As filed with the Securities and Exchange Commission on August 17, 2007

Registration No. 333-144405

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

AMENDMENT NO. 1 TO
Form S-1
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

ULTA SALON, COSMETICS & FRAGRANCE, INC.
(Exact name of Registrant as specified in its charter)

Delaware	**5999f**	**36-3685240**
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification No.)*

1135 Arbor Drive
Romeoville, Illinois 60446
(630) 226-0020
(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Lynelle P. Kirby
President, Chief Executive Officer and Director
Ulta Salon, Cosmetics & Fragrance, Inc.
1135 Arbor Drive
Romeoville, Illinois 60446
(630) 226-0020
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

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Approximate date of commencement of proposed sale to the public: As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(2)
Common Stock, par value $.01 per share	$115,000,000	$3,531
Preferred stock purchase rights(3)	—	—

(1) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933. Includes shares of common stock subject to the underwriters' option.

(2) Previously paid.

(3) The preferred stock purchase rights initially will trade together with the common stock. The value attributable to the preferred stock purchase rights, if any, is reflected in the offering price of the common stock.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to completion, dated , 2007

Prospectus

shares

Common stock

This is an initial public offering of shares of common stock of Ulta Salon, Cosmetics & Fragrance, Inc. We are selling shares of common stock. The selling stockholders identified in this prospectus are offering an additional shares. We will not receive any proceeds from the sale of shares by the selling stockholders. Prior to this offering, there has been no public market for our common stock. The estimated initial public offering price is between $ and $ per share.

We are applying to have our common stock listed on The NASDAQ Global Select Market under the symbol "ULTA."

	Per share	Total
Public offering price	$	$
Underwriting discounts and commissions	$	$
Proceeds to ULTA, before expenses	$	$
Proceeds to the selling stockholders, before expenses	$	$

The selling stockholders have granted the underwriters an option for a period of 30 days to purchase up to additional shares of common stock to cover over-allotments, if any.

Investing in our common stock involves a high degree of risk. See "Risk factors" beginning on page 9.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed on the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of common stock to purchasers on , 2007.

JPMorgan **Wachovia Securities**

Thomas Weisel Partners LLC

Cowen and Company

Piper Jaffray

, 2007

the STORE ON
EVERYONE'S LIPS
(the SALON on everyone's list)

ULTA
BEAUTY

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You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with information that is different. We are offering to sell and seeking offers to buy shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our common stock.

Unless the context requires otherwise, the words “ULTA,” “we,” “company,” “us” and “our” refer to Ulta Salon, Cosmetics & Fragrance, Inc. For purposes of this prospectus, the term “stockholder” shall refer to the holders of our common stock.

Prospectus summary

This summary highlights information contained elsewhere in this prospectus. You should read the entire prospectus carefully, including the "Risk factors" section and our consolidated financial statements and the related notes included in this prospectus before making an investment in our common stock. In this prospectus, our fiscal years ended January 29, 2000, February 3, 2001, February 2, 2002, February 1, 2003, January 31, 2004, January 29, 2005, January 28, 2006, February 3, 2007 and February 2, 2008 are referred to as fiscal 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 and 2007, respectively.

Our company

We are the largest beauty retailer that provides one-stop shopping for prestige, mass and salon products and salon services in the United States. We provide affordable indulgence to our customers by combining the product breadth, value and convenience of a beauty superstore with the distinctive environment and experience of a specialty retailer. Key aspects of our business include:

One-Stop Shopping. We offer a unique combination of over 21,000 prestige and mass beauty products across the categories of cosmetics, fragrance, haircare, skincare, bath and body products and salon styling tools, as well as salon haircare products. We also offer a full-service salon in all of our stores.

Our Value Proposition. We focus on delivering a compelling value proposition to our customers. For example, we run frequent promotions and gift certificates for our mass brands, gift-with-purchase offers and multi-product gift sets for our prestige brands, and a comprehensive customer loyalty program.

An Off-Mall Location. We are conveniently located in high-traffic, off-mall locations, and our typical store is approximately 10,000 square feet, including a salon of approximately 950 square feet. As of May 31, 2007, we operated 207 stores across 26 states.

In addition to these fundamental elements of a beauty superstore, we strive to offer an uplifting shopping experience through what we refer to as "The Four E's": *Escape*, *Education*, *Entertainment* and *Esthetics*.

Escape. We offer our customer a timely escape without the intimidating, commission-oriented and brand-dedicated sales approach found in most department stores and with a level of service typically unavailable in drug stores and mass merchandisers.

Education. We staff our stores with a team of well-trained beauty consultants and professionally licensed estheticians and stylists whose mission is to educate, inform and advise our customers regarding their beauty needs.

Entertainment. Our catalogs are invitations for our customers to come to ULTA to play, touch, test, learn and explore. We further enhance the shopping experience through live demonstrations, customer makeovers and in-store videos.

Esthetics. Our store design features sleek, modern lines, wide aisles that make the store easy to navigate and pleasant lighting to create a luxurious and welcoming environment.

We were founded in 1990 as a discount beauty retailer at a time when prestige, mass and salon products were sold through distinct channels—department stores for prestige products, drug stores and mass merchandisers for mass products, and salons and authorized retail outlets for professional hair care products. When Lyn Kirby, our current President and Chief Executive Officer, joined us in December 1999, we pioneered our unique combination of beauty superstore and specialty store attributes. In October 2005, Ms. Kirby was recognized by Cosmetics Executive Women (CEW) with a *2005 Achiever Award* for achievement in the beauty industry. In May 2007, we received a *2007 Hot Retailer Award* from the International Council of Shopping Centers (ICSC) for being an innovative retail concept.

We believe our strategy provides us with competitive advantages that have contributed to our strong financial performance. Our net sales have increased from $206.5 million in fiscal 1999 to $755.1 million in fiscal 2006, representing a 20.3% compounded annual growth rate. In that same period, we grew our store base from 75 to 196 stores while growing our net income from $1.2 million in fiscal 1999 to $22.5 million in fiscal 2006, representing a 51.6% compounded annual growth rate. In addition, we have achieved 29 consecutive quarters of positive comparable store sales growth since fiscal 2000.

Our competitive strengths

We believe the following competitive strengths differentiate us from our competitors and are critical to our continuing success:

Differentiated merchandising strategy with broad appeal. We believe our broad selection of merchandise across categories, price points and brands offers a unique shopping experience for our customers. While the products we sell can be found in department stores, specialty stores, salons, drug stores and mass merchandisers, we offer all of these products in one retail format. We offer over 500 brands, such as *Bare Escentuals* cosmetics, *Chanel* and *Estée Lauder* fragrances, *L'Oréal* haircare and cosmetics and *Paul Mitchell* haircare.

Our unique customer experience. We combine the value and convenience of a beauty superstore with the distinctive environment and experience of a specialty retailer. We cater to the woman who loves to indulge in shopping for beauty products as well as the woman who is time constrained. We believe our unique shopping experience increases both the frequency and length of our customers' visits.

Retail format poised to benefit from shifting channel dynamics. Over the past several years, the approximately $75 billion beauty products and salon services industry has experienced significant changes, including a shift in how manufacturers distribute and customers purchase beauty products. We are capitalizing on these trends by offering an off-mall, service-oriented specialty retail concept with a comprehensive product mix across categories and price points.

Loyal and active customer base. We have approximately six million customer loyalty program members. We utilize this valuable proprietary database to drive traffic, better understand our customers' purchasing patterns and support new store site selection.

Strong vendor relationships across product categories. We have strong, active relationships with over 300 vendors. We believe these relationships, which span the three distinct beauty categories of prestige, mass and salon, and have taken years to develop, create a significant impediment for other retailers to replicate our model.

Experienced management team. Our senior management team averages over 25 years of combined beauty and retail experience and brings a creative merchandising approach and a disciplined operating philosophy to our business.

Growth strategy

We intend to expand our presence as a leading retailer of beauty products and salon services by:

- Growing our store base to our long-term potential of over 1,000 stores.
- Increasing our sales and profitability by expanding our prestige brand offerings.
- Improving our profitability by leveraging our fixed costs.
- Continuing to enhance our brand awareness to generate sales growth.
- Driving increased customer traffic to our salons.
- Expanding our online business.

Risks relating to our company

Investing in our common stock involves a high degree of risk. In particular, we may not be able to successfully implement our growth strategy or capitalize on our competitive strengths. Additionally:

- We may be unable to compete effectively in our highly competitive markets.
- If we are unable to gauge beauty trends and react to changing consumer preferences in a timely manner, our sales will decrease.
- Our failure to retain our existing senior management team and to continue to attract qualified new personnel could adversely affect our business.
- We intend to continue to open new stores, which could strain our resources and have a material adverse effect on our business and financial performance.
- The capacity of our distribution and order fulfillment infrastructure may not be adequate to support our recent growth and expected future growth plans, which could prevent the successful implementation of these plans or cause us to incur costs to expand this infrastructure.
- Any material disruption of our information systems could negatively impact financial results and materially adversely affect our business operations.

If any of the foregoing events or circumstances occur, an investment in our common stock may be impaired. You should read “Risk factors” beginning on page 8 for a more complete discussion of certain factors you should consider together with all other information included in this prospectus before making an investment decision.

Company information

We were incorporated in Delaware on January 9, 1990 under the name "R.G. Trends Corporation." On June 7, 1990, we changed our name to "Ulta3, Inc.," on February 7, 1992, we changed our name to "Ulta3 The Cosmetic Savings Store, Inc.," on July 12, 1995, we changed our name to "Ulta3 Cosmetics & Salon, Inc.," and on July 29, 1999, we changed our name to "Ulta Salon, Cosmetics & Fragrance, Inc." Our principal executive offices are located at 1135 Arbor Drive, Romeoville, Illinois 60446 and our telephone number is (630) 226-0020. Our primary website is www.ulta.com. The information contained in, or that can be accessed through, our website is not incorporated by reference into this prospectus, and you should not consider information contained on our website as part of this prospectus.

ULTAtm, our logo, Basically Utm, Formativtm, Ulta 3tm, Ulta 3 and designtm, Ulta 3 Beauty Clubtm, Ulta 3 Cosmetics Savings Storetm, Ulta 3 Salon Cosmetics Fragrance designtm, Ulta 3 The Ultimate Beauty Storetm, Ulta Beautytm, Ulta Salon-Cosmetics-Fragrancetm, Ulta Salon-Cosmetics-Fragrance and designtm, Ulta.comtm and What a Woman Wantstm are our trademarks. All service marks, trademarks and trade names referred to in this prospectus are the property of their respective owners. We do not intend our use or display of other parties' service marks, trademarks or trade names or to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by these other parties.

The offering

Common stock offered by us	shares
Common stock offered by the selling stockholders	shares
Common stock to be outstanding after the offering	shares
Use of proceeds	We intend to use the net proceeds of approximately million from this offering to pay in full the approximately $91.9 million of accumulated dividends in arrears on our preferred stock and the approximately $4.8 million redemption price of the Series III preferred stock, and to use any remaining proceeds to reduce our borrowings under our third amended and restated loan and security agreement. We will not receive any proceeds from the sale of common stock by the selling stockholders.
Dividends	We have never paid any dividends on our common stock and do not anticipate paying any dividends on our common stock in the foreseeable future. See "Dividend policy."
Preferred stock purchase rights	Each share of common stock offered hereby will have associated with it one preferred stock purchase right under the stockholder rights agreement which we intend to adopt in connection with this offering. Each of these rights will entitle its holder to purchase one one-thousandth of a share of Series A junior participating preferred stock at a purchase price specified in the stockholder rights agreement under the circumstances provided therein. See "Description of capital stock—Stockholder rights agreement."
Proposed NASDAQ Global Select Market symbol	"ULTA"
Risk factors	See "Risk factors" and other information included in this prospectus for a discussion of some of the factors you should consider before deciding to purchase our common stock.

The number of shares of common stock to be outstanding after this offering is based on 77,411,747 shares outstanding as of May 5, 2007 and excludes:

- 861,011 shares of common stock issuable upon exercise of outstanding options under our Second Amended and Restated Restricted Stock Option Plan, as amended, or the Old Plan, at a weighted average exercise price of $0.48 per share. No further awards will be made under the Old Plan; and
- 5,189,390 shares of common stock issuable upon exercise of outstanding options under our 2002 Equity Incentive Plan, or the 2002 Plan, at a weighted average exercise price of $2.65.

Except as otherwise indicated, information in this prospectus reflects or assumes the following:

- the conversion on a one-for-one basis of all outstanding shares of our Series I, Series II, Series IV, Series V and Series V-1 preferred stock into an aggregate of 65,702,530 shares of common stock effective upon the consummation of this offering pursuant to the terms of our restated certificate of incorporation;
- the redemption of all outstanding shares of our Series III preferred stock effective upon the consummation of this offering for an aggregate of approximately $4.8 million pursuant to the terms of our restated certificate of incorporation; and
- no exercise by the underwriters of their option to purchase additional shares of common stock to cover over-allotments.

Summary consolidated financial information

The following table sets forth our summary consolidated financial data for the periods indicated. You should read this information in conjunction with our consolidated financial statements, including the related notes, and "Management's discussion and analysis of financial condition and results of operations" included elsewhere in this prospectus. The following summary consolidated balance sheet data as of January 28, 2006 and February 3, 2007 and the summary consolidated income statement data for each of the three fiscal years ended January 29, 2005, January 28, 2006 and February 3, 2007 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The summary consolidated balance sheet data as of May 5, 2007 and the summary consolidated statement of operations data for the three months ended April 29, 2006 and May 5, 2007 have been derived from our unaudited consolidated financial statements included elsewhere in this prospectus. The summary consolidated balance sheet data as of January 29, 2005 has been derived from our audited consolidated financial statements not included in this prospectus. The selected balance sheet data as of April 29, 2006 has been derived from our unaudited consolidated financial statements that are not included in this prospectus. Our unaudited summary consolidated financial data as of April 29, 2006 and May 5, 2007 and for the three months then ended, has been prepared on the same basis as the annual audited consolidated financial statements and includes all adjustments, consisting of only normal recurring adjustments necessary for the fair presentation of this data in all material respects. The results for any interim period are not necessarily indicative of the results of operations to be expected for a full fiscal year.

	Fiscal year ended(1)			Three months ended	
(Dollars in thousands, except per share and per square foot data)	January 29, 2005	January 28, 2006	February 3, 2007	April 29, 2006	May 5, 2007
Consolidated income statement data:					
Net sales(2)	$ 491,152	$ 579,075	$ 755,113	$ 159,468	$ 194,113
Cost of sales	346,585	404,794	519,929	108,813	134,600
Gross profit	144,567	174,281	235,184	50,655	59,513
Selling, general, and administrative expenses	121,999	140,145	188,000	41,316	47,982
Pre-opening expenses	4,072	4,712	7,096	826	1,656
Operating income	18,496	29,424	40,088	8,513	9,875
Interest expense	2,835	2,951	3,314	742	996
Income before income taxes	15,661	26,473	36,774	7,771	8,879
Income tax expense	6,201	10,504	14,231	3,071	3,560
Net income	$ 9,460	$ 15,969	$ 22,543	$ 4,700	$ 5,319
Net income (loss) per share:					
Basic	$ (0.44)	$ 0.47	$ 0.87	$ 0.18	$ 0.14
Diluted	$ (0.44)	$ 0.21	$ 0.29	$ 0.06	$ 0.07
Weighted average number of shares:					
Basic	5,032,612	6,478,217	9,130,697	6,960,640	11,368,805
Diluted	5,032,612	76,297,969	79,026,350	76,617,578	80,652,941

(Dollars in thousands, except per share and per square foot data)	Fiscal year ended(1) January 29, 2005	January 28, 2006	February 3, 2007	Three months ended April 29, 2006	May 5, 2007
Other operating data:					
Comparable store sales increase(3)	8.0%	8.3%	14.5%	12.8%	9.2%
Number of stores end of period	142	167	196	170	203
Total square footage end of period	1,464,330	1,726,563	2,023,305	1,755,280	2,096,275
Total square footage per store(4)	10,312	10,339	10,323	10,325	10,326
Average total square footage(5)	1,374,005	1,582,935	1,857,885	1,650,697	1,934,871
Net sales per average total square foot(6)	$ 357	$ 366	$ 398	$ 370	$ 400
Capital expenditures	34,807	41,607	62,331	5,304	17,757
Depreciation and amortization	18,304	22,285	29,736	6,048	9,840
Consolidated balance sheet data:					
Cash and cash equivalents	$ 3,004	$ 2,839	$ 3,645	$ 2,926	$ 3,161
Working capital	69,955	76,473	88,105	75,733	85,870
Property and equipment, net	114,912	133,003	162,080	131,603	174,916
Total assets	253,425	282,615	338,597	287,601	377,852
Total debt(7)	47,008	50,173	55,529	63,537	87,883
Total stockholders' equity	105,308	123,015	148,760	128,221	153,359

(1) Our fiscal year-end is the Saturday closest to January 31 based on a 52/53-week year. Each fiscal year consists of four 13-week quarters, with an extra week added onto the fourth quarter every five or six years.

(2) Fiscal 2006 was a 53-week operating year and the 53rd week represented approximately $16.4 million in net sales.

(3) Comparable store sales increase reflects sales for stores beginning on the first day of the 14th month of operation. Remodeled stores are included in comparable store sales unless the store was closed for a portion of the current or comparable prior period.

(4) Total square footage per store is calculated by dividing total square footage at end of period by number of stores at end of period.

(5) Average total square footage represents a weighted average which reflects the effect of opening stores in different months throughout the period.

(6) Net sales per average total square foot was calculated by dividing net sales for the trailing 12-month period by the average square footage for those stores open during each period. The fiscal 2006 and first quarter fiscal 2007 net sales per average total square foot amounts were adjusted to exclude the net sales effects of the 53rd week.

(7) Total debt includes approximately $4.8 million related to the Series III redeemable preferred stock, which is presented between the liabilities section and the equity section of our consolidated balance sheet for all periods presented.

Risk factors

Investment in our common stock involves a high degree of risk and uncertainty. You should carefully consider the following risks and all of the other information contained in this prospectus before making an investment decision. If any of the following risks occur, our business, financial condition, results of operations or future growth could suffer. In these circumstances, the market price of our common stock could decline, and you may lose all or part of your investment. The risks described below are not the only ones facing our company. Additional risks not presently known to us or which we currently consider immaterial also may adversely affect our company.

Risks related to our business

We may be unable to compete effectively in our highly competitive markets.

The markets for beauty products and salon services are highly competitive with few barriers to entry. We compete against a diverse group of retailers, both small and large, including regional and national department stores, specialty retailers, drug stores, mass merchandisers, high-end and discount salon chains, locally owned beauty retailers and salons, Internet businesses, catalog retailers and direct response television, including television home shopping retailers and infomercials. We believe the principal bases upon which we compete are the quality of merchandise, our value proposition, the quality of our customers' shopping experience and the convenience of our stores as one-stop destinations for beauty products and salon services. Many of our competitors are, and many of our potential competitors may be, larger and have greater financial, marketing and other resources and therefore may be able to adapt to changes in customer requirements more quickly, devote greater resources to the marketing and sale of their products, generate greater national brand recognition or adopt more aggressive pricing policies than we can. As a result, we may lose market share, which could have a material adverse effect on our business, financial condition and results of operations.

If we are unable to gauge beauty trends and react to changing consumer preferences in a timely manner, our sales will decrease.

We believe our success depends in substantial part on our ability to:

- recognize and define product and beauty trends;
- anticipate, gauge and react to changing consumer demands in a timely manner;
- translate market trends into appropriate, saleable product and service offerings in our stores and salons in advance of our competitors;
- develop and maintain vendor relationships that provide us access to the newest merchandise on reasonable terms; and
- distribute merchandise to our stores in an efficient and effective manner and maintain appropriate in-stock levels.

If we are unable to anticipate and fulfill the merchandise needs of the regions in which we operate, our net sales may decrease and we may be forced to increase markdowns of slow-moving merchandise, either of which could have a material adverse effect on our business, financial condition and results of operations.

If we fail to retain our existing senior management team and continue to attract qualified new personnel, such failure could have a material adverse effect on our business, financial condition and results of operations.

Our business requires disciplined execution at all levels of our organization. This execution requires an experienced and talented management team. Ms. Kirby, our President and Chief Executive Officer since December 1999, is of key importance to our business, including her relationships with our vendors and influence on our sales and marketing. If we lost Ms. Kirby's services or if we were to lose the benefit of the experience, efforts and abilities of other key executive and buying personnel, it could have a material adverse effect on our business, financial condition and results of operations. We have entered into employment agreements with Ms. Kirby and Mr. Barkus, our Chief Operating Officer, expiring in February 2008 and February 2009, respectively. For more information on our management team and their employment agreements and severance agreements, see "Management." Furthermore, our ability to manage our retail expansion will require us to continue to train, motivate and manage our associates and to attract, motivate and retain additional qualified managerial and merchandising personnel and store associates. Competition for this type of personnel is intense, and we may not be successful in attracting, assimilating and retaining the personnel required to grow and operate our business profitably.

We intend to continue to open new stores, which could strain our resources and have a material adverse effect on our business and financial performance.

Our continued and future growth largely depends on our ability to successfully open and operate new stores on a profitable basis. During 2006, we opened 31 new stores, and we are on track to open approximately 50 new stores in 2007. We intend to continue to grow our number of stores for the foreseeable future, and believe we have the long-term potential to grow our store base to over 1,000 stores in the United States over the next 10 years. During fiscal 2006, the average investment required to open a typical new store was approximately $1.4 million. This continued expansion could place increased demands on our financial, managerial, operational and administrative resources. For example, our planned expansion will require us to increase the number of people we employ as well as to monitor and upgrade our management information and other systems and our distribution infrastructure. These increased demands and operating complexities could cause us to operate our business less efficiently, have a material adverse effect on our operations and financial performance and slow our growth.

The capacity of our distribution and order fulfillment infrastructure may not be adequate to support our recent growth and expected future growth plans, which could prevent the successful implementation of these plans or cause us to incur costs to expand this infrastructure, which could have a material adverse effect on our business, financial condition and results of operations.

We currently operate a single distribution facility (including an overflow facility), which houses the distribution operations for ULTA retail stores together with the order fulfillment operations of our Internet business. We have identified the need for a second distribution facility, which we expect will be operational in the first half of 2008, as well as the need to upgrade our existing information systems in order to support the addition of the second distribution facility. If we are unable to successfully implement the expansion of our distribution infrastructure and upgrade of our information systems, the efficient flow of our merchandise could be disrupted. In order to support our recent and expected future growth and to maintain the efficient operation of our business, additional distribution centers may need to be added in the future.

Our failure to expand our distribution capacity on a timely basis to keep pace with our anticipated growth in stores could have a material adverse effect on our business, financial condition and results of operations.

Any significant interruption in the operations of our distribution and order fulfillment infrastructure could disrupt our ability to deliver our merchandise and to process customer orders in a timely manner, which could have a material adverse effect on our business, financial condition and results of operations.

We currently distribute products to our stores from only one distribution facility, without supplementing such deliveries with direct-to-store arrangements from vendors or wholesalers. This dependence on one distribution facility, combined with the fact that we are a retailer carrying approximately 21,000 beauty products that change on a regular basis in response to beauty trends, makes the success of our operations particularly vulnerable to disruptions in our distribution system. Any significant interruption in the operation of our distribution infrastructure, including an interruption caused by our failure to successfully open our second distribution facility in the first half of 2008 or events beyond our control, such as disruptions in our information systems, disruptions in operations due to fire or other catastrophic events, labor disagreements, or shipping problems, could drastically reduce our ability to receive and process orders and provide products and services to our stores. Given our merchandising strategy and our dependence on only one distribution facility, this could result in lost sales and a loss of customer loyalty, which could have a material adverse effect on our business, financial condition and results of operations.

Any material disruption of our information systems could negatively impact financial results and materially adversely affect our business operations.

We are increasingly dependent on a variety of information systems to effectively manage the operations of our growing store base and fulfill customer orders from our Internet business. In addition, we have identified the need to expand and upgrade our information systems to support recent and expected future growth, including the planned opening of our second distribution facility in the first half of 2008. As part of this planned expansion of our information systems, we expect to construct a new data center and modify our warehouse management system software to support our second distribution facility. Any interruption during the transition of our information systems to the new data center and the modification of our warehouse management system software could have a material adverse effect on our business, financial condition and results of operations. The failure of our information systems to perform as designed, including the failure of our warehouse management software system to operate as expected during the holiday season or to support our planned second distribution facility, could have an adverse effect on our business and results of our operations. Any material disruption of our systems could disrupt our ability to track, record and analyze the merchandise that we sell and could negatively impact our operations, shipment of goods, ability to process financial information and credit card transactions, and our ability to receive and process Internet orders or engage in normal business activities. Moreover, security breaches or leaks of proprietary information, including leaks of customers' private data, could result in liability, decrease customer confidence in our company, and weaken our ability to compete in the marketplace, which could have a material adverse effect on our business, financial condition and results of operations.

Our Internet operations, while relatively small, are increasingly important to our business. We plan to go live with a new version of our website in the first half of 2008 or earlier. In addition

to changing consumer preferences and buying trends relating to Internet usage, the re-launch of our website will occur before a peak holiday season and before we have had time to conduct full and extensive testing, which makes us particularly vulnerable to website downtime and other technical failures. The re-launch of our website is important to our marketing efforts because the new website will serve as a more effective extension of ULTA's marketing and prospecting strategies (beyond catalogs, newspaper inserts and national advertising) by better exposing potential new customers to the ULTA brand and product offerings. Our failure to successfully respond to these risks and uncertainties could reduce Internet sales and damage our brand's reputation.

A downturn in the economy may affect consumer purchases of discretionary items such as prestige beauty products and premium salon services, which could delay our growth strategy and have a material adverse effect on our business, financial condition, profitability and cash flows.

We appeal to a wide demographic consumer profile and offer a broad selection of prestige beauty products at higher price points than mass beauty products. We also offer a wide selection of premium salon services. A downturn in the economy could adversely impact consumer purchases of discretionary items such as prestige beauty products and premium salon services. Factors that could affect consumers' willingness to make such discretionary purchases include general business conditions, levels of employment, interest rates and tax rates, the availability of consumer credit and consumer confidence in future economic conditions. In the event of an economic downturn, consumer spending habits could be adversely affected and we could experience lower than expected net sales, which could force us to delay or slow our growth strategy and have a material adverse effect on our business, financial condition, profitability and cash flows.

Increased costs or interruption in our third-party vendors' overseas sourcing operations could disrupt production, shipment or receipt of some of our merchandise, which would result in lost sales and could increase our costs.

We directly source the majority of our gift-with-purchase and other promotional products through third-party vendors using foreign factories. In addition, many of our vendors use overseas sourcing to varying degrees to manufacture some or all of their products. Any event causing a sudden disruption of manufacturing or imports from such foreign countries, including the imposition of additional import restrictions, unanticipated political changes, increased customs duties, legal or economic restrictions on overseas suppliers' ability to produce and deliver products, and natural disasters, could materially harm our operations. We have no long-term supply contracts with respect to such foreign-sourced items, many of which are subject to existing or potential duties, tariffs or quotas that may limit the quantity of certain types of goods that may be imported into the United States from such countries. Our business is also subject to a variety of other risks generally associated with sourcing goods from abroad, such as political instability, disruption of imports by labor disputes and local business practices.

Our sourcing operations may also be hurt by health concerns regarding infectious diseases in countries in which our merchandise is produced, adverse weather conditions or natural disasters that may occur overseas or acts of war or terrorism in the United States or worldwide, to the extent these acts affect the production, shipment or receipt of merchandise. Our future operations and performance will be subject to these factors, which are beyond our control, and these factors could materially hurt our business, financial condition and results of operations or may require us to modify our current business practices and incur increased costs.

Recent volatility in the global oil markets has resulted in rising fuel and freight prices, which many shipping companies are passing on to their customers. Our shipping costs have increased, and these costs may continue to increase. We may be unable to pass these increased costs on to our customers, which will reduce our profitability. Additionally, recent increased demand for shipping capacity between the United States and Asia will further increase our costs for merchandise sourced from Asia, which could have a material adverse effect on our business, financial condition and results of operations.

A reduction in traffic to, or the closing of, the other destination retailers in the shopping areas where our stores are located could significantly reduce our sales and leave us with unsold inventory, which could have a material adverse effect on our business, financial condition and results of operations.

As result of our real estate strategy, most of our stores are located in off-mall shopping areas known as power centers or lifestyle centers, which also accommodate other well-known destination retailers. Power centers typically contain three to five big-box anchor stores along with a variety of smaller specialty tenants, while lifestyle centers typically contain a variety of high-end destination retailers but no large anchor stores. As a consequence of most of our stores being located in such shopping areas, our sales are derived, in part, from the volume of traffic generated by the other destination retailers and the anchor stores in the lifestyle centers and power centers where our stores are located. Customer traffic to these shopping areas may be adversely affected by the closing of such destination retailers or anchor stores, or by a reduction in traffic to such stores resulting from a regional economic downturn, a general downturn in the local area where our store is located, or a decline in the desirability of the shopping environment of a particular power center or lifestyle center. Such a reduction in customer traffic would reduce our sales and leave us with excess inventory, which could have a material adverse effect on our business, financial condition and results of operations. We may respond by increasing markdowns or initiating marketing promotions to reduce excess inventory, which would further decrease our gross profits and net income.

Diversion of exclusive salon products, or a decision by manufacturers of exclusive salon products to utilize other distribution channels, could negatively impact our revenue from the sale of such products, which could have a material adverse effect on our business, financial condition and results of operations.

The retail products that we sell in our salons are meant to be sold exclusively by professional salons and authorized professional retail outlets. However, incidents of product diversion occur, which involve the selling of salon exclusive haircare products to unauthorized channels such as drug stores, grocery stores or mass merchandisers. Diversion could result in adverse publicity that harms the commercial prospects of our products (if diverted products are old, tainted or damaged), as well as lower product revenues should consumers choose to purchase diverted product from these channels rather than purchasing from one of our salons. Additionally, the various product manufacturers could in the future decide to utilize other distribution channels for such products, therefore widening the availability of these products in other retail channels, which could negatively impact the revenue we earn from the sale of such products.

We rely on our good relationships with vendors to purchase prestige, mass and salon beauty products on reasonable terms. If these relationships were to be impaired, we may not be able to obtain a sufficient selection or volume of merchandise on reasonable terms, and we may not be able to respond promptly to changing trends in beauty products, either of which could have a material adverse effect on our competitive position, our business and financial performance.

We have no long-term supply agreements or exclusive arrangements with vendors and, therefore, our success depends on maintaining good relationships with our vendors. Our business depends to a significant extent on the willingness and ability of our vendors to supply us with a sufficient selection and volume of products to stock our stores. We also have strategic partnerships with certain core brands, which has allowed us to benefit from the growing popularity of such brands. Any of our other core brands could in the future decide to scale back or end its partnership with us and strengthen its relationship with our competitors, which could negatively impact the revenue we earn from the sale of such products. If we fail to maintain strong relationships with our existing vendors, or fail to continue acquiring and strengthening relationships with additional vendors of beauty products, our ability to obtain a sufficient amount and variety of merchandise on reasonable terms may be limited, which could have a negative impact on our competitive position.

During fiscal 2006, merchandise supplied to ULTA by our top ten vendors accounted for approximately 35% of our net sales. The loss of or a reduction in the amount of merchandise made available to us by any one of these key vendors, or by any of our other vendors, could have an adverse effect on our business.

If we fail to maintain the value of our brand, our sales are likely to decline and our growth strategy could be jeopardized.

Our success depends on the value of the ULTA brand. The ULTA name is integral not only to our business but also to the continuation of our growth strategy. A primary component of our strategy involves expanding into other geographic markets in the United States. As we expand into new geographic markets, consumers in these markets may not accept our brand image. Maintaining, promoting and positioning our brand will depend largely on the success of our marketing and merchandising efforts and our ability to provide a consistent, high quality customer experience. We anticipate that, as our business expands into new markets and as the market becomes increasingly competitive, maintaining and enhancing our brand may become increasingly difficult and expensive. Our brand could be adversely affected if we fail to achieve these objectives or if our public image or reputation were to be tarnished by negative publicity. Any of these events could result in a decrease in sales and jeopardize our growth strategy.

If we are unable to protect our intellectual property rights, our brand and reputation could be harmed, which could have a material adverse effect on our business, financial condition and results of operations.

We regard our trademarks, trade dress, copyrights, trade secrets, know-how and similar intellectual property as critical to our success. Our principal intellectual property rights include registered trademarks on our name, "ULTA," copyrights in our website content, rights to our domain name www.ulta.com and trade secrets and know-how with respect to our *ULTA* branded product formulations, product sourcing, sales and marketing and other aspects of our business. As such, we rely on trademark and copyright law, trade secret protection and confidentiality agreements with certain of our employees, consultants, suppliers and others to protect our proprietary rights. If we are unable to protect or preserve the value of our

trademarks, copyrights, trade secrets or other proprietary rights for any reason, or if other parties infringe on our intellectual property rights, our brand and reputation could be impaired and we could lose customers.

If our manufacturers are unable to produce products manufactured uniquely for ULTA, including ULTA branded products and gift-with-purchase and other promotional products, consistent with applicable regulatory requirements, we could suffer lost sales and be required to take costly corrective action, which could have a material adverse effect on our business, financial condition and results of operations.

We do not own or operate any manufacturing facilities and therefore depend upon independent third-party vendors for the manufacture of all products manufactured uniquely for *ULTA*, including *ULTA* branded products and gift-with-purchase and other promotional products. Our third-party manufacturers of *ULTA* products may not maintain adequate controls with respect to product specifications and quality and may not continue to produce products that are consistent with applicable regulatory requirements. If we or our third-party manufacturers fail to comply with applicable regulatory requirements, we could be required to take costly corrective action. In addition, sanctions under the FDC Act may include seizure of products, injunctions against future shipment of products, restitution and disgorgement of profits, operating restrictions and criminal prosecution. The Food and Drug Administration, or FDA, does not have a pre-market approval system for cosmetics, and we believe we are permitted to market our cosmetics and have them manufactured without submitting safety or efficacy data to the FDA. However, the FDA may in the future determine to regulate our cosmetics or the ingredients included in our cosmetics as drugs. These events could interrupt the marketing and sale of our *ULTA* products, severely damage our brand reputation and image in the marketplace, increase the cost of our products, cause us to fail to meet customer expectations or cause us to be unable to deliver merchandise in sufficient quantities or of sufficient quality to our stores, any of which could result in lost sales, which could have a material adverse effect on our business, financial condition and results of operations.

We, as well as our vendors, are subject to laws and regulations that could require us to modify our current business practices and incur increased costs, which could have a material adverse effect on our business, financial condition and results of operations.

In our U.S. markets, numerous laws and regulations at the federal, state and local levels can affect our business. Legal requirements are frequently changed and subject to interpretation, and we are unable to predict the ultimate cost of compliance with these requirements or their effect on our operations. If we fail to comply with any present or future laws or regulations, we could be subject to future liabilities, a prohibition on the operation of our stores or a prohibition on the sale of our *ULTA* branded products. In particular, failure to adequately comply with the following legal requirements could have a material adverse effect on our business, financial conditions and results of operations:

- Our rapidly expanding workforce, growing in pace with our number of stores, makes us vulnerable to changes in labor and employment laws. In addition, changes in federal and state minimum wage laws and other laws relating to employee benefits could cause us to incur additional wage and benefits costs, which could hurt our profitability and affect our growth strategy.

- Ensuring compliance with local zoning and real estate land use restrictions is increasingly challenging as we grow the number of our stores in new cities and states.

- Our salon business is subject to state board regulations and state licensing requirements for our stylists and our salon procedures. Failure to maintain compliance with these regulatory and licensing requirements could jeopardize the viability of our salons.
- We operate stores in California, which has enacted legislation commonly referred to as “Proposition 65” requiring that “clear and reasonable” warnings be given to consumers who are exposed to chemicals known to the State of California to cause cancer or reproductive toxicity. Although we have sought to comply with Proposition 65 requirements, there can be no assurance that we will not be adversely affected by litigation relating to Proposition 65.

In addition, the formulation, manufacturing, packaging, labeling, distribution, sale and storage of our vendors’ products and our *ULTA* products are subject to extensive regulation by various federal agencies, including the FDA, the Federal Trade Commission, or FTC, and state attorneys general in the United States. If we, our vendors or the manufacturers of our *ULTA* products fail to comply with those regulations, we could become subject to significant penalties or claims, which could harm our results of operations or our ability to conduct our business. In addition, the adoption of new regulations or changes in the interpretations of existing regulations may result in significant compliance costs or discontinuation of product sales and may impair the marketability of our vendors’ products or our *ULTA* products, resulting in significant loss of net sales. Our failure to comply with FTC or state regulations that cover our vendors’ products or our *ULTA* product claims and advertising, including direct claims and advertising by us, may result in enforcement actions and imposition of penalties or otherwise harm the distribution and sale of our products.

Our ULTA products and salon services may cause unexpected and undesirable side effects that could result in their discontinuance or expose us to lawsuits, either of which could result in unexpected costs and damage to our reputation, which could have a material adverse effect on our business, financial condition and results of operations.

Unexpected and undesirable side effects caused by our *ULTA* products for which we have not provided sufficient label warnings, or salon services which may have been performed negligently, could result in the discontinuance of sales of our products or of certain salon services or prevent us from achieving or maintaining market acceptance of the affected products and services. Such side effects could also expose us to product liability or negligence lawsuits. Any claims brought against us may exceed our existing or future insurance policy coverage or limits. Any judgment against us that is in excess of our policy limits would have to be paid from our cash reserves, which would reduce our capital resources. Further, we may not have sufficient capital resources to pay a judgment, in which case our creditors could levy against our assets. These events could cause negative publicity regarding our company, brand or products, which could in turn harm our reputation and net sales, which could have a material adverse effect on our business, financial condition and results of operations.

Legal proceedings or third-party claims of intellectual property infringement may require us to spend time and money and could prevent us from developing certain aspects of our business operations, which could have a material adverse effect on our business, financial condition and results of operations.

Our technologies, promotional products purchased from third-party vendors, or *ULTA* products or potential products in development may infringe rights under patents, patent applications, trademark, copyright or other intellectual property rights of third parties in the United States and abroad. These third parties could bring claims against us that would cause us to incur

substantial expenses and, if successful, could cause us to pay substantial damages. Further, if a third party were to bring an intellectual property infringement suit against us, we could be forced to stop or delay development, manufacturing, or sales of the product that is the subject of the suit.

As a result of intellectual property infringement claims, or to avoid potential claims, we may choose to seek, or be required to seek, a license from the third party and would most likely be required to pay license fees or royalties or both. These licenses may not be available on acceptable terms, or at all. Ultimately, we could be prevented from commercializing a product or be forced to cease some aspect of our business operations if, as a result of actual or threatened intellectual property infringement claims, we are unable to enter into licenses on acceptable terms. Even if we were able to obtain a license, the rights may be nonexclusive, which would give our competitors access to the same intellectual property. The inability to enter into licenses could harm our business significantly.

In addition to infringement claims against us, we may become a party to other patent or trademark litigation and other proceedings, including interference proceedings declared by the United States Patent and Trademark Office, or USPTO, proceedings before the USPTO's Trademark Trial and Appeal Board and opposition proceedings in the European Patent Office, regarding intellectual property rights with respect to promotional products purchased from third-party vendors or our *ULTA* branded products and technology. Some of our competitors may be able to sustain the costs of such litigation or proceedings better than us because of their substantially greater financial resources. Uncertainties resulting from the initiation and continuation of intellectual property litigation or other proceedings could impair our ability to compete in the marketplace. Intellectual property litigation and other proceedings may also absorb significant management time and resources, which could have a material adverse effect on our business, financial condition and results of operations.

Increases in the demand for, or the price of, raw materials used to build and remodel our stores could hurt our profitability.

The raw materials used to build and remodel our stores are subject to availability constraints and price volatility caused by weather, supply conditions, government regulations, general economic conditions and other unpredictable factors. As a retailer engaged in an active building and remodeling program, we are particularly vulnerable to increases in construction and remodeling costs. As a result, increases in the demand for, or the price of, raw materials could hurt our profitability.

Increases in costs of mailing, paper and printing will affect the cost of our catalog and promotional mailings, which will reduce our profitability.

Postal rate increases and paper and printing costs affect the cost of our catalog and promotional mailings. In fiscal 2006, approximately 23% of our selling, general, and administrative expenses were attributable to such costs. Recent changes in postal rates resulted in an average 14% increase in the cost of our catalog mailings and a 5% increase in the cost of mailing our newspaper inserts. In response to any future increases in mailing costs, we may consider reducing the number and size of certain catalog editions. In addition, we rely on discounts from the basic postal rate structure, such as discounts for bulk mailings and sorting by zip code and carrier routes. We are not a party to any long-term contracts for the supply of paper. The cost of paper fluctuates significantly, and our future paper costs are subject to supply and demand forces that we cannot control. Future additional increases in postal rates or in paper or printing costs would reduce our profitability to

the extent that we are unable to pass those increases directly to customers or offset those increases by raising selling prices or by reducing the number and size of certain catalog editions.

Our secured revolving credit facility contains certain restrictive covenants that could limit our operational flexibility, including our ability to open stores.

We have a $150 million secured revolving credit facility, or credit facility (expandable under an accordion option to a maximum of $200 million), with a term expiring May 2011. Substantially all of our assets are pledged as collateral for outstanding borrowings under the agreement. Outstanding borrowings bear interest at the prime rate or the Eurodollar rate plus 1.00% up to $100 million and 1.25% thereafter. The credit facility agreement contains usual and customary restrictive covenants relating to our management and the operation of our business. These covenants, among other things, restrict our ability to grant liens on our assets, incur additional indebtedness, pay cash dividends and redeem our stock, enter into transactions with affiliates and merge or consolidate with another entity. These covenants could restrict our operational flexibility, including our ability to open stores, and any failure to comply with these covenants or our payment obligations would limit our ability to borrow under the credit facility and, in certain circumstances, may allow the lenders thereunder to require repayment. For more information regarding our credit facility, see "Description of indebtedness."

We will need to raise additional funds to pursue our growth strategy or continue our operations, and we may be unable to raise capital when needed, which could have a material adverse effect on our business, financial condition and results of operations.

From time to time, in addition to this offering, we will seek additional equity or debt financing to provide for capital expenditures and working capital consistent with our growth strategy. Based on our current growth strategy, we expect it to be necessary to exercise the $50 million accordion option of our credit facility during fiscal 2008. In addition, if general economic, financial or political conditions in our markets change, or if other circumstances arise that have a material effect on our cash flow, the anticipated cash needs of our business as well as our belief as to the adequacy of our available sources of capital could change significantly. Any of these events or circumstances could result in significant additional funding needs, requiring us to raise additional capital to meet those needs. If financing is not available on satisfactory terms or at all, we may be unable to execute our growth strategy as planned and our results of operations may suffer.

Failure to maintain adequate financial and management processes and controls could lead to errors in our financial reporting and could harm our ability to manage our expenses.

Reporting obligations as a public company and our anticipated growth are likely to place a considerable strain on our financial and management systems, processes and controls, as well as on our personnel. In addition, as a public company we will be required to document and test our internal controls over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 so that our management can periodically certify as to the effectiveness of our internal controls over financial reporting. Our independent registered public accounting firm will be required to render an opinion on management's assessment and on the effectiveness of our internal controls over financial reporting by the time our annual report for fiscal 2008 is due and thereafter, which will require us to further document and make additional changes to our internal controls over financial reporting. As a result, we have been required to improve our financial and managerial controls, reporting systems and procedures and have incurred and will continue to incur expenses to test our systems and to make such improvements. If our

management is unable to certify the effectiveness of our internal controls or if our independent registered public accounting firm cannot render an opinion on management's assessment and on the effectiveness of our internal control over financial reporting, or if material weaknesses in our internal controls are identified, we could be subject to regulatory scrutiny and a loss of public confidence, which could have a material adverse effect on our business and our stock price. In addition, if we do not maintain adequate financial and management personnel, processes and controls, we may not be able to accurately report our financial performance on a timely basis, which could cause a decline in our stock price and adversely affect our ability to raise capital.

Risks related to this offering

The market price for our common stock may be volatile, and you may not be able to sell our stock at a favorable price or at all.

The market price of our common stock is likely to fluctuate significantly from time to time in response to factors including:

- differences between our actual financial and operating results and those expected by investors;
- fluctuations in quarterly operating results;
- our performance during peak retail seasons such as the holiday season;
- market conditions in our industry and the economy as a whole;
- changes in the estimates of our operating performance or changes in recommendations by any research analysts that follow our stock or any failure to meet the estimates made by research analysts;
- investors' perceptions of our prospects and the prospects of the beauty products and salon services industries;
- the performance of our key vendors;
- announcements by us, our vendors or our competitors of significant acquisitions, divestitures, strategic partnerships, joint ventures or capital commitments;
- introductions of new products or new pricing policies by us or by our competitors;
- recruitment or departure of key personnel; and
- the level and quality of securities research analyst coverage for our common stock.

In addition, public announcements by our competitors and vendors concerning, among other things, their performance, strategy, or accounting practices could cause the market price of our common stock to decline regardless of our actual operating performance.

Our comparable store sales and quarterly financial performance may fluctuate for a variety of reasons, which could result in a decline in the price of our common stock.

Our comparable store sales and quarterly results of operations have fluctuated in the past, and we expect them to continue to fluctuate in the future. A variety of other factors affect our comparable store sales and quarterly financial performance, including:

- changes in our merchandising strategy or mix;
- performance of our new and remodeled stores;

- the effectiveness of our inventory management;
- timing and concentration of new store openings, including additional human resource requirements and related pre-opening and other start-up costs;
- cannibalization of existing store sales by new store openings;
- levels of pre-opening expenses associated with new stores;
- timing and effectiveness of our marketing activities, such as catalogs and newspaper inserts;
- seasonal fluctuations due to weather conditions;
- actions by our existing or new competitors; and
- general U.S. economic conditions and, in particular, the retail sales environment.

Accordingly, our results for any one fiscal quarter are not necessarily indicative of the results to be expected for any other quarter, and comparable store sales for any particular future period may decrease. In that event, the price of our common stock would likely decline. For more information on our quarterly results of operations, see "Management's discussion and analysis of financial condition and results of operations."

No public market for our common stock currently exists, and we cannot assure you that an active, liquid trading market will develop or be sustained following this offering.

Prior to this offering, there has been no public market for our common stock. An active, liquid trading market for our common stock may not develop or be sustained following this offering. As a result, you may not be able to sell your shares of our common stock quickly or at the market price. The initial public offering price of our common stock will be determined by negotiations between us and the underwriters based upon a number of factors and may not be indicative of prices that will prevail following the consummation of this offering. The market price of our common stock may decline below the initial public offering price, and you may not be able to resell your shares of our common stock at or above the initial offering price and may suffer a loss on your investment.

You will experience an immediate and substantial book value dilution after this offering, and will experience further dilution with the future exercise of stock options.

The initial public offering price of our common stock will be substantially higher than the pro forma net tangible book value per share of the outstanding common stock based on the historical adjusted net book value per share as of May 5, 2007. Based on an assumed initial public offering price of $ per share (the midpoint of the range set forth on the cover of this prospectus) and our net tangible book value as of May 5, 2007, if you purchase our common stock in this offering you will pay more for your shares than existing stockholders paid for their shares and you will suffer immediate dilution of approximately $ per share in pro forma net tangible book value. As a result of this dilution, investors purchasing stock in this offering may receive significantly less than the full purchase price that they paid for the shares purchased in this offering in the event of a liquidation.

As of May 5, 2007, there were outstanding options to purchase 6,050,401 shares of our common stock, of which 3,255,294 were vested, at a weighted average exercise price for all outstanding options of $2.34 per share. From time to time, we may issue additional options to associates, non-employee directors and consultants pursuant to our equity incentive plans. These options generally vest commencing one year from the date of grant and continue vesting over a four-year period. You will experience further dilution as these stock options are exercised.

Approximately % of our total outstanding shares are restricted from immediate resale, but may be sold into the market in the near future. The large number of shares eligible for public sale or subject to rights requiring us to register them for public sale could depress the market price of our common stock.

The market price of our common stock could decline as a result of sales of a large number of shares of our common stock in the market after this offering, and the perception that these sales could occur may also depress the market price. Upon completion of this offering, we will have shares of our common stock outstanding. Of these shares, the common stock sold in this initial public offering will be freely tradable, except for any shares purchased by our "affiliates" as defined in Rule 144 under the Securities Act of 1933. The holders of approximately % of our outstanding common stock are obligated, subject to certain exceptions, not to dispose of or hedge any of their common stock during the 180-day period following the date of this prospectus. After the expiration of the lock-up period, these shares may be sold in the public market, subject to prior registration or qualification for an exemption from registration, including, in the case of shares held by affiliates, compliance with the volume restrictions of Rule 144.

Upon the consummation of this offering, stockholders owning 68,411,623 shares are entitled, under contracts providing for registration rights, to require us to register our common stock owned by them for public sale.

Sales of our common stock as restrictions end or pursuant to registration rights may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause our stock price to fall and make it more difficult for you to sell shares of our common stock.

Our current principal stockholders will continue to have significant influence over us after this offering, and they could delay, deter, or prevent a change of control or other business combination or otherwise cause us to take action with which you might not agree.

Upon the consummation of this offering, our principal stockholders will own, in the aggregate, approximately of our outstanding common stock. As a result, these stockholders will be able to exercise control over all matters requiring stockholder approval, including the election of directors, amendment of our certificate of incorporation and approval of significant corporate transactions and will have significant control over our management and policies. Such concentration of voting power could have the effect of delaying, deterring, or preventing a change of control or other business combination that might otherwise be beneficial to our stockholders. In addition, the significant concentration of share ownership may adversely affect the trading price of our common stock because investors often perceive disadvantages in owning shares in companies with controlling stockholders.

We did not register our stock options as required under the Securities Exchange Act of 1934 and, as a result, we may face potential claims under federal and state securities laws.

As of the last day of fiscal 2001, options granted under the Old Plan and the Restricted Stock Option Plan–Consultants, or the Consultants Plan, were held by more than 500 holders. Subsequently, these options also included options granted under the 2002 Plan. As a result, we were required to file a registration statement registering the options pursuant to Section 12(g) of the Securities Exchange Act of 1934 no later than 120 days following the last day of fiscal 2001. We did not file a registration statement within this time period.

If we had filed a registration statement pursuant to Section 12(g), we would have become subject to the periodic reporting requirements of Section 13 of the Securities Exchange Act of 1934 upon the effectiveness of that registration statement. We have not filed any periodic reports, including annual or quarterly reports on Form 10-K or Form 10-Q, and periodic reports on Form 8-K, during the period since 120 days following the last day of fiscal 2001.

Our failure to file these periodic reports could give rise to potential claims by present or former option holders based on the theory that such holders were harmed by the absence of such public reports. If any such claim or action were to be asserted, we could incur significant expenses and management's attention could be diverted in defending these claims.

Anti-takeover provisions in our organizational documents, stockholder rights agreement and Delaware law may discourage or prevent a change in control, even if a sale of the company would be beneficial to our stockholders, which could cause our stock price to decline and prevent attempts by our stockholders to replace or remove our current management.

Our amended and restated certificate of incorporation and by-laws contain provisions that may delay or prevent a change in control, discourage bids at a premium over the market price of our common stock and harm the market price of our common stock and diminish the voting and other rights of the holders of our common stock. These provisions include:

- dividing our board of directors into three classes serving staggered three-year terms;
- authorizing our board of directors to issue preferred stock and additional shares of our common stock without stockholder approval;
- prohibiting stockholder actions by written consent;
- prohibiting our stockholders from calling a special meeting of stockholders;
- prohibiting our stockholders from making certain changes to our amended and restated certificate of incorporation or amended and restated bylaws except with 66$^{2}/_{3}$% stockholder approval; and
- requiring advance notice for raising business matters or nominating directors at stockholders' meetings.

As permitted by our amended and restated certificate of incorporation and by-laws, upon the consummation of this offering we will have a stockholder rights agreement, sometimes known as a "poison pill," which provides for the issuance of a new series of preferred stock to holders of common stock. In the event of a takeover attempt, this preferred stock gives rights to holders of common stock other than the acquirer to buy additional shares of common stock at a discount, leading to the dilution of the acquirer's stake.

We are also subject to provisions of Delaware law that, in general, prohibit any business combination with a beneficial owner of 15% or more of our common stock for three years after the stockholder becomes a 15% stockholder, subject to specified exceptions. Together, these provisions of our certificate of incorporation, by-laws and stockholder rights agreement and of Delaware law could make the removal of management more difficult and may discourage transactions that otherwise could involve payment of a premium over prevailing market prices for our common stock.

Special note regarding forward-looking statements

Some of the statements under "Prospectus summary," "Risk factors," "Management's discussion and analysis of financial condition and results of operations," "Business" and elsewhere in this prospectus may contain forward-looking statements which reflect our current views with respect to, among other things, future events and financial performance. You can identify these forward-looking statements by the use of forward-looking words such as "outlook," "believes," "expects," "potential," "continues," "may," "will," "should," "seeks," "approximately," "predicts," "project," "intends," "plans," "estimates," "anticipates," "future" or the negative version of those words or other comparable words. Any forward-looking statements contained in this prospectus are based upon our historical performance and on current plans, estimates and expectations. The inclusion of this forward-looking information should not be regarded as a representation by us, the underwriters or any other person that the future plans, estimates or expectations contemplated by us will be achieved. Such forward-looking statements are subject to various risks and uncertainties. Accordingly, there are or will be important factors that could cause our actual results to differ materially from those indicated in these statements. We believe these factors include but are not limited to those described under "Risk factors." These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included in this prospectus. We do not undertake any obligation to publicly update or review any forward-looking statement, whether as a result of new information, future developments or otherwise.

If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may vary materially from what we may have projected. Any forward-looking statements you read in this prospectus reflect our current views with respect to future events and are subject to these and other risks, uncertainties and assumptions relating to our operations, results of operations, financial condition, growth strategy and liquidity. You should specifically consider the factors identified in this prospectus that could cause actual results to differ before making an investment decision.

Use of proceeds

We estimate that the net proceeds from our sale of shares of common stock in this offering will be approximately $ million, based on the initial public offering price of $ per share and after deducting estimated underwriting discounts and commissions and estimated offering expenses, which are payable by us. We intend to use the net proceeds from this offering to pay in full the approximately $91.9 million of accumulated dividends in arrears on our preferred stock, which will satisfy all amounts due with respect to accumulated dividends, and the approximately $4.8 million redemption price of the Series III preferred stock, and to use any remaining proceeds to reduce our borrowings under our third amended and restated loan and security agreement. We will not receive any of the proceeds from the sale of shares of common stock by the selling stockholders.

Dividend policy

We do not anticipate paying any dividends in the foreseeable future. We currently intend to retain all of our future earnings, if any, to repay existing indebtedness and to fund the operation, development and growth of our business. In addition, the terms of our credit facility currently, and any future debt or credit facility may, restrict our ability to pay dividends. As a result, capital appreciation, if any, of our common stock will be your sole source of gain from your purchase of our common stock for the foreseeable future.

Capitalization

The following table shows our capitalization as of May 5, 2007:

- on an actual basis
- on a pro forma basis, giving effect to (i) the filing, and effectiveness prior to the consummation of this offering, of an amended and restated certificate of incorporation to provide for authorized capital stock of 400,000,000 shares of common stock and 70,000,000 shares of undesignated preferred stock, (ii) the automatic conversion on a one-for-one basis of all outstanding shares of our preferred stock, other than our Series III preferred stock, into an aggregate of 65,702,530 shares of common stock, (iii) the payment in full of the approximately $91.9 million of accumulated dividends in arrears on our preferred stock upon the consummation of this offering, (iv) the redemption of our Series III preferred stock for approximately $4.8 million concurrently with the closing of this offering, and (v) the sale by us of shares of common stock in this offering, at an initial public offering price of $ per share, after deducting underwriting discounts and commissions and estimated offering expenses; as if such amendment, conversion, payment, redemption and sale had occurred on, or was effective as of, May 5, 2007

This table should be read in conjunction with the consolidated financial statements and notes to those consolidated financial statements included elsewhere in this prospectus.

(unaudited) **(Dollars in thousands, except per share data)**	**As of May 5, 2007**		
		Actual	**Pro forma**
Long-term debt (including current maturities)	$	83,091	
Series III Preferred Stock; 4,792,302 shares authorized, actual; no shares authorized, pro forma; 4,792,302 shares issued and outstanding, actual; no shares issued and outstanding, pro forma(1)		4,792	
Stockholders' equity:			
Preferred stock, par value $.01 per share, 101,500,000 shares authorized, actual; 70,000,000 shares authorized, pro forma:			
Series I Convertible Preferred Stock, par value $.01 per share; 17,207,532 shares authorized, actual; no shares authorized, pro forma; 16,768,882 shares issued and outstanding, actual; no shares issued and outstanding, pro forma(2)		44,405	
Series II Convertible Preferred Stock, par value $.01 per share; 7,634,207 shares authorized, actual; no shares authorized, pro forma; 7,420,130 shares issued and outstanding, actual; no shares issued and outstanding, pro forma		74,455	
Series IV Convertible Preferred Stock, par value $.01 per share; 19,183,653 shares authorized, actual; no shares authorized, pro forma; 19,145,558 shares issued and outstanding, actual; no shares issued and outstanding, pro forma(2)		48,044	

(unaudited) (Dollars in thousands, except per share data)	As of May 5, 2007 Actual	 Pro forma
Series V Convertible Preferred Stock, par value $.01 per share; 22,500,000 shares authorized, actual; no shares authorized, pro forma; 21,447,959.34 shares issued and outstanding, actual; no shares issued and outstanding, pro forma(2)	57,502	
Series V-1 Convertible Preferred Stock, par value $.01 per share; 4,600,000 shares authorized, actual; no shares authorized, pro forma; 920,000 shares issued and outstanding, actual; no shares issued and outstanding, pro forma(2)	2,397	
Total preferred stock:	$ 226,803	
Treasury stock—preferred, at cost:	(1,815)	
Common stock, par value $.01 per share, 106,500,000 shares authorized, actual; 400,000,000 shares authorized, pro forma; 11,709,217 shares issued and outstanding, actual; shares issued and outstanding, pro forma	121	
Treasury stock—common, at cost:	(2,244)	
Additional paid-in capital:	16,333	
Related party notes receivable:(3)	(4,094)	
Accumulated deficit:	(81,665)	
Accumulated other comprehensive loss:	(80)	
Total stockholders' equity:	153,359	
Total capitalization:	$ 241,242	

(1) Upon consummation of this offering, the company is required to redeem all Series III preferred stock. The company has determined that the Series III preferred stock should be presented between the liabilities section and the equity section of the balance sheet as provided by guidance contained in EITF Topic D-98, "*Classification and Measurement of Redeemable Securities*." Under this guidance, classification in the permanent equity section is not considered appropriate because the Series III preferred stock is redeemable upon majority vote of the board of directors to authorize this offering and the board of directors is controlled by the holders of our preferred stock.

(2) Preferred stock as presented in the table above includes accumulated dividends in arrears as of May 5, 2007 as follows (in thousands):

Series I	$ 28,826
Series IV	28,884
Series V	26,745
Series V-I	1,073
	$ 85,528

(3) The note was paid in full on June 29, 2007.

The outstanding share information set forth above is as of May 5, 2007, and excludes:

- 861,011 shares of common stock issuable upon exercise of outstanding options under the Old Plan, at a weighted average exercise price of $0.48 per share. No further awards will be made under the Old Plan; and
- 5,189,390 shares of common stock issuable upon exercise of outstanding options under the 2002 Plan, at a weighted average exercise price of $2.65.

Dilution

If you invest in our common stock, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the net tangible book value per share of common stock upon the completion of this offering.

Calculations relating to shares of common stock in the following discussion and tables assume the following have occurred as of May 5, 2007: (i) the conversion of all outstanding shares of our preferred stock, other than our Series III preferred stock, into 65,702,530 shares of common stock and (ii) the redemption of all outstanding shares of our Series III preferred stock.

Our net tangible book value as of May 5, 2007 equaled approximately $153.4 million, or $1.98 per share of common stock. Net tangible book value per share represents the amount of our total tangible assets less total liabilities, divided by the total number of shares of common stock outstanding. After giving effect to the sale of shares of common stock offered by us in this offering at the initial public offering price of $ per share and after deducting the estimated underwriting discounts and commissions and offering expenses payable by us, our net tangible book value, as adjusted, as of May 5, 2007, would have equaled approximately $ million, or $ per share of common stock. This represents an immediate increase in net tangible book value of $ per share to our existing stockholders and an immediate dilution in net tangible book value of $ per share to new investors of common stock in this offering. The following table illustrates this per share dilution to new investors purchasing our common stock in this offering. The table assumes no issuance of shares of common stock under our stock plans after May 5, 2007. As of May 5, 2007, 6,050,401 shares were subject to outstanding options, of which 3,255,294 were vested, at a weighted average exercise price for all outstanding options of $2.34 per share. To the extent outstanding options are exercised, there will be further dilution to new investors.

Assumed initial public offering price per share		$
Net tangible book value per share as of May 5, 2007	$	
Increase in net tangible book value per share attributable to new investors		
Adjusted net tangible book value per share after this offering		
Dilution in net tangible book value per share to new investors		$

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the adjusted net tangible book value per share after this offering by approximately $ million, and dilution in net tangible book value per share to new investors by approximately $ assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses.

The following table as of May 5, 2007 summarizes the differences between our existing stockholders and new investors with respect to the number of shares of common stock issued in this offering, the total consideration paid and the average price per share paid. The calculations with respect to shares purchased by new investors in this offering reflect the initial public offering price of $ per share.

	Shares purchased		Total consideration		Average price
	Number	Percentage	Amount	Percentage	per share
Existing stockholders		%	$	%	$
New investors					
Total		%	$	%	$

Selected consolidated financial data

The following selected income statement data for each of the fiscal years ended January 29, 2005, January 28, 2006 and February 3, 2007 and the selected balance sheet data as of January 28, 2006 and February 3, 2007 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The selected income statement data for the fiscal years ended February 1, 2003 and January 31, 2004 and the balance sheet data as of February 1, 2003 and January 31, 2004, have been derived from unaudited consolidated financial statements not included in this prospectus. The selected balance sheet data as of January 29, 2005 has been derived from our audited financial statements not included in this prospectus. The selected balance sheet data as of April 29, 2006 has been derived from our unaudited consolidated financial statements that are not included in this prospectus. The selected balance sheet data as of May 5, 2007 and the selected income statement data for the three months ended April 29, 2006 and May 5, 2007 have been derived from our unaudited consolidated financial statements included elsewhere in this prospectus.

Our unaudited selected consolidated financial data as of April 29, 2006 and May 5, 2007 and for the three months then ended, have been prepared on the same basis as the annual audited consolidated financial statements and includes all adjustments, consisting of only normal recurring adjustments necessary for the fair presentation of this data in all material respects. The results for any interim period are not necessarily indicative of the results of operations to be expected for a full fiscal year.

The following selected consolidated financial data should be read in conjunction with our “Management’s discussion and analysis of financial condition and results of operations” and consolidated financial statements and related notes, included elsewhere in this prospectus.

(Dollars in thousands, except per share and per square foot data)	Fiscal year ended(1)					Three months ended	
	February 1, 2003	January 31, 2004	January 29, 2005	January 28, 2006	February 3, 2007	April 29, 2006	May 5, 2007
Consolidated income statement data:							
Net sales(2)	$ 362,217	$ 423,863	$ 491,152	$ 579,075	$ 755,113	$ 159,468	$ 194,113
Cost of sales	259,836	312,203	346,585	404,794	519,929	108,813	134,600
Gross profit	102,381	111,660	144,567	174,281	235,184	50,655	59,513
Selling, general, and administrative expenses	86,382	98,446	121,999	140,145	188,000	41,316	47,982
Pre-opening expenses	2,751	2,318	4,072	4,712	7,096	826	1,656
Operating income	13,248	10,896	18,496	29,424	40,088	8,513	9,875
Interest expense	2,349	2,789	2,835	2,951	3,314	742	996
Income before income taxes	10,899	8,107	15,661	26,473	36,774	7,771	8,879
Income tax expense	1,203	3,023	6,201	10,504	14,231	3,071	3,560
Net income	$ 9,696	$ 5,084	$ 9,460	$ 15,969	$ 22,543	$ 4,700	$ 5,319
Net income (loss) per share:							
Basic	$ 0.03	$ (1.49)	$ (0.44)	$ 0.47	$ 0.87	$ 0.18	$ 0.14
Diluted	$ 0.01	$ (1.49)	$ (0.44)	$ 0.21	$ 0.29	$ 0.06	$ 0.07
Weighted average number of shares:							
Basic	3,063,950	3,688,093	5,032,612	6,478,217	9,130,697	6,960,640	11,368,805
Diluted	6,267,232	3,688,093	5,032,612	76,297,969	79,026,350	76,617,578	80,652,941
Other operating data:							
Comparable store sales increase(3)	6.9%	6.2%	8.0%	8.3%	14.5%	12.8%	9.2%
Number of stores end of period	112	126	142	167	196	170	203
Total square footage end of period	1,127,708	1,285,857	1,464,330	1,726,563	2,023,305	1,755,280	2,096,275
Total square footage per store(4)	10,069	10,205	10,312	10,339	10,323	10,325	10,326
Average total square footage(5)	1,046,793	1,216,777	1,374,005	1,582,935	1,857,885	1,650,697	1,934,871
Net sales per average total square foot(6)	$ 346	$ 348	$ 357	$ 366	$ 398	$ 370	$ 400
Capital expenditures	27,430	30,354	34,807	41,607	62,331	5,304	17,757
Depreciation and amortization	12,522	15,411	18,304	22,285	29,736	6,048	9,840
Consolidated balance sheet data:							
Cash and cash equivalents	$ 2,628	$ 3,178	$ 3,004	$ 2,839	$ 3,645	$ 2,926	$ 3,161
Working capital	59,589	60,751	69,955	76,473	88,105	75,733	85,870
Property and equipment, net	85,180	99,577	114,912	133,003	162,080	131,603	174,916
Total assets	195,059	206,420	253,425	282,615	338,597	287,601	377,852
Total debt(7)	37,229	42,906	47,008	50,173	55,529	63,537	87,883
Total stockholders' equity	87,359	92,778	105,308	123,015	148,760	128,221	153,359

(1) Our fiscal year-end is the Saturday closest to January 31 based on a 52/53-week year. Each fiscal year consists of four 13-week quarters, with an extra week added onto the fourth quarter every five or six years.

(2) Fiscal 2006 was a 53-week operating year and the 53rd week represented approximately $16.4 million in net sales.

(3) Comparable store sales increase reflects sales for stores beginning on the first day of the 14th month of operation. Remodeled stores are included in comparable store sales unless the store was closed for a portion of the current or comparable prior period.

(4) Total square footage per store is calculated by dividing total square footage at end of period by number of stores at end of period.

(5) Average total square footage represents a weighted average which reflects the effect of opening stores in different months throughout the period.

(6) Net sales per average total square foot was calculated by dividing net sales for the trailing 12-month period by the average square footage for those stores open during each period. The fiscal 2006 and first quarter fiscal 2007 net sales per average total square foot amounts were adjusted to exclude the net sales effects of the 53rd week.

(7) Total debt includes approximately $4.8 million related to the Series III preferred stock, which is presented between the liabilities section and the equity section of our consolidated balance sheet for all periods.

Management's discussion and analysis of financial condition and results of operations

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with the "Selected consolidated financial data" section of this prospectus and our consolidated financial statements and related notes included elsewhere in this prospectus. This discussion and analysis contains forward-looking statements based on current expectations that involve risks and uncertainties. As a result of many factors, such as those set forth under "Risk factors" and elsewhere in this prospectus, our actual results may differ materially from those anticipated in these forward-looking statements.

Overview

We were founded in 1990 as a discount beauty retailer at a time when prestige, mass and salon products were sold through separate distribution channels. In 1999, we embarked on a multi-year strategy to understand and embrace what women want in a beauty retailer and transform ULTA into the shopping experience that it is today. We pioneered our unique combination of beauty superstore and specialty store attributes. We believe our strategy provides us with the competitive advantages that have contributed to our strong financial performance.

We are currently the largest beauty retailer that provides one-stop shopping for prestige, mass and salon products and salon services in the United States. We combine the unique elements of a beauty superstore with the distinctive environment and experience of a specialty retailer. Key aspects of our beauty superstore strategy include our ability to offer our customers a broad selection of over 21,000 beauty products across the categories of cosmetics, fragrance, haircare, skincare, bath and body products and salon styling tools, as well as salon haircare products. We focus on delivering a compelling value proposition to our customers across all of our product categories. Our stores are conveniently located in high-traffic, off-mall locations such as power centers and lifestyle centers with other destination retailers. As of May 31, 2007, we operated 207 stores across 26 states. In addition to these fundamental elements of a beauty superstore, we strive to offer an uplifting shopping experience through what we refer to as "The Four E's": *Escape*, *Education*, *Entertainment* and *Esthetics*.

Over the past seven years, we believe we have demonstrated our ability to deliver profitable sales and square footage growth. From fiscal 1999 to fiscal 2006, we grew our net sales and square footage at a compounded annual growth rate of 20.3% and 16.0%, respectively, while delivering increases in net income at a compounded annual growth rate of 51.6%. In addition, we have achieved 29 consecutive quarters of positive comparable sales growth since fiscal 2000. In fiscal 2006, we achieved net sales and net income of $755.1 million and $22.5 million, respectively.

The continued growth of our business and any future increases in net sales, net income, and cash flows is dependent on our ability to execute our growth strategy, including growing our store base, expanding our prestige brand offerings, driving incremental salon traffic, expanding our online business, and continuing to enhance our brand awareness. We believe that the steadily expanding U.S. beauty products and services industry, the shift in distribution of prestige beauty products from department stores to specialty retail stores, coupled with ULTA's competitive strengths, positions us to capture additional market share in the industry through successful execution of our growth strategy.

With the successful development and execution of ULTA's consumer experience strategy over the last several years, we began to accelerate our store unit growth in fiscal 2007 to approximately 25%, compared to the average growth rate of 17% achieved in fiscal 2005 and 2006, respectively. In fiscal 2007, we implemented our remodel program. To support this rate of store unit growth in fiscal 2007 and execute our future growth strategy, we have made and will continue to make the necessary infrastructure investments and therefore do not expect to sustain the net income growth rates of 68% and 40%, respectively, achieved in fiscal 2005 and 2006. We plan to finance investments in new and remodeled ULTA stores and our infrastructure with cash flows from operations and borrowings under our credit facility, when necessary. Several factors, including the availability of the appropriate real estate locations could impact our ability to open new stores contemplated by our growth strategy on a timely and consistent basis.

Comparable store sales is a key metric that is monitored closely within the retail industry. We do not expect our future comparable store sales increases to reflect the levels experienced in the fourth fiscal quarter 2005 and in fiscal 2006. This is due in part to the difficulty in improving on such significant increases in subsequent periods.

We seek to increase our total net sales through increases in our comparable store sales and by opening new stores. Gross profit as a percentage of net sales is expected to be consistent with historical rates given our planned distribution infrastructure investments and the impact of the rate of new store growth. We plan to continue to improve our operating results by leveraging our fixed costs and decreasing our selling, general, and administrative expenses, as a percentage of our net sales.

First quarter fiscal 2007 net sales increased $34.6 million, or 21.7%, to $194.1 million, compared to $159.5 million in first quarter fiscal 2006. During first quarter fiscal 2007, we opened seven new stores and our comparable store sales increase was 9.2%. Gross profit as a percentage of net sales decreased 1.1 percentage points to 30.7% in first quarter fiscal 2007 compared to 31.8% in first quarter fiscal 2006. The decease is primarily due to accelerated depreciation on store assets as a result of our remodel strategy. The decrease in gross profit as a percentage of net sales was partially offset by a 1.2 percentage points improvement in our selling, general, and administrative expense as a percentage of net sales. Net income was $5.3 million in first quarter fiscal 2007 representing an increase of $0.6 million, or 13.2%, compared to $4.7 million in first quarter fiscal 2006. Net income in first quarter fiscal 2007 was negatively impacted by $2.1 million of planned accelerated depreciation related to our store remodel program.

Fiscal 2006 net sales increased $176.0 million, or 30.4%, to $755.1 million, compared to $579.1 million in fiscal 2005. Fiscal 2006 was a 53-week operating year and the 53rd week represented approximately $16.4 million of the net sales increase. Adjusted for the 53rd week, fiscal 2006 net sales increased $159.6 million, or 27.6%, compared to fiscal 2005. We added 31 new stores in fiscal 2006 and our comparable store sales increase was $82.4 million, or 14.5%. Our gross profit as a percentage of net sales increased 1.0 percentage point to 31.1% and total gross profit increased 34.9% to $235.2 million in fiscal 2006 compared to $174.3 million in fiscal 2005. Selling, general, and administrative expenses were $188.0 million, representing a $47.9 million, or 34.2%, increase compared to $140.1 million in fiscal 2005. Selling, general, and administrative expenses in fiscal 2006 included a non-recurring stock compensation charge of $2.8 million ($1.7 million net of income taxes). Net income was $22.5 million, a $6.5 million, or 41.2%, increase over fiscal 2005. Cash flow from operations increased $18.0 million, or 48.0%, to $55.6 million in fiscal 2006 compared to $37.6 million in fiscal 2005.

Fiscal 2005 net sales increased $87.9 million, or 17.9%, to $579.1 million compared to $491.2 million in fiscal 2004. We added 25 new stores in fiscal 2005 and our comparable store sales increase was 8.3%. Gross profit as a percentage of net sales increased 0.7 percentage point to 30.1% and total gross profit increased $29.7 million, or 20.5%, to $174.3 million compared to $144.6 million in fiscal 2004. Selling, general, and administrative expenses increased $18.1 million or 14.9% to $140.1 million, compared to $122.0 million in fiscal 2004. Cash flow from operations increased $8.3 million, or 28.5%, to $37.6 million in fiscal 2005 compared to $29.3 million in fiscal 2004.

Basis of presentation

Net sales include store and Internet merchandise sales as well as salon service revenue. Salon service revenue represents less than 10% of our combined product sales and services revenues and therefore, these revenues are combined with product sales. We recognize merchandise revenue at the point of sale, or POS, in our retail stores and the time of shipment in the case of Internet sales. Merchandise sales are recorded net of estimated returns. Salon service revenue is recognized at the time the service is provided. Gift card sales revenue is deferred until the customer redeems the gift card. Company coupons and other incentives are recorded as a reduction of net sales.

Comparable store sales reflect sales for stores beginning on the first day of the 14th month of operation. Therefore, a store is included in our comparable store base on the first day of the period after it has cycled its grand opening sales period which generally covers the first month of operation. Non-comparable store sales include sales from new stores that have not yet completed their 13th month of operation and stores that were closed for part or all of the period in either year as a result of remodel activity. Remodeled stores are included in comparable store sales unless the store was closed for a portion of the current or prior period. There may be variations in the way in which some of our competitors and other retailers calculate comparable or same store sales. As a result, data herein regarding our comparable store sales may not be comparable to similar data made available by our competitors or other retailers.

Comparable store sales is a critical measure that allows us to evaluate the performance of our store base as well as several other aspects of our overall strategy. Several factors could positively or negatively impact our comparable store sales results:

- the introduction of new products or brands;
- the location of new stores in existing store markets;
- competition;
- our ability to respond on a timely basis to changes in consumer preferences;
- the effectiveness of our various marketing activities; and
- the number of new stores opened and the impact on the average age of all of our comparable stores.

Cost of sales includes:

- the cost of merchandise sold, including all vendor allowances, which are treated as a reduction of merchandise costs;

- warehousing and distribution costs including labor and related benefits, freight, rent, depreciation and amortization, real estate taxes, utilities, and insurance;
- store occupancy costs including rent, depreciation and amortization, real estate taxes, utilities, repairs and maintenance, insurance, licenses, and cleaning expenses;
- salon payroll and benefits; and
- shrink and inventory valuation reserves.

Our cost of sales may be impacted as we open an increasing number of stores. We also expect that cost of sales as a percentage of net sales will be negatively impacted in the next several years as a result of accelerated depreciation related to our store remodel program. The program was adopted in third quarter fiscal 2006. We have accelerated depreciation expense on assets to be disposed of during the remodel process such that those assets will be fully depreciated at the time of the planned remodel. Changes in our merchandise mix may also have an impact on cost of sales.

This presentation of items included in cost of sales may not be comparable to the way in which our competitors or other retailers compute their cost of sales.

Selling, general, and administrative expenses include:

- payroll, bonus, and benefit costs for retail and corporate employees;
- advertising and marketing costs;
- occupancy costs related to our corporate office facilities;
- public company expense including Sarbanes-Oxley compliance expenses;
- stock-based compensation expense related to option exercises which will result in increases in expense as we implemented a structured stock option compensation program in 2007;
- depreciation and amortization for all assets except those related to our retail and warehouse operations which is included in cost of sales; and
- legal, finance, information systems and other corporate overhead costs.

This presentation of items in selling, general, and administrative expenses may not be comparable to the way in which our competitors or other retailers compute their selling, general, and administrative expenses.

Pre-opening expenses includes non-capital expenditures during the period prior to store opening for new and remodeled stores including store set-up labor, management and employee training, and grand opening advertising. Pre-opening expenses also includes rent during the construction period related to new stores.

Interest expense includes interest costs associated with our credit facility which is structured as an asset based lending instrument. Our interest expense will fluctuate based on the seasonal borrowing requirements associated with acquiring inventory in advance of key holiday selling periods and fluctuation in the variable interest rates we are charged on outstanding balances. Our credit facility is used to fund seasonal inventory needs and new and remodel store capital requirements in excess of our cash flow from operations. Our credit facility interest is based on

a variable interest rate structure which can result in increased cost in periods of rising interest rates.

Income tax expense reflects the federal statutory tax rate and the weighted average state statutory tax rate for the states in which we operate stores.

Results of operations

Our fiscal year is the 52 or 53 weeks ending on the Saturday closest to January 31. The company's fiscal years ended January 29, 2005, January 28, 2006, and February 3, 2007, were 52, 52, and 53 week years, respectively, and are hereafter referred to as fiscal 2004, fiscal 2005, and fiscal 2006.

Our quarterly periods are the 13 or 14 weeks ending on the Saturday closest to April 30, July 31, October 31, and January 31. Our first quarters ended April 29, 2006 and May 5, 2007, were 13 weeks and are hereafter referred to as first quarter fiscal 2006 and first quarter fiscal 2007.

The following tables present the components of our results of operations for the periods indicated:

	Fiscal year ended			Three months ended	
(Dollars in thousands)	**January 29, 2005**	**January 28, 2006**	**February 3, 2007**	**April 29, 2006**	**May 5, 2007**
Net sales	$ 491,152	$ 579,075	$ 755,113	$ 159,468	$ 194,113
Cost of sales	346,585	404,794	519,929	108,813	134,600
Gross profit	144,567	174,281	235,184	50,655	59,513
Selling, general, and administrative expenses	121,999	140,145	188,000	41,316	47,982
Pre-opening expenses	4,072	4,712	7,096	826	1,656
Operating income	18,496	29,424	40,088	8,513	9,875
Interest expense	2,835	2,951	3,314	742	996
Income before income taxes	15,661	26,473	36,774	7,771	8,879
Income tax expense	6,201	10,504	14,231	3,071	3,560
Net income	$ 9,460	$ 15,969	$ 22,543	$ 4,700	$ 5,319
Other operating data:					
Number of stores end of period	142	167	196	170	203
Comparable store sales increase	8.0%	8.3%	14.5%	12.8%	9.2%

(Percentage of net sales)	Fiscal year ended January 29, 2005	January 28, 2006	February 3, 2007	Three months ended April 29, 2006	May 5, 2007
Net sales	100.0%	100.0%	100.0%	100.0%	100.0%
Cost of sales	70.6%	69.9%	68.9%	68.2%	69.3%
Gross profit	29.4%	30.1%	31.1%	31.8%	30.7%
Selling, general, and administrative expenses	24.8%	24.2%	24.9%	25.9%	24.7%
Pre-opening expenses	0.8%	0.8%	0.9%	0.5%	0.9%
Operating income	3.8%	5.1%	5.3%	5.4%	5.1%
Interest expense	0.6%	0.5%	0.4%	0.5%	0.5%
Income before income taxes	3.2%	4.6%	4.9%	4.9%	4.6%
Income tax expense	1.3%	1.8%	1.9%	1.9%	1.8%
Net income	1.9%	2.8%	3.0%	3.0%	2.8%

First quarter fiscal 2007 versus first quarter fiscal 2006

Net sales

Net sales increased $34.6 million, or 21.7%, to $194.1 million in first quarter fiscal 2007 compared to $159.5 million in first quarter fiscal 2006. This increase is due to an additional 34 stores operating since first quarter fiscal 2006, one store closure and a 9.2% increase in comparable store sales. Non-comparable stores contributed $20.8 million of the net sales increase while comparable stores contributed $13.8 million of the total net sales increase. Our comparable store sales growth in first quarter fiscal 2007 was driven by growth in existing brands, as well as new brands which were introduced in fiscal 2006 and resulted in increased customer traffic and growth in average transaction value.

Gross profit

Gross profit increased $8.8 million, or 17.5%, to $59.5 million in first quarter fiscal 2007 compared to $50.7 million in first quarter fiscal 2006. Gross profit as a percentage of net sales decreased 1.1 percentage points to 30.7% in first quarter fiscal 2007 compared to 31.8% in first quarter fiscal 2006. The 1.1 percentage points decrease in the gross profit percentage primarily resulted from $2.1 million of planned accelerated depreciation related to our store remodel program. The store remodel program was adopted late in third quarter fiscal 2006. Our fiscal 2007 second quarter gross margin will include a similar accelerated depreciation variance as there was no similar expense in the prior year period.

Selling, general, and administrative expenses

Selling, general, and administrative expenses increased $6.7 million, or 16.1%, to $48.0 million in first quarter fiscal 2007 compared to $41.3 million in first quarter fiscal 2006. As a percentage of net sales, selling, general, and administrative expenses decreased 1.2 percentage points to 24.7% in first quarter fiscal 2007 compared to 25.9% in first quarter fiscal 2006. The decrease as

a percentage of net sales is primarily due to a shift in advertising expense as compared to first quarter fiscal 2006.

Pre-opening expenses

Pre-opening expenses increased $0.9 million, or 100.5%, to $1.7 million in first quarter fiscal 2007 compared to $0.8 million in first quarter fiscal 2006. During first quarter fiscal 2007, we opened seven new stores and remodeled three stores as compared to four new store openings in first quarter fiscal 2006.

Interest expense

Interest expense increased by $0.3 million, or 34.2%, to $1.0 million in first quarter fiscal 2007 compared to $0.7 million in first quarter fiscal 2006. This increase is due to an increase to the average debt outstanding on our credit facility compared to the same period in fiscal 2006.

Income tax expense

Income tax expense of $3.6 million in first quarter fiscal 2007 represents an effective tax rate of 40.1%, compared to $3.1 million of tax expense representing an effective tax rate of 39.5% for first quarter fiscal 2006. The increase in the effective tax rate is primarily due to the increasing number of stores in states with higher income tax rates.

Net income

Net income increased $0.6 million, or 13.2%, to $5.3 million in first quarter fiscal 2007, compared to $4.7 million in first quarter fiscal 2006. The increase resulted from an increase in gross profit of $8.9 million driven by a comparable store sales increase of 9.2%, net of increased expenses of $2.1 million of planned accelerated depreciation for our remodel store program. The increase in gross profit was partially offset by a $6.7 million increase in selling, general, and administrative expenses primarily related to operating costs for new stores opened in first quarter fiscal 2006 and first quarter fiscal 2007.

Fiscal year 2006 versus fiscal year 2005

Net sales

Net sales increased $176.0 million, or 30.4%, to $755.1 million in fiscal 2006 compared to $579.1 million in fiscal 2005. Fiscal 2006 was a 53-week operating year and the 53rd week represented approximately $16.4 million in net sales. Adjusted for the 53rd week, fiscal 2006 net sales increased $159.6 million, or 27.6% compared to fiscal 2005. This increase is due to the opening of 31 new stores in 2006, two store closures, and a 14.5% increase in comparable store sales. Non-comparable stores, which include stores opened in fiscal 2006 as well as stores opened in fiscal 2005 which have not yet turned comparable, contributed $77.3 million of the net sales increase while comparable stores contributed $82.3 million of the total net sales increase. Our comparable store sales growth in fiscal 2006 was driven by strong performance of existing and new brands. We introduced several new fragrance brands in the first half of the year which resulted in increased customer traffic and growth in average transaction value.

Gross profit

Gross profit increased $60.9 million, or 34.9%, to $235.2 million in fiscal 2006, compared to $174.3 million, in fiscal 2005. Gross profit as a percentage of net sales increased 1.0 percentage point to 31.1% in fiscal 2006 from 30.1% in fiscal 2005. The increase in gross profit resulted from:

- an increase of $176.0 million in net sales from new stores and comparable sales growth;
- a 0.6 percentage point improvement in salon payroll and benefits as a percentage of net sales driven by improved salon stylist productivity resulting from a continued focus on training programs and other strategic initiatives;
- a 0.5 percentage point decrease due to $3.5 million of planned accelerated depreciation related to our store remodel program;
- a 0.3 percentage point improvement resulting from a reduction in merchandise shrink as a result of continued focus and improvement in overall store and supply chain inventory controls and specific in-store initiatives targeted at controlling merchandise loss, and improvement in our distribution and supply chain costs as we focus on increasing the efficiency of these operations and leverage the growth in our store base; and
- a 0.3 percentage point improvement in leverage of store occupancy costs as a result of comparable store sales growth.

Selling, general, and administrative expenses

Selling, general, and administrative expenses increased $47.9 million, or 34.2%, to $188.0 million in fiscal 2006 compared to $140.1 million in fiscal 2005. As a percentage of net sales, selling, general, and administrative expenses increased 0.7 percentage point to 24.9% for fiscal 2006 compared to 24.2% in fiscal 2005. This increase in the selling, general, and administrative percentage resulted from:

- operating expenses from new stores opened in fiscal 2005 and fiscal 2006;
- a non-recurring stock compensation charge of $2.8 million, or 0.4 percentage point of net sales, primarily related to a former executive of the company;
- $0.7 million of share-based compensation expense related to our adoption of Statement of Financial Accounting Standards (SFAS) 123R in fiscal 2006 which increased selling, general, and administrative expenses by 0.1 percentage point of net sales; and
- $0.6 million of incremental asset write-offs related to closed or remodeled stores representing 0.1 percentage point of net sales.

Pre-opening expenses

Pre-opening expenses increased $2.4 million, or 50.6%, to $7.1 million in fiscal 2006 compared to $4.7 million in fiscal 2005. During fiscal 2006, we opened 31 new stores and remodeled seven stores. During fiscal 2005, we opened 25 new stores and remodeled one store.

Interest expense

Interest expense increased $0.3 million, or 12.3%, to $3.3 million in fiscal 2006 compared to $3.0 million in fiscal 2005 primarily due to an increase in the interest rates on our variable rate credit facility.

Income tax expense

Income tax expense of $14.2 million in fiscal 2006 represents an effective tax rate of 38.7%, compared to fiscal 2005 tax expense of $10.5 million which represents an effective tax rate of 39.7%. The decrease in the effective tax rate is primarily due to an adjustment to reflect the state tax effects of our net operating loss carry forwards.

Net income

Net income increased $6.5 million, or 41.2%, to $22.5 million in fiscal 2006 compared to $16.0 million in fiscal 2005. The after-tax impact of the non-recurring stock compensation charge was approximately $1.7 million. The increase in net income of $6.5 million resulted from an increase in gross profit of $60.9 million driven by a comparable store sales increase of 14.5% and a 1.0 percentage point increase in gross profit as a percentage of sales. The increase in gross profit was partially offset by a $47.9 million (including the $2.8 million non-recurring stock compensation charge) increase in selling, general, and administrative expenses related to operating costs for new stores opened in fiscal 2005 and fiscal 2006 as well as costs incurred to support the infrastructure necessary to manage current and future store growth.

Fiscal year 2005 versus fiscal year 2004

Net sales

Net sales increased $87.9 million, or 17.9%, to $579.1 million in fiscal 2005 compared to $491.2 million in fiscal 2004. This increase is due to the addition of 25 new stores in fiscal 2005 and an 8.3% increase in comparable store sales. Our comparable store growth for fiscal 2004 was 8.0%. Non-comparable stores, which include stores opened in fiscal 2005 as well as stores opened in fiscal 2004 which have not yet turned comparable, contributed $48.5 million of the net sales increase while comparable stores contributed $39.4 million of the total net sales increase. Our comparable store sales growth was primarily due to increased penetration of the prestige, salon styling tools, and private label product categories, which drove increased traffic and an increase in average transaction value.

Gross profit

Gross profit increased $29.7 million, or 20.5%, to $174.3 million in fiscal 2005 compared to $144.6 million in fiscal 2004. Gross profit as a percentage of net sales increased 0.7 percentage point to 30.1% in fiscal 2005 compared to 29.4% in fiscal 2004. The increase in gross profit resulted from:

- an increase of $87.9 million in net sales from new store sales and comparable sales growth;
- a 0.4 percentage point improvement due to reduction in merchandise shrink resulting from specific supply chain and in-store initiatives targeted at controlling merchandise loss, and improvement in our distribution and supply-chain costs as we focus on increasing the efficiency of those operations and leverage the growth in our store base; and

- a 0.4 percentage point improvement in salon payroll and benefits as a percentage of net sales driven by improved salon stylist productivity resulting from focused training programs and other strategic initiatives.

Selling, general, and administrative expenses

Selling, general, and administrative expenses increased $18.1 million, or 14.9%, to $140.1 million in fiscal 2005 compared to $122.0 million in fiscal 2004. As a percentage of net sales, selling, general, and administrative expenses decreased 0.6 percentage point to 24.2% in fiscal 2005 compared to 24.8% in fiscal 2004, respectively. This increase in expenses resulted from:

- operating expenses from new stores opened in fiscal 2004 and fiscal 2005; and
- a 0.4 percentage point decrease in corporate and field overhead, advertising, and store operating expenses as a percentage of sales driven by leverage from the net sales increase.

Pre-opening expenses

Pre-opening expenses increased $0.6 million, or 15.7%, to $4.7 million in fiscal 2005 compared to $4.1 million in fiscal 2004. During fiscal 2005, we opened 25 new stores and remodeled one store. During fiscal 2004, we opened 20 new stores and remodeled none.

Interest expense

Interest expense increased $0.2 million, or 4.1%, to $3.0 million in fiscal 2005 compared to $2.8 million in fiscal 2004 primarily due to an increase in the interest rates on our variable rate credit facility.

Income tax expense

Income tax expense of $10.5 million in fiscal 2005 represents an effective tax rate of 39.7%, compared to income tax expense of $6.2 million in fiscal 2004 which represents an effective tax rate of 39.6%.

Net income

Net income increased $6.5 million, or 68.8%, to $16.0 million in fiscal 2005 compared to $9.5 million in fiscal 2004. The increase in net income of $6.5 million resulted from an increase in gross profit of $29.7 million driven by a comparable store sales increase of 8.3% and additional sales from new stores opened during fiscal 2004 and fiscal 2005 as well as a 0.7 percentage point increase in gross profit as a percentage of net sales. The increase in gross profit was partially offset by an $18.1 million increase in selling, general, and administrative expenses which resulted from expenses to operate new stores opened in fiscal 2004 and fiscal 2005 as well as costs incurred to support the infrastructure necessary to manage current and future store growth.

Seasonality and unaudited quarterly statements of operations

Our business is subject to seasonal fluctuation. Significant portions of our net sales and profits are realized during the fourth quarter of the fiscal year due to the holiday selling season. To a lesser extent, our business is also affected by Mothers' Day as well as the "Back to School" period and Valentines' Day. Any decrease in sales during these higher sales volume periods could have an adverse effect on our business, financial condition, or operating results for the entire fiscal year.

The following tables set forth our unaudited quarterly results of operations for each of the quarters in fiscal 2005 and fiscal 2006. The information for each of these periods has been prepared on the same basis as the audited consolidated financial statements included in this prospectus. This information includes all adjustments, which consist only of normal and recurring adjustments that management considers necessary for the fair presentation of such data. We use a 13 week (14 week in fourth quarter fiscal 2006) fiscal quarter ending on the last Saturday of the quarter. The data should be read in conjunction with the audited and unaudited consolidated financial statements included elsewhere in this prospectus. Our quarterly results of operations have varied in the past and are likely to do so again in the future. As such, we believe that period-to-period comparisons of our results of operations should not be relied upon as an indication of our future performance.

	Fiscal quarter							
	2005				2006			
(Dollars in thousands)	First	Second	Third	Fourth	First	Second	Third	Fourth
Net sales	$ 127,583	$ 131,485	$ 129,949	$ 190,058	$ 159,468	$ 162,558	$ 166,075	$ 267,012
Cost of sales	89,707	93,783	91,313	129,991	108,813	113,093	115,332	182,691
Gross profit	37,876	37,702	38,636	60,067	50,655	49,465	50,743	84,321
Selling, general, and administrative expenses	32,833	31,958	32,239	43,115	41,316	39,605	40,797	66,282
Pre-opening expenses	864	1,002	1,641	1,205	826	1,601	2,901	1,768
Operating income	4,179	4,742	4,756	15,747	8,513	8,259	7,045	16,271
Interest expense	755	770	700	726	742	715	1,031	826
Income before income taxes	3,424	3,972	4,056	15,021	7,771	7,544	6,014	15,445
Income tax expense	1,353	1,568	1,607	5,976	3,071	2,980	2,397	5,783
Net income	$ 2,071	$ 2,404	$ 2,449	$ 9,045	$ 4,700	$ 4,564	$ 3,617	$ 9,662
Other operating data:								
Number of stores end of period	147	150	158	167	170	177	188	196
Comparable store sales increase	7.3%	7.2%	7.9%	10.0%	12.8%	13.0%	16.8%	15.0%

(Percentage of net sales)	Fiscal quarter 2005 First	Second	Third	Fourth	2006 First	Second	Third	Fourth
Net sales	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Cost of sales	70.3%	71.3%	70.3%	68.4%	68.2%	69.6%	69.4%	68.4%
Gross profit	29.7%	28.7%	29.7%	31.6%	31.8%	30.4%	30.6%	31.6%
Selling, general, and administrative expenses	25.7%	24.3%	24.8%	22.7%	25.9%	24.4%	24.6%	24.8%
Pre-opening expenses	0.7%	0.8%	1.3%	0.6%	0.5%	1.0%	1.7%	0.7%
Operating income	3.3%	3.6%	3.6%	8.3%	5.4%	5.0%	4.3%	6.1%
Interest expense	0.6%	0.6%	0.5%	0.4%	0.5%	0.4%	0.6%	0.3%
Income before income taxes	2.7%	3.0%	3.1%	7.9%	4.9%	4.6%	3.7%	5.8%
Income tax expense	1.1%	1.2%	1.2%	3.1%	1.9%	1.8%	1.4%	2.2%
Net income	1.6%	1.8%	1.9%	4.8%	3.0%	2.8%	2.3%	3.6%

Liquidity and capital resources

Our primary cash needs are for capital expenditures for new, relocated, and remodeled stores, increased merchandise inventories related to store expansion, planned expansion of our headquarters, new second distribution facility, and for continued improvement in our information technology systems.

Our primary sources of liquidity are cash flows from operations, changes in working capital, and borrowings under our credit facility. The most significant component of our working capital is merchandise inventories reduced by related accounts payable and accrued expenses. Our working capital position benefits from the fact that we generally collect cash from sales to customers the same day or within several days of the related sale, while we typically have up to 30 days to pay our vendors.

During fiscal 2006, the average investment required to open a new ULTA store was approximately $1.4 million, which includes capital investments, net of landlord contributions, and initial inventory, net of payables. We began to implement our remodel program and accelerate our store unit growth in fiscal 2007 to approximately 25% compared to the average growth rate of 17% in fiscal 2005 and 2006. We plan to finance the capital expenditures related to our new and remodeled stores from operating cash flows and borrowings under our credit facility, including the accordion option.

Our working capital needs are greatest from August through November each year as a result of our inventory build-up during this period for the approaching holiday season. This is also the time of year when we are at maximum investment levels in our new store class and have not yet collected the landlord allowances due us as part of our lease agreement. Based on past performance and current expectations, we believe that cash generated from operations and borrowings under the credit facility, with the accordion option exercised, will satisfy the company's working capital needs, capital expenditure needs, commitments, and other liquidity requirements through at least the next 12 months.

Credit facility

Our credit facility is with LaSalle Bank National Association as the administrative agent, Wachovia Capital Finance Corporation as collateral agent, and JPMorgan Chase Bank, N.A. as documentation agent. The credit facility, as amended with our existing bank group on June 29, 2007, provides for a maximum credit of $150 million and a $50 million accordion option through May 31, 2011. Substantially all of the company's assets are pledged as collateral for outstanding borrowings under the facility. Outstanding borrowings bear interest at the prime rate or the Eurodollar rate plus 1.00% up to $100 million and 1.25% thereafter. The advance rates on owned inventory are 80% (85% from September 1 to January 31). The interest rate on the outstanding balances under the facility as of January 28, 2006 and February 3, 2007 was 6.146% and 7.025%, respectively. We had approximately $49.0 million and $48.9 million of availability as of January 28, 2006 and February 3, 2007, respectively, excluding the accordion option. The credit facility agreement contains a restrictive financial covenant on tangible net worth and also requires us to provide financial statements and other related information to our lenders. We have been in compliance with all covenants during the three fiscal years ended February 3, 2007. We also have an ongoing letter of credit that renews annually. The balance was $326,000 at January 28, 2006 and February 3, 2007.

As of May 5, 2007, we have classified $55,038,000 of outstanding borrowings under the facility as long-term, as this is the minimum amount we believe will remain outstanding for an uninterrupted period over the next year.

Operating activities

Operating activities consist primarily of net income adjusted for certain non-cash items, including depreciation and amortization, deferred income taxes, realized gains and losses on disposal of property and equipment, non-cash stock-based compensation, and the effect of working capital changes.

(Dollars in thousands)	Fiscal year ended January 29, 2005	Fiscal year ended January 28, 2006	Fiscal year ended February 3, 2007	Three months ended April 29, 2006	Three months ended May 5, 2007
Net income	$ 9,460	$ 15,969	$ 22,543	$ 4,700	$ 5,319
Items not affecting cash:					
Depreciation and amortization	18,304	22,285	29,736	6,048	9,840
Deferred income taxes	961	(3,037)	(3,080)	—	(822)
Non-cash stock compensation charges	634	468	983	228	289
Excess tax benefits from stock-based compensation	—	(213)	(5,360)	—	—
Loss on disposal of property and equipment	1,167	1,230	3,518	656	135
Changes in working capital items	(1,265)	899	7,290	(19,838)	(28,932)
Net cash provided by (used in) operations	$ 29,261	$ 37,601	$ 55,630	$ (8,206)	$ (14,171)

Net cash provided by operating activities was $29.3 million, $37.6 million, and $55.6 million in fiscal 2004, 2005, and 2006, respectively. The increase in net cash from operating activities of $18.0 million in fiscal 2006 compared to fiscal 2005 is primarily attributed to the following:

- an increase in depreciation and amortization of $7.5 million attributed to new stores opened in fiscal 2006 and fiscal 2005 and accelerated depreciation related to our remodel program;
- an increase in net income of $6.6 million;
- an increase of $6.4 million in net working capital changes mainly attributed to a combination of increases in deferred rent related to new store lease terms ($2.8 million), an increase in accrued liabilities ($4.0 million), a decrease in prepaid and other assets ($2.1 million), and an increase in landlord allowances receivable related to additional new stores opened in fiscal 2006 ($2.5 million);
- a decrease of $5.1 million related to increased volume of excess tax benefits recognized from stock-based compensation (described further below); and

- an increase of $2.3 million on loss on disposal of property and equipment representing write-offs of remodel store assets and other store fixtures.

The increase in net cash from operating activities of $8.3 million in fiscal 2005 compared to fiscal 2004 is primarily attributed to the following:

- an increase in net income of $6.5 million;
- an increase in depreciation and amortization of $4.0 million attributed to new stores opened in fiscal 2005 and fiscal 2004;
- a deduction from operating cash flows for the effects of deferred income taxes of $4.0 million; and
- an increase of $2.2 million in net working capital changes mainly related to the increase in deferred rent related to new store lease terms.

The increase in net cash used in operating activities of $6.0 million in first quarter fiscal 2007 compared to first quarter fiscal 2006 is primarily attributed to the following:

- an increase of $9.1 million used for working capital items mainly attributed to merchandise inventories; and
- an increase in depreciation and amortization of $3.8 million attributed to new stores and accelerated depreciation related to our remodel program.

Prior to the adoption of SFAS 123R, we presented all tax benefits related to tax deductions resulting from the exercise of stock options as operating activities in the consolidated statement of cash flows. SFAS 123R requires that cash flows resulting from tax benefits related to tax deductions in excess of compensation expense recognized for those options (excess tax benefits) be classified as financing cash flows. As a result, we classified $5.4 million and $0.2 million in fiscal 2006 and fiscal 2005, respectively, as an operating cash outflow and a financing cash inflow. There was no corresponding amount in fiscal 2004.

Investing activities

Investing activities consist primarily of capital expenditures for new and remodeled stores as well as investments in information technology systems.

	Fiscal year ended			Three months ended	
(Dollars in thousands)	**January 29, 2005**	**January 28, 2006**	**February 3, 2007**	**April 29, 2006**	**May 5, 2007**
Purchases of property and equipment	$ (34,807)	$ (41,607)	$ (62,331)	$ 5,304	$ (17,757)
Issuance of related party notes receivable	—	—	(2,414)	—	—
Receipt of related party notes receivable	—	—	—	—	373
Net cash used in investing activities	$ (34,807)	$ (41,607)	$ (64,745)	$ 5,304	$ (17,384)

Net cash used in investing activities was $34.8 million, $41.6 million, and $64.7 million in fiscal 2004, 2005, and 2006, respectively. During fiscal 2006, our Chief Executive Officer exercised stock options in exchange for a promissory note for $4.1 million. The company withheld $2.4 million of payroll-related taxes in connection with the exercised options and that portion of the note has been classified as an investing activity. The remainder of the promissory note of $1.7 million related to exercise proceeds of the options and was classified as a non-cash financing activity. The note was paid in full on June 29, 2007.

Net cash used in investing activities was $5.3 million and $17.4 million in first quarter fiscal 2006 and first quarter fiscal 2007, respectively, primarily representing new store and information technology investments. In addition, two related party notes receivable were settled during first fiscal quarter 2007.

Financing activities

Financing activities consist principally of borrowings and payments on our credit facility and capital stock transactions.

(Dollars in thousands)	Fiscal year ended			Three months ended	
	January 29, 2005	January 28, 2006	February 3, 2007	April 29, 2006	May 5, 2007
Proceeds on long-term borrowings	$ 532,002	$ 644,817	$ 851,468	$ 184,053	$ 239,123
Payments on long-term borrowings	(528,010)	(641,652)	(846,112)	(170,689)	(206,769)
Excess tax benefits from stock-based compensation	—	213	5,360	—	—
Proceeds from issuance of common stock	1,801	615	1,422	233	547
Purchase of treasury stock	—	—	(2,217)	—	(1,830)
Principal payments under capital lease obligations	(421)	(167)	—	—	—
Proceeds from issuance of preferred stock	—	15	—	—	—
Net cash provided by financing activities	$ 5,372	$ 3,841	$ 9,921	$ 13,597	$ 31,071

Net cash provided by financing activities was $5.4 million, $3.8 million, and $9.9 million in fiscal 2004, 2005, and 2006, respectively.

The increase in net cash provided by financing activities in fiscal 2006 of $6.1 million is due to the $5.1 million increase in excess tax benefits from stock-based compensation, $0.8 million increase in proceeds recognized by the company resulting from the exercise of stock options by employees, net of a $2.2 million outflow related to a treasury stock transaction with an investor.

The decrease in net cash provided by financing activities in fiscal 2005 of $1.5 million is mainly attributed to the decrease in the amount of proceeds resulting from stock option exercises from the dollar levels in fiscal 2004.

The increase in net cash provided by financing activities in first quarter fiscal 2007 of $17.5 million, compared to first quarter fiscal 2006, is mainly attributed to the $19.0 million net increase in long-term borrowings.

As discussed above, the statement of cash flow presentation of tax benefits related to tax deductions in excess of compensation expense recognized for those options was modified by SFAS 123R. Accordingly, we classified $5.4 million and $0.2 million in fiscal 2006 and 2005, respectively, as financing cash inflows. There was no corresponding amount in fiscal 2004.

Leases and other commitments

We lease retail stores, warehouses, corporate offices, and certain equipment under operating leases with various expiration dates through fiscal 2019. Our store leases generally have initial lease terms of 10 years and include renewal options under substantially the same terms and conditions as the original leases. In addition to future minimum lease payments, most of our lease agreements include escalating rent provisions which we recognize straight-line over the term of the lease, including any lease renewal periods deemed to be probable. For certain locations, we receive cash tenant allowances and we report these amounts as deferred rent, which is amortized into rent expense over the term of the lease, including any lease renewal periods deemed to be probable. While a number of our store leases include contingent rentals, contingent rent amounts are insignificant.

The following table summarizes our contractual arrangements and the timing and effect that such commitments are expected to have on our liquidity and cash flows in future periods. The table below excludes contingent rent, common area maintenance charges, and real estate taxes. The table below includes obligations for executed agreements for which we do not yet have the right to control the use of the property as of February 3, 2007:

(Dollars in thousands)	Total	Less than 1 year	1 to 3 years	4 to 5 years	After 5 years
Contractual cash obligations:					
Operating lease obligations(1)	$ 421,641	$ 53,494	$ 115,026	$ 97,228	$ 155,893
Revolving credit facility(2)	50,737	—	—	50,737	—
Total(3)	$ 472,378	$ 53,494	$ 115,026	$ 147,965	$ 155,893

(1) Operating lease obligations consist primarily of future minimum lease commitments related to store operating leases (see Note 4 of the Notes to the Consolidated Financial Statements). Operating lease obligations do not include common area maintenance, or CAM, insurance, or tax payments for which the Company is also obligated. Total expense related to CAM, insurance and taxes for the 2006 fiscal year was $11.7 million.

(2) Interest payments on the variable rate revolving credit facility are not included in the table above. Outstanding borrowings bear interest at the prime rate or the Eurodollar rate plus 1.25% up to $50 million and 1.50% thereafter. The interest rate on the outstanding balances under the facility as of January 28, 2006 and February 3, 2007 was 6.146% and 7.025%, respectively.

(3) In June 2007, we finalized a lease for a second distribution facility located in Phoenix, Arizona. The lease expires in March 2019. Minimum lease payments, excluding CAM, insurance, and real estate taxes, are approximately $18.4 million over the lease term.

In April 2007, we finalized a lease for additional office space in Romeoville, Illinois. The lease expires in August 2018. Minimum lease payments, excluding CAM, insurance, and real estate taxes, are approximately $15.6 million over the lease term.

Effects of inflation

Although we do not believe that inflation has had a material impact on our financial position or results of operations to date, a high rate of inflation in the future may have an adverse effect on our ability to maintain current levels of gross margin and selling, general, and administrative expenses as a percentage of net sales if the selling prices of our products do not increase with these increased costs. In addition, inflation could materially increase the interest rates on our debt.

Quantitative and qualitative disclosures about market risk

Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily the result of fluctuations in interest rates. We do not hold or issue financial instruments for trading purposes.

Interest rate sensitivity

We are exposed to interest rate risks primarily through borrowing under our credit facility. Interest on our borrowings is based upon variable rates. We have an interest rate swap agreement in place with a notional amount of $25 million which effectively converts variable rate debt to fixed rate debt at an interest rate of 5.11%. The interest rate swap is reflected in the consolidated financial statements at negative fair value of $80,000 and a positive fair value of $32,000 at January 28, 2006 and February 3, 2007, respectively. The interest rate swap is designated as a cash flow hedge, the effective portion of which is recorded as an unrecognized gain/(loss) in other comprehensive income in stockholders' equity. Our weighted average debt for fiscal 2006 was $30 million adjusted for the $25 million hedged amount. A hypothetical 1% increase or decrease in interest rates would have resulted in a $0.3 million change to our interest expense in fiscal 2006.

Critical accounting policies and estimates

Management's discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these financial statements required the use of estimates and judgments that affect the reported amounts of our assets, liabilities, revenues and expenses. Management bases estimates on historical experience and other assumptions it believes to be reasonable under the circumstances and evaluates these estimates on an on-going basis. Actual results may differ from these estimates.

A discussion of our more significant estimates follows. Management has discussed the development, selection, and disclosure of these estimates and assumptions with the audit committee of the board of directors.

Inventory valuation

Merchandise inventories are carried at the lower of average cost or market value. Cost is determined using the weighted-average cost method and includes costs incurred to purchase and distribute goods as well as related vendor allowances including co-op advertising, markdowns, and volume discounts. We record valuation adjustments to our inventories if the cost of a specific product on hand exceeds the amount we expect to realize from the ultimate sale or disposal of the

inventory. These estimates are based on management's judgment regarding future demand, age of inventory, and analysis of historical experience. If actual demand or market conditions are different than those projected by management, future merchandise margin rates may be unfavorably or favorably affected by adjustments to these estimates.

Inventories are adjusted for the results of periodic physical inventory counts at each of our locations. We record a shrink reserve representing management's estimate of inventory losses by location that have occurred since the date of the last physical count. This estimate is based on management's analysis of historical results and operating trends.

Adjustments to earnings resulting from revisions to management's estimates of the lower of cost or market and shrink reserves have been insignificant during fiscal 2004, 2005 and 2006.

Self-insurance

We are self-insured for certain losses related to health, workers' compensation, and general liability insurance. We maintain stop loss coverage with third-party insurers to limit our liability exposure. Current stop loss coverage is $150,000 for health claims, $100,000 for general liability claims, and $250,000 for workers' compensation claims. Management estimates undiscounted loss reserves associated with these liabilities in part by considering historical claims experience, industry factors, and other actuarial assumptions including information provided by third parties. Self-insurance reserves for fiscal 2004, 2005, and 2006 were $2.2 million, $2.1 million, and $2.3 million, respectively. Adjustments to earnings resulting from revisions to management's estimates of these reserves have been insignificant for fiscal 2004, 2005, and 2006.

Impairment of long-lived tangible assets

We review long-lived tangible assets whenever events or circumstances indicate these assets might not be recoverable based on undiscounted future cash flows. Assets are reviewed at the lowest level for which cash flows can be identified, which is the store level. Significant estimates are used in determining future operating results of each store over its remaining lease term. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. We have not recorded an impairment charge in any of the periods presented in the accompanying consolidated financial statements.

Stock-based compensation

Effective January 29, 2006, we adopted the fair value method of accounting for stock-based compensation arrangements in accordance with Financial Accounting Standards Board, or FASB, Statement No. 123(R), *Share-Based Payment* (FAS 123(R)), using the prospective method of transition. We use the Black-Scholes option pricing model which requires the input of assumptions. The assumptions include estimating the fair value of the company's common shares, the length of time employees will retain their vested stock options before exercising them (expected term), the estimated future volatility of the company's common stock over the expected term, and the number of options that will ultimately not complete their vesting requirements (forfeitures). Stock-based compensation expense is recognized on a straight-line basis over the requisite employee service period. Changes in assumptions can materially affect the estimate of fair value of stock-based compensation and consequently, the related amounts recognized in the consolidated financial statements.

The fair value of our common shares at the time of option grants is determined by our board of directors based on all known facts and circumstances, including valuations prepared by a nationally recognized independent third-party appraisal firm. Future volatility estimates are based on the historical volatility of a peer group of publicly-traded companies. The expected term is based on the shortcut approach in accordance with SAB 107, *Share-Based Payment*. During fiscal 2006, we recorded $665,000 of share-based compensation expense pursuant to the provisions of FAS 123(R). Management's valuation model weighted-average assumptions are summarized in Note 11 of our consolidated financial statements. A 10% increase or decrease in the volatility assumption would have impacted the actual expense recorded by approximately $100,000. At February 3, 2007, there was approximately $2.2 million of total unrecognized compensation expense related to unvested options. The cost is expected to be recognized over a weighted-average period of approximately three years.

Prior to January 29, 2006, we accounted for stock-based compensation using the intrinsic value method of accounting in accordance with Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* (APB25), and related interpretations. Under APB25, no compensation expense was recognized when stock options were granted with exercise prices equal to or greater than market value on the date of grant.

Recent accounting pronouncements

In July 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes—an Interpretation of FASB Statement No. 109* (FIN 48). FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return, and provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006. We adopted FIN 48 on February 4, 2007. The adoption of FIN 48 had no impact on the company's consolidated financial position or results of operations.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* (SFAS 157). SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with U.S. GAAP and expands disclosures about fair value measurements. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The company does not expect the adoption of SFAS 157 to have a material effect on the company's consolidated financial position or results of operations.

In September 2006, the Securities and Exchange Commission released Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (SAB 108). SAB 108 provides guidance on how the effects of the carryover or reversal of prior year financial statement misstatements should be considered in quantifying a current year misstatement. The adoption of SAB 108 by the company as of February 3, 2007, did not have any impact on the company's consolidated financial position or results of operations.

In February 2007, the FASB issued SFAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, which permits all entities to choose to measure eligible items at fair value on specified election dates. The associated unrealized gains and losses on the items for which the fair value option has been elected shall be reported in earnings. SFAS 159 is effective for financial statements issued for fiscal years beginning after November 15, 2007. Currently, we are not able to estimate the impact SFAS 159 will have on our financial statements.

Business

Overview

We are the largest beauty retailer that provides one-stop shopping for prestige, mass and salon products and salon services in the United States. We provide affordable indulgence to our customers by combining the product breadth, value and convenience of a beauty superstore with the distinctive environment and experience of a specialty retailer. Key aspects of our business include:

One-Stop Shopping. Our customers can satisfy all of their beauty needs at ULTA. We offer a unique combination of over 21,000 prestige and mass beauty products organized by category in bright, open, self-service displays to encourage our customers to play, touch, test, learn and explore. We believe we offer the widest selection of categories across prestige and mass cosmetics, fragrance, haircare, skincare, bath and body products and salon styling tools. We also offer a full-service salon and a wide range of salon haircare products in all of our stores.

Our Value Proposition. We believe our focus on delivering a compelling value proposition to our customers across all of our product categories is fundamental to our customer loyalty. For example, we run frequent promotions and gift certificates for our mass brands, gift-with-purchase offers and multi-product gift sets for our prestige brands, and a comprehensive customer loyalty program.

An Off-Mall Location. We are conveniently located in high-traffic, off-mall locations such as power centers and lifestyle centers with other destination retailers. Our typical store is approximately 10,000 square feet, including approximately 950 square feet dedicated to our full-service salon. Our displays, store design and open layout allow us the flexibility to respond to consumer trends and changes in our merchandising strategy. As of May 31, 2007, we operated 207 stores across 26 states.

While our stores appeal to a wide demographic, our typical customer is in her early 30s, trend focused and actively uses a mixture of prestige, mass and salon products. She is college educated and has an annual household income of approximately $73,000. She understands her beauty needs and seeks a retail partner that can deliver convenience and great value.

In addition to the fundamental elements of a beauty superstore, we strive to offer an uplifting shopping experience through what we refer to as “The Four E’s”: *Escape*, *Education*, *Entertainment* and *Esthetics*.

Escape. We offer our customers a timely escape from the stresses of daily life in a welcoming and approachable environment. Our customer can immerse herself in our extensive product selection, indulge herself in our hair or skin treatments, or discover new and exciting products in an interactive setting. We provide a shopping experience without the intimidating, commission-oriented and brand-dedicated sales approach found in most department stores and with a level of service typically unavailable in drug stores and mass merchandisers.

Education. We staff our stores with a team of well-trained beauty consultants and professionally licensed estheticians and stylists whose mission is to educate, inform and advise our customers regarding their beauty needs. We also provide product education

through demonstrations, in-store videos and informational displays. Our focus on educating our customer reinforces our authority as her primary resource for beauty products and our credibility as a provider of consistent, high-quality salon services. Our beauty consultants are trained to service customers across all prestige lines and within our prestige “boutiques” where customers can receive a makeover or skin analysis.

Entertainment. The entertainment experience for our customer begins at home when she receives our catalogs. Our catalogs are designed to introduce our customers to our newest products and promotions and to be invitations to come to ULTA to play, touch, test, learn and explore. A significant percentage of our sales throughout the year is derived from new products, making every visit to ULTA an opportunity to discover something new and exciting. In addition to providing approximately 3,900 testers in categories such as fragrance, cosmetics, skincare, and salon styling tools, we further enhance the shopping experience and store atmosphere through live demonstrations from our licensed salon professionals and beauty consultants, and through customer makeovers and in-store videos.

Esthetics. We strive to create a visually pleasing and inviting store and salon environment that exemplifies and reinforces the quality of our products and services. Our stores are brightly lit, spacious and attractive on the inside and outside of the store. Our store and salon design features sleek, modern lines that reinforce our status as a fashion authority, together with wide aisles that make the store easy to navigate and pleasant lighting to create a luxurious and welcoming environment. This strategy enables us to provide an extensive product selection in a well-organized store and to offer a salon experience that is both fashionable and contemporary.

We were founded in 1990 as a discount beauty retailer at a time when prestige, mass and salon products were sold through distinct channels — department stores for prestige products, drug stores and mass merchandisers for mass products, and salons and authorized retail outlets for professional hair care products. When Lyn Kirby, our current President and Chief Executive Officer, joined us in December 1999, we embarked on a multi-year strategy to understand and embrace what women want in a beauty retailer and transform ULTA into the shopping experience that it is today. We conducted extensive research and surveys to analyze customer response and our effectiveness in areas such as in-store experience, merchandise selection, salon services and marketing strategies. We believe we pioneered a unique retail approach that focuses on all aspects of how women prefer to shop for beauty products by combining the fundamental elements of a beauty superstore, including one-stop shopping, a compelling value proposition and convenient locations, together with an uplifting specialty retail experience through our emphasis on “The Four E’s”. While we are currently executing on the core elements of our business strategy, we plan to continually refine our approach in order to further enhance the shopping experience for our customers.

The success of our strategy has been recognized by various industry organizations. In October 2005, Ms. Kirby was recognized by Cosmetics Executive Women (CEW), a leading trade organization in the beauty industry, with a 2005 Achiever Award for professional achievement in the beauty industry. In May 2007, we received a 2007 Hot Retailer Award from the International Council of Shopping Centers (ICSC), a global trade association of the shopping center industry, for being an innovative retail concept.

We believe our strategy provides us with competitive advantages that have contributed to our strong financial performance. Our net sales have increased from $206.5 million in fiscal 1999 to

$755.1 million in fiscal 2006, representing a 20.3% compounded annual growth rate. In that same period, we grew our store base from 75 to 196 stores while growing our net income from $1.2 million in fiscal 1999 to $22.5 million in fiscal 2006, representing a 51.6% compounded annual growth rate. In addition, we have achieved 29 consecutive quarters of positive comparable store sales growth since fiscal 2000.

Our competitive strengths

We believe the following competitive strengths differentiate us from our competitors and are critical to our continuing success:

Differentiated merchandising strategy with broad appeal. We believe our broad selection of merchandise across categories, price points and brands offers a unique shopping experience for our customers. While the products we sell can be found in department stores, specialty stores, salons, drug stores and mass merchandisers, we offer all of these products in one retail format so that our customer can find everything she needs in one shopping trip. We appeal to a wide range of customers by offering over 500 brands, such as *Bare Escentuals* cosmetics, *Chanel* and *Estée Lauder* fragrances, *L'Oréal* haircare and cosmetics and *Paul Mitchell* haircare. We also have private label *ULTA* offerings in key categories. Because our offerings span a broad array of product categories in prestige, mass and salon, we appeal to a wide range of customers including women of all ages, demographics, and lifestyles.

Our unique customer experience. We combine the value and convenience of a beauty superstore with the distinctive environment and experience of a specialty retailer. The "Four E's" provide the foundation for our operating strategy. We cater to the woman who loves to indulge in shopping for beauty products as well as the woman who is time constrained and comes to the store knowing exactly what she wants. Our distribution infrastructure consistently delivers a greater than 95% in-stock rate, so our customers know they will find the products they are looking for. Our well-trained beauty consultants are not commission-based or brand-dedicated and therefore can provide unbiased and customized advice tailored to our customers' needs. Together with our customer service strategy, our store locations, layout and design help create our unique retail shopping experience, which we believe increases both the frequency and length of our customers' visits.

Retail format poised to benefit from shifting channel dynamics. Over the past several years, the approximately $75 billion beauty products and salon services industry has experienced significant changes, including a shift in how manufacturers distribute and customers purchase beauty products. This has enabled the specialty retail channel in which we operate to grow at a greater rate than the industry overall since at least 2000. We are capitalizing on these trends by offering an off-mall, service-oriented specialty retail concept with a comprehensive product mix across categories and price points.

Loyal and active customer base. We have approximately six million customer loyalty program members, the majority of whom have shopped at one of our stores within the past 12 months. We utilize this valuable proprietary database to drive traffic, better understand our customers' purchasing patterns and support new store site selection. We regularly distribute catalogs and newspaper inserts to entertain and educate our customers and, most importantly, to drive traffic to our stores.

Strong vendor relationships across product categories. We have strong, active relationships with over 300 vendors, including *Estée Lauder, Bare Escentuals*, *Coty, L'Oréal* and *Procter &*

Gamble. We believe the scope and extent of these relationships, which span the three distinct beauty categories of prestige, mass and salon and have taken years to develop, create a significant impediment for other retailers to replicate our model. These relationships also frequently afford us the opportunity to work closely with our vendors to market both new and existing brands in a collaborative manner.

Experienced management team. Our senior management team averages over 25 years of combined beauty and retail experience and brings a creative merchandising approach and a disciplined operating philosophy to our business. Our senior management team is led by Lyn Kirby, our President and Chief Executive Officer. Other key senior executives include Bruce Barkus, our Chief Operating Officer, and Gregg Bodnar, our Chief Financial Officer. Additionally, over the past three years, we have significantly expanded the depth of our management team at all levels and in all functional areas to support our growth strategy.

Growth strategy

We intend to expand our presence as a leading retailer of beauty products and salon services by:

Growing our store base to our long-term potential of over 1,000 stores. We believe our successful track record of opening new stores in diverse markets throughout the United States demonstrates the portability and growth potential of our retail concept.

- Based on the broad demographic appeal of our retail concept, the significant size of the market in which we operate and our internal real estate planning model which we use to evaluate potential new store growth opportunities, we believe we have the potential to grow our store base to over 1,000 ULTA stores in the United States over the next 10 years. Our internal real estate model takes into account a number of variables, including demographic and sociographic data as well as population density relative to maximum drive times, economic and competitive factors. We plan to open stores both in markets in which we currently operate and in new markets.

  We opened 31 stores in fiscal 2006 and plan to open approximately 50 stores in fiscal 2007.

	Fiscal year			
	2003	2004	2005	2006
Total stores beginning of period	112	126	142	167
Stores opened	15	20	25	31
Stores closed	(1)	(4)	—	(2)
Total stores end of period	126	142	167	196
Total square footage	1,285,857	1,464,330	1,726,563	2,023,305
Total square footage per store	10,205	10,312	10,339	10,323

- In addition, we developed and initiated a store remodel program in 2006 to update our older stores to provide a modern and consistent shopping experience across all of our locations. We remodeled seven stores in fiscal 2006 and plan to remodel approximately 18 stores in fiscal 2007. We believe this program will improve the appeal of our stores, drive additional traffic and increase our sales and profitability.

	Fiscal year			
	2003	2004	2005	2006
Stores remodeled	2	0	1	7

Increasing our sales and profitability by expanding our prestige brand offerings. Our strategy is to continue to expand our portfolio of products and brands, in particular to enhance our offering of prestige brands, both by capitalizing on the success of our existing vendor relationships and by identifying and developing new supply sources. We plan to continue to expand and attract additional prestige brands to our stores by increasing education for our beauty consultants, providing high levels of customer service, and tailoring the presentation and merchandising of these products in our stores to appeal to prestige vendors. For example, by the end of 2007, we will have installed "boutique" areas of approximately 200 square feet in over 90 of our stores to showcase and build brand equity for key vendors and to provide our customers with a place to experiment and learn about these products. We intend to install this feature in most of our stores over time. Over the past two years, we have added several prestige brands including *Estée Lauder* fragrance, *Frédéric Fekkai* haircare, *Smashbox* cosmetics and *T3* salon styling tools. We believe this strategy will result in a continued increase in our number of transactions and our average transaction value.

Improving our profitability by leveraging our fixed costs. We plan to continue to improve our operating results by leveraging our existing infrastructure and continually optimizing our operations. We will continue to make investments in our information systems to enable us to enhance our efficiency in such areas as merchandise planning and allocation, inventory management, distribution and point of sale, or POS, functions. We believe we will continue to improve our profitability by reducing our operating expenses, in particular general corporate overhead and fixed costs, as a percentage of sales.

Continuing to enhance our brand awareness to generate sales growth. We believe a key component of our success is the brand exposure we get from our marketing initiatives. Our direct mail advertising programs are designed to drive additional traffic to our stores by highlighting current promotional events and new product offerings. Our national magazine print advertising campaign exposes potential new customers to our retail concept by conveying an attractive and sophisticated brand message. We believe we have an opportunity to increase our in-store marketing efforts as an additional means of educating our customers and increasing the frequency of their visits to our stores.

Driving increased customer traffic to our salons. We are committed to establishing ULTA as a leading salon authority. We seek to increase salon traffic and grow salon revenues by providing high quality and consistent services from our licensed stylists, who are knowledgeable about the newest hair fashion trends. Our objective is to create customer loyalty, increase conversion of our retail customers to our salon services, encourage referrals and distinguish our salons from those of our competitors. Our stylists are trained to sell haircare products to their customers by demonstrating the products while styling their customers' hair. Additionally, we have refined our recruiting methods, hiring procedures and training programs to enhance stylist retention, which is an important factor in salon productivity.

Expanding our online business. We plan to go live with a new version of our website in the first half of 2008 or earlier to enhance the overall ULTA experience with greater functionality, ease-of-use and integration with our customer loyalty program. We also intend to establish

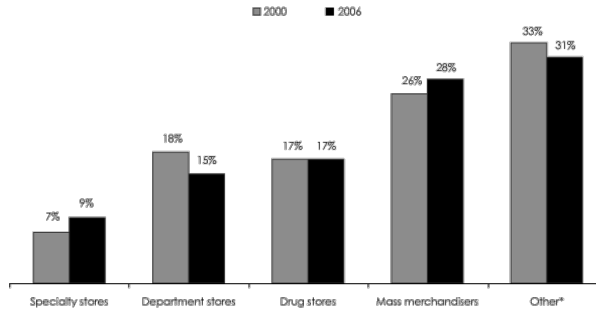
ourselves as a leading online beauty resource for women by providing our customers with information on key trends and products, including editorial content and links to our vendor partners. Through the re-launch of our website, we believe we will be well positioned to capitalize on the growth of Internet sales of beauty products. We believe our website and retail stores will provide our customers with an integrated multi-channel shopping experience and increased flexibility for their beauty buying needs.

Our market

We operate within the large and steadily growing U.S. beauty products and salon services industry. This market represented approximately $75 billion in retail sales, according to Kline & Company and IBISWorld Inc. The approximately $35 billion beauty products industry includes color cosmetics, haircare, fragrance, bath and body, skincare, salon styling tools and other toiletries. Within this market, we compete across all major categories as well as a range of price points by offering prestige, mass and salon products. The approximately $40 billion salon services industry consists of hair, face and nail services.

Distribution for beauty products is varied. Prestige products are typically purchased in department or specialty stores, while mass products and staple items are generally purchased at drug stores, food retail stores and mass merchandisers. In addition, salon haircare products are sold in salons and authorized professional retail outlets. From 2000 to 2006, changes in consumer shopping preferences and industry consolidation have resulted in declines in the market share of department stores from 18% to 15% and of food retail stores and other channels from 33% to 31%, while the specialty retail channel has increased its share of the beauty retail market from 7% to 9%, according to Kline & Company. Distribution for salon products and services is highly fragmented, with approximately 230,000 salons in the United States, according to Professional Consultants & Resources, a market research firm.

The following table represents retail sales of beauty products by channel in the United States:



Source: Kline & Company

* "Other" includes the following categories: food stores, salons and spas, direct sales, and all other.

Key trends

We believe an important shift is occurring in the distribution of beauty products. Department stores, which have traditionally been the primary distribution channel for prestige beauty products, have been meaningfully affected by changing consumer preferences and industry consolidation over the past decade. We believe women, particularly younger generations, tend to find department stores intimidating, high-pressured and hinder a multi-brand shopping experience and, as such, are choosing to shop elsewhere for their beauty care needs. According to NPD, 55% of women aged 18 to 24 shop in specialty stores, compared to 40% of women aged 18 to 64. Over the past ten years, department stores have lost significant market share to specialty stores in apparel, and we believe the beauty category is undergoing a similar shift in retail channels. We believe women are seeking a shopping experience that provides something different, a place to experiment, learn about various products, find what they want and indulge themselves. A recent NPD study found that nine out of ten women who shop at specialty retailers for beauty products do so because they can touch, feel and smell the products.

As a result of this market transformation, there has been an increase in the number of prestige beauty brands pursuing new distribution channels for their products, such as specialty retail, spas and salons, direct response television (i.e., home shopping and infomercials) and the Internet. In addition, many smaller prestige brands are selling their products through these channels due to the high fixed costs associated with operating in most department stores and to capitalize on consumers' growing propensity to shop in these channels. According to industry sources, color cosmetics sales through these channels are projected to grow at a higher rate than sales of color cosmetics in total. We believe that, based on our recent success in attracting new prestige brands, we are well-positioned to continue to capture additional prestige brands as they expand into specialty stores. Also, there are a growing number of brands that have built significant consumer awareness and sales by initially offering their products on direct response television. We benefit from offering brands that sell their products through this channel, as we experience increased store traffic and sales after these brands appear on television.

Historically, manufacturers have distributed their products through distinct channels—department stores for prestige products, drug stores and mass merchandisers for mass products, and salons and authorized retail outlets for professional hair care products. We believe women are increasingly shopping across retail channels as well as purchasing a combination of prestige and mass beauty products. We attribute this trend to a number of factors, including the growing availability of prestige brands outside of department stores and increased innovation in mass products. Based on the competitive environment in which we operate, we believe that we have been at the forefront of breaking down the industry's historical distribution paradigm by combining a wide range of beauty products, categories and price points under one roof. Our strategy reflects a more customer-centric model of how women prefer to shop today for their beauty needs.

Major growth drivers for the industry include favorable consumer spending trends, product innovation and growth of certain population segments.

- *Baby Boomers (currently 41-60 years old):* Baby Boomers have large disposable incomes and are increasing their spending on personal care as well as health and wellness. The aging of the Baby Boomer generation is also influencing product innovation and demand for anti-aging products and cosmetic procedures.
- *Generation X (currently 31-40 years old):* Generation X is entering their peak earning years and represents a significant contributor to overall consumer spending, including beauty

products. A recent survey by American Express showed that Generation X spends 60% more on beauty products than Baby Boomers. In addition, Generation X has grown up shopping in specialty stores and seeks a retail environment that combines a compelling experience, functionality, variety and location.

- *Generation Y (currently 13-30 years old):* According to U.S. Census Bureau data, the 20 to 34 year-old age group is expected to grow by approximately 10% from 2003 to 2015. As Generation Y continues to enter the workforce, they will have increased disposable income to spend on beauty products.

We believe we are well positioned to capitalize on these trends and capture additional market share in the industry. We believe we have demonstrated an ability to provide a differentiated store experience for customers as well as offer a breadth and depth of merchandise previously unavailable from more traditional beauty retailers.

Stores

We are conveniently located in high-traffic, off-mall locations such as power centers and lifestyle centers with other destination retailers. Our typical store is approximately 10,000 square feet, including approximately 950 square feet dedicated to our full-service salon. As of May 31, 2007, we operated 207 stores in 26 states, as shown in the table below:

State	Number of stores
Arizona	19
California	25
Colorado	9
Delaware	1
Florida	9
Georgia	11
Illinois	27
Indiana	4
Iowa	1
Kansas	1
Kentucky	2
Maryland	3
Michigan	4
Minnesota	6
Nevada	5
New Jersey	9
New York	6
North Carolina	8
Oklahoma	4
Oregon	1
Pennsylvania	11
South Carolina	3
Texas	27
Virginia	7
Washington	3
Wisconsin	1
Total	**207**

We believe we have the long-term potential to grow our store base to over 1,000 stores in the United States over the next 10 years. We opened 31 stores in fiscal 2006 and plan to open approximately 50 stores in fiscal 2007. All of our stores are leased. During fiscal 2006, the average investment required to open a new ULTA store was approximately $1.4 million, which includes capital investments, net of landlord contributions, and initial inventory, net of payables. However, our net investment required to open new stores and the net sales generated by new stores may vary depending on a number of factors, including geographic location.

Store remodel program

Our retail store concept, including physical layout, displays, lighting and quality of finishes, has continued to evolve over time to match the rising expectations of our customers and to keep pace with our merchandising and operating strategies. In recent years, our strategic focus has been on refining our new store model, improving our real estate selection process, and executing on our new store opening program. As a result, we decided to limit the investments made in our existing store base from fiscal 2000 to fiscal 2005. In fiscal 2006, we developed and initiated a store remodel program to update our older stores to provide a consistent shopping experience across all of our locations. We remodeled seven stores in fiscal 2006 and plan to remodel approximately 18 stores in fiscal 2007. We believe this program will improve the appeal of our stores, drive additional customer traffic and increase our sales and profitability.

The remodel store selection process is subject to the same discipline as our new store real estate decision process. Our focus is to remodel the oldest, highest performing stores first, subject to criteria such as rate of return, lease terms, market performance and quality of real estate. We expect to remodel the majority of our older stores (those opened prior to fiscal 2000) by the end of 2008. The average investment to remodel a store in fiscal 2006 was approximately $1 million. Each remodel takes approximately 13 weeks to complete, during which time we typically keep the store open.

Salon

We operate full-service salons in all of our stores. Our current ULTA store format includes an open and modern salon area with eight to ten stations. The entire salon area is approximately 950 square feet with a concierge desk, esthetics room, semi-private shampoo and hair color processing areas. Each salon is a full-service salon offering hair cuts, hair coloring, permanent texture, with most salons also providing facials and waxing. We employ licensed professional stylists and estheticians that offer highly skilled services as well as an educational experience, including consultations, styling lessons, skincare regimens, and at-home care recommendations.

ULTA.com

We established ULTA.com to give our customers an integrated multi-channel buying experience by providing them with an opportunity to access our product offerings beyond our brick-and-mortar retail stores. We plan to go live with a new version of our website in 2008 or earlier. The new version of ULTA.com will more effectively support the key elements of the ULTA brand proposition by providing access to over 9,000 beauty products from over 400 brands. We also intend to establish ourselves as a leading online beauty resource for women by providing our customers with information on key trends and products, including editorial content and links to our vendor partners. Additionally, ULTA.com will serve as an extension of ULTA's marketing and prospecting strategies (beyond catalogs, newspaper inserts and national advertising) by exposing potential new customers to the ULTA brand and product offerings. This role for ULTA.com will be implemented through online marketing strategies such as banner advertising and paid and natural search vehicles. ULTA.com's email marketing programs are also effective in communicating with and driving sales from online and retail store customers. As ULTA.com continues to grow in terms of functionality and content, it will become an important element in ULTA's customer loyalty programs and a valued resource for customers to access product information and beauty trends and techniques.

Merchandising

Strategy

We focus on offering one of the most extensive product and brand selections in our industry, including a broad assortment of branded and private label beauty products in cosmetics, fragrance, haircare, skincare, bath and body products and salon styling tools. A typical ULTA store carries over 19,000 basic and over 2,000 promotional products. We present these products in an assisted self-service environment using centrally produced planograms (detailed schematics showing product placement in the store) and promotional merchandising planners. Our merchandising team continually monitors current fashion trends, historical sales trends and new product launches to keep ULTA's product assortment fresh and relevant to our customers.

We believe our broad selection of merchandise, from moderate-priced brands to higher-end prestige brands, offers a unique shopping experience for our customers. The products we sell can also be found in department stores, specialty stores, salons, mass merchandisers and drug stores, but we offer all of these products in one retail format so that our customer can find everything she needs in one stop.

We believe we offer a compelling value proposition to our customers across all of our product categories. For example, we run frequent promotions and gift certificates for our mass brands, gift-with-purchase offers and multi-product gift sets for our prestige brands, and a comprehensive customer loyalty program.

We believe our private label products are a strategically important category for growth and profit contribution. Our objective is to provide quality, trend-right private label products at a good value to continue to strengthen our customers' perception of ULTA as a contemporary beauty destination. ULTA manages the full development cycle of these products from concept through production in order to deliver differentiated packaging and formulas to build brand image. Current *ULTA* cosmetics and bath brands have a strong following and we have plans to expand our private label products into additional categories.

Category mix

We offer products in the following categories:

- *Cosmetics*, which includes products for the face, eyes, cheeks, lips and nails;
- *Haircare*, which includes shampoos, conditioners, styling products, and hair accessories;
- *Salon styling tools*, which includes hair dryers, curling irons and flat irons;
- *Skincare and bath and body*, which includes products for the face, hands and body;
- *Fragrance* for both men and women;
- *Private label*, consisting of *ULTA* branded cosmetics, skincare, bath and body products; and
- *Other*, including candles, home fragrance products, exercise accessories, educational DVDs and other miscellaneous health and beauty products.

Organization

Our merchandising team reports directly to our Chief Executive Officer and consists of a Vice President of Prestige Cosmetics, Skin & Fragrance; a Vice President of Mass Cosmetics, Skincare & Haircare; a Vice President of Salon Products, Styling Tools & Bath; and a Senior Vice President of Private Brand Development. The vice presidents have one or two divisional merchandise managers reporting to them, and the divisional merchandise managers have a buyer and/or associate/assistant buyer reporting to them. There are approximately 17 divisional merchandise managers, buyers and/or associate/assistant buyers on the merchandising team. Our merchandising team works directly with our centralized planning and replenishment group to ensure a consistent delivery of products across our store base.

Our planogram department assists the merchants to keep new products flowing into stores on a timely basis. All major product categories undergo planogram revisions once or twice a year and adjustments are made to assortment mix and product placement based on current sales trends.

Our visual department works with our merchandising team on every advertising event regarding strategic placement of promotional merchandise, along with functional signage and creative product presentation standards, in all of our stores. All stores receive a centrally produced promotional planner for each event to ensure consistent implementation.

Planning and allocation

We have developed a disciplined approach to buying and a dynamic inventory planning and allocation process to support our merchandising strategy. We centrally manage product replenishment to our stores through our planning and replenishment group. This group serves as a strategic partner to, and provides financial oversight of, the merchandising team. The merchandising team creates a sales forecast by category for the year. Our planning and replenishment group creates an open-to-buy plan, approved by senior executives, for each product category. The open-to-buy plan is updated weekly with point of sale, or POS, data, receipts and inventory levels and is used throughout the year to balance buying opportunities and inventory return on investment. We believe this structure maximizes our buying opportunities while maintaining organizational and financial control.

Regularly replenished products are presented consistently in all stores utilizing a merchandising planogram process. POS data is used to calculate sales forecasts and to determine replenishment levels. We determine promotional product replenishment levels using sales histories from similar or comparable events. To ensure our inventory remains productive, our planning and replenishment group, along with senior executives, monitors the levels of clearance and aged inventory in our stores on a weekly basis. In addition, we have structured our accounting policies to ensure appropriate clearance and movement of aged inventory.

Vendor relationships

We work with over 300 vendors. Each merchandising vice president has over 15 years of experience developing relationships in the industry with which he or she works. We have no long-term supply agreements or exclusive arrangements with our vendors. Our top ten vendors represent approximately 35% of our total annual sales. These include vendors across all product categories, such as *Bare Essentials, Farouk Systems, Helen of Troy, L'Oréal* and *Procter & Gamble*, among others. We have “top-to-top” meetings with each of these vendors at least once a year, which in most instances includes our Chief Executive Officer and the vendor’s senior

management team. We believe our vendors view us as a significant distribution channel for growth and brand enhancement.

Marketing and advertising

Marketing strategy

We employ a multi-faceted marketing strategy to increase brand awareness and drive traffic to our stores. Our marketing strategy complements a basic tenet of our business strategy, which is to provide our customers with a satisfying and uplifting experience. We communicate this vision through a multi-media approach. Our primary media expenditure is in direct mail catalogs and free-standing newspaper inserts. These vehicles allow the customer to see the breadth of our selection of prestige, mass and salon beauty products.

In order to reach new customers and to establish ULTA as a national brand, we advertise in national magazines such as *InStyle*, *Allure*, *Lucky*, *Cosmopolitan* and *Vanity Fair*. These advertising channels have proven successful in raising our brand awareness on a national level and driving additional sales from both existing and new customers. In conjunction with our national brand advertising, we have initiated a public relations strategy that focuses on reaching top tier magazine editors to ensure consistent messaging in beauty magazines as well as direct-to-customer efforts through multi-media channels.

Our Internet advertising strategy complements our print media strategy. We send out email distributions to our key customers, and we integrate promotional messaging in banner advertising during certain times of the year.

Our gross advertising budget over the next five years is decreasing as a percentage of sales, due in part to the effectiveness of our strategy of opening new stores in existing markets as well as the cost efficiencies we are able to achieve as our catalogs and newspaper inserts circulate more widely.

Customer loyalty programs - The Club at ULTA

The strategy of our customer loyalty program, which we initiated in 1996, is to engage, motivate and reward existing ULTA customers while increasing our customer count and sales. We have approximately six million customer loyalty program members, the majority of whom have shopped at one of our stores within the past 12 months. Customers sign up to become members in-store and receive free gifts four times a year, with the value of such gifts based on customers' spending levels. We also send reward certificates to members in our catalogs.

Staffing and operations

Retail

Our current ULTA store format is typically staffed with a general manager, a salon manager, four assistant managers, and approximately 20 full and part-time associates, including approximately six to eight beauty consultants and eight to fifteen licensed salon professionals. The management team in each store reports to the general manager. The general manager oversees all store activities and salon management, which include inventory management, merchandising, cash management, scheduling, hiring and guest services. Members of store management receive bonuses depending on their position and on sales, shrink, payroll, or a

combination of these three factors. Each general manager reports to a district manager, who in turn reports to the Vice President of Operations East, the Vice President of Operations West or the Senior Vice President of Operations. The Senior Vice President of Operations reports to our Chief Operating Officer. Each store team receives additional support from time to time from recruiting specialists for the retail and salon operations, a field loss prevention team, market trainers, and management trainers.

ULTA stores are open seven days a week, 11 hours a day, Monday through Saturday, and seven hours on Sunday. Our stores have extended hours during the holiday season.

Salon

A typical salon is staffed with eight to 15 licensed salon professionals, including one salon manager, eight to 12 stylists, and one to two estheticians. Our higher producing salons may also have a salon coordinator and assistant manager. Our training teams, vendor education classes and leadership conferences create a comprehensive educational program for our approximately 1,900 salon professionals.

Training and development

Our success is dependent in part on our ability to attract, train, retain and motivate qualified employees at all levels of the organization. We have developed a corporate culture that enables individual store managers to make store-level operating decisions and consistently rewards their success. We are committed to improving the skills and careers of our workforce and providing advancement opportunities for our associates. Our associates and regional managers are essential to our store expansion strategy. We primarily use existing managers or promote from within to support our new stores, although many outlying stores have all-new teams.

All of our associates participate in an interactive new-hire orientation through which each associate becomes acquainted with ULTA's vision and mission. Training for new store managers, beauty consultants and sales associates familiarizes them with opening and closing routines, guest service expectations, our loss prevention policy and procedures, and our culture. We also have ongoing development programs that include operational training for hourly associates, beauty consultants, management and stylists. We provide continuing education to both salon professionals and retail associates throughout their careers at ULTA to enable them to deliver the "Four E's" to our customers. In contrast to the sales teams at traditional department stores, our sales teams are not commissioned or brand-dedicated. Our beauty consultants are trained to work across all prestige lines and within our prestige "boutiques", where customers can receive a makeover or skin analysis.

Distribution

Our distribution facility (including an overflow facility) is located in an approximately 317,000 square foot facility in Romeoville, Illinois. We have negotiated a lease for a second distribution facility in Phoenix, Arizona that is approximately 330,000 square feet in size. This new facility, which we expect will be completed and operational in the first half of 2008, will service our Western region and accommodate our anticipated growth by providing support for our current distribution facility.

Inventory is shipped from our suppliers to our distribution facility. We carry over 21,000 products and replenish our stores with such products primarily in eaches (i.e., less-than-case quantities), which allows us to ship less than an entire case when only one or two of a particular product is needed. Our distribution facility uses a WM software system, which was upgraded in early 2007. Products are bar-coded and scanned using handheld radio-frequency devices as they move within the warehouse to ensure accuracy. Product is delivered to stores using contract carriers. One vendor currently provides store-ready orders that can be quickly forwarded to our stores. We use advance ship notices, or ASNs, and carton barcode labels to facilitate these shipments. We expect to increase the number of vendors using ASNs and carton barcodes to expedite our receiving process.

Information technology

We are committed to using technology to enhance our competitive position. We depend on a variety of information systems and technologies to maintain and improve our competitive position and to manage the operations of our growing store base. We rely on computer systems to provide information for all areas of our business, including supply chain, merchandising, POS, electronic commerce, finance, accounting and human resources. Our core business systems consist mostly of a purchased software program that integrates with our internally developed software solutions. Our technology also includes a company-wide network that connects all corporate users, stores, and our distribution infrastructure and provides communications for credit card and daily polling of sales and merchandise movement at the store level. We intend to leverage our technology infrastructure and systems where appropriate to gain operational efficiencies through more effective use of our systems, people and processes. We update the technology supporting our stores, distribution infrastructure and corporate headquarters on a continual basis. From fiscal 2006 through fiscal 2007, we will have invested $22.6 million to improve the technology in our distribution infrastructure, stores and corporate headquarters. We will continue to make investments in our information systems to facilitate our growth and enable us to enhance our competitive position.

We use a POS system that includes registers with full scanning capabilities in order to maintain speed and accuracy at customer checkouts. Our POS system is integrated with our customer loyalty program and has the ability to look up our customers' loyalty numbers. We are planning to upgrade the POS system to enable the acceptance of debit cards by the end of 2007.

During 2007, we have launched several initiatives to support our expected growth, including the transition of a legacy WM software system to the core purchased software program, construction of a modern, secure data center, a technical upgrade of the same purchased software program system and an update of our website technology. In anticipation of our planned second distribution facility, our WM software system was recently upgraded to make it capable of supporting multiple distribution facilities. Further development and testing of our WM software system is necessary before it will be ready to operate a second distribution facility. We believe these initiatives will provide the needed functionality and capacity to support the business and will provide the foundation for future stores and distribution facilities.

Competition

Distribution for beauty products is varied. Prestige products are typically purchased in department or specialty stores, while mass products and staple items are generally purchased at drug stores, grocery stores and mass merchandisers. In addition, salon haircare products are sold

in salons and authorized professional retail outlets. From 2000 to 2006, changes in consumer shopping preferences and industry consolidation have resulted in declines in the market share of department stores from 18% to 15% and of food retail stores and other channels from 33% to 31%, while the specialty retail channel has increased its share of the beauty retail market from 7% to 9%, according to Kline & Company. Our major competitors for prestige and mass products include traditional department stores such as *Macy's* and *Nordstrom*, specialty stores such as *Sephora* and *Bath & Body Works*, drug stores such as *CVS/pharmacy* and *Walgreens* and mass merchandisers such as *Target* and *Wal-Mart*. We believe the principal bases upon which we compete are the quality of merchandise, our value proposition, the quality of our customers' shopping experience and the convenience of our stores as one-stop destinations for beauty products and salon services.

The market for salon services and products is highly fragmented, with approximately 230,000 salons in the United States, according to Professional Consultants & Resources, a market research firm. Our competitors for salon services and products include *Regis Corp.*, *Sally Beauty*, *JCPenney* salons and independent salons.

Intellectual property

We have registered a number of trademarks in the United States, including Ulta 3 (and design), Ulta Salon Cosmetics and Fragrances (and design), ULTA.com, and several brands and service marks. The renewal dates for these marks are December 29, 2008, January 22, 2012 and October 8, 2012, respectively. The application for ULTA Beauty and design is pending. All marks that are deemed material to our business have been protected in the United States, Canada and select foreign countries.

We believe our trademarks, especially those related to the ULTA concept, have significant value and are important to building brand recognition.

Government regulation

In our U.S. markets, we are affected by extensive laws, governmental regulations, administrative determinations, court decisions and similar constraints. Such laws, regulations and other constraints may exist at the federal, state or local levels in the United States. Our *ULTA* branded products are subject to regulation by the FDA, the FTC and State Attorneys General in the United States. Such regulations principally relate to the safety of our ingredients, proper labeling, advertising, packaging and marketing of our products.

Products classified as cosmetics (as defined in the FDC Act) are not subject to pre-market approval by the FDA, but the products and the ingredients must be tested to ensure safety. The FDA also utilizes an "intended use" doctrine to determine whether a product is a drug or cosmetic by the labeling claims made for the product. Certain ingredients commonly used in cosmetics products such as sunscreens and acne treatment ingredients are classified as over-the-counter drugs which have specific label requirements and allowable claims. The labeling of cosmetic products is subject to the requirements of the FDC Act, the Fair Packaging and Labeling Act and other FDA regulations.

The government regulations that most impact our day-to-day operations are the labor and employment and taxation laws to which most retailers are typically subject. We are also subject to typical zoning and real estate land use restrictions and typical advertising and consumer

protection laws (both federal and state). Our salon business is subject to state board regulations and state licensing requirements for our stylists and our salon procedures.

In our store leases, we require our landlords to obtain all necessary zoning approvals and permits for the site to be used as a retail site and we also ask them to obtain any zoning approvals and permits for our specific use (but at times the responsibility of obtaining zoning approvals and permits for our specific use falls to us). We require our landlords to deliver a certificate of occupation for any work they perform on our buildings or the shopping centers in which our stores are located. We are responsible for delivering a certificate of occupation for any remodeling or build-outs that we perform and are responsible for complying with all applicable laws in connection with such construction projects or build-outs.

Associates

As of May 5, 2007, we employed approximately 3,400 people on a full-time basis and approximately 3,700 on a part-time basis. We have no collective bargaining agreements. We have not experienced any work stoppages and believe we have good relationships with our associates.

Properties

All ULTA retail stores, our principal executive offices and all of our distribution, warehouse and other office facilities are leased or subleased. Most of our retail store leases provide for a fixed minimum annual rent and have a fixed term with options for two or three extension periods of five years each, exercisable at our option. As of May 31, 2007, we operated 207 ULTA retail stores.

As of May 31, 2007, we operated one distribution facility (including an overflow facility), or the Arbor Drive warehouse, which is located in Romeoville, Illinois. The Arbor Drive warehouse contains approximately 317,000 square feet. The lease for the Arbor Drive warehouse expires as of April 30, 2010 and has two renewal options with terms of five years each. We have negotiated a lease for a second distribution facility located in Phoenix, Arizona for approximately 330,000 square feet to be operational in the first half of 2008.

Our principal executive offices are currently located in two separate buildings. One portion of our executive offices, or the Arbor Drive offices, is located on the site of the Arbor Drive warehouse. Our remaining executive offices, or the Windham Parkway offices, are located in a separate building in Romeoville, Illinois. The lease for the Arbor Drive offices expires as of April 30, 2010 and the lease for the Windham Parkway offices expires as of January 31, 2008. We have secured additional office space in Romeoville, Illinois for corporate use to accommodate future human resource requirements over the next several years.

Legal proceedings

We are involved in various legal proceedings that are incidental to the conduct of our business, including, but not limited to, employment discrimination claims. In the opinion of management, the amount of any liability with respect to these proceedings, either individually or in the aggregate, will not be material.

Management

Executive officers and directors

Upon the consummation of this offering, our executive officers and directors will be as follows:

Name	Age	Position
Lyn P. Kirby	53	President, Chief Executive Officer and Director
Bruce E. Barkus	54	Chief Operating Officer and Assistant Secretary
Gregg R. Bodnar	42	Chief Financial Officer and Assistant Secretary
Hervé J.F. Defforey	57	Director
Robert F. DiRomualdo	63	Director
Dennis K. Eck	64	Non-Executive Chairman of the Board of Directors
Gerald R. Gallagher	66	Director
Terry J. Hanson	60	Director
Charles Heilbronn	52	Director
Steven E. Lebow	53	Director
Yves Sisteron	52	Director

Lyn P. Kirby: Ms. Kirby has been our President, Chief Executive Officer and Director since December 1999. Prior to joining ULTA, Ms. Kirby was President of Circle of Beauty, a subsidiary of Sears, from March 1998 to December 1999; Vice President and General Manager of new business for Gryphon Development, a subsidiary of Limited Brands, Inc. from 1995 to March 1998; and Vice President of Avon Products Inc. and general manager of the gift business, the in-house creative agency and color cosmetics prior to 1995. Ms. Kirby holds a Bachelor degree (honors) in commerce and marketing from the University of New South Wales in Sydney, Australia.

Bruce E. Barkus: Mr. Barkus has been our Chief Operating Officer since December 2005, our Corporate Secretary from April 2006 to August 2007, an Assistant Corporate Secretary since August 2007, and served as our Acting Chief Financial Officer from April 2006 to October 2006. Prior to joining ULTA, Mr. Barkus was President and Chief Executive Officer of GNC and its wholly owned subsidiary, General Nutrition Centers, Inc. from May 2005 to November 2005. Prior to that, Mr. Barkus was an executive at Family Dollar Stores, Inc., as Executive Vice President from October 2003 to May 2005; Senior Vice President of Store Operations from August 2000 to October 2003; and Vice President of Store Operations from June 1999 to July 2000. Prior to June 1999, Mr. Barkus served in various executive roles at Eckerd Corporation, where he was Vice President of Operations for the North Texas Region. Mr. Barkus holds a Doctorate degree in business administration from Nova Southeastern University School of Business.

Gregg R. Bodnar: Mr. Bodnar has been our Chief Financial Officer and Assistant Corporate Secretary since October 2006. Prior to joining ULTA, Mr. Bodnar was Senior Vice President and Chief Financial Officer of Borders International from January 2003 to June 2006; Vice President Group Financial Reporting and Planning of Borders Group, Inc. from January 2000 to December 2002; Director of Finance of Borders Group, Inc. from January 1996 to December 1999; Vice President, Finance and Chief Financial Officer of Rao Group Inc. from 1993 to 1996; and as an

auditor and certified public accountant at the public accounting firm of Coopers & Lybrand from 1988 to 1993. Mr. Bodnar holds a Bachelor degree in finance and accounting from Wayne State University in Detroit, Michigan.

Hervé J.F. Defforey: Mr. Defforey has been a director of ULTA since July 2004. Mr. Defforey has been an operating partner of GRP, a venture capital firm, in Los Angeles, California since September 2006. Prior to September 2006, Mr. Defforey was a partner in GRP Europe Ltd. from November 2001 to September 2006; Chief Financial Officer and Managing Director of Carrefour S.A. from 1993 to 2004; and Treasurer at BMW Group and General Manager of various BMW AG group subsidiaries and also held senior positions at Chase Manhattan Bank, EBRO Agricolas, S.A. and Nestlé S.A. prior to 1993. Mr. Defforey holds a business degree in marketing from HEC St. Gall (Switzerland). Mr. Defforey is a director of X5 Retail Group (chairman of the supervisory board), IFCO Systems (member of the audit committee), PrePay Technologies Ltd. and Kyriba Corporation.

Robert F. DiRomualdo: Mr. DiRomualdo has been a director of ULTA since February 2004. Mr. DiRomualdo is Chairman and Chief Executive Officer of Naples Ventures, LLC, a private investment company that he formed in 2002. Prior to 2002, Mr. DiRomualdo was Chairman of the Board of Directors of Borders Group, Inc. and its predecessor companies from August 1994 to January 2002; Chief Executive Officer of Borders Group, Inc. and its predecessor companies from 1989 to December 1999; and President and Chief Executive Officer of Hickory Farms, the food store chain, prior to 1989. Mr. DiRomualdo holds a Bachelor degree from Drexel Institute of Technology and a Master of Business Administration degree from the Harvard Business School. Mr. DiRomualdo is a director of Bill Me Later, Inc. (chairman of the compensation committee and member of the audit committee).

Dennis K. Eck: Mr. Eck has been our Non-Executive Chairman of the Board of Directors and a director of ULTA since October 2003. Prior to that, Mr. Eck served in various executive roles with Coles Myer, one of Australia's largest retailers, where he was Chief Executive Officer and a member of the board of Coles Myer LTD Australia from November 1997 to September 2001; Chief Operating Officer and a member of the board of Coles Myer LTD from April 1997 to November 1997; Managing Director-Basic Needs of Coles Myer LTD from November 1996 to April 1997; and Managing Director of Coles Myer Supermarkets from May 1994 to November 1996. Prior to 1994, Mr. Eck was Chief Operating Officer and a member of the board of The Vons Companies Inc. from February 1990 to November 1993. From 1988 to February 1990, Mr. Eck served as Vice Chairman of the Board and Executive Vice President of American Stores, Inc. and Chairman and Chief Executive Officer of American Food and Drug, a subsidiary of American Stores, Inc. From 1987 to 1988, Mr. Eck was President and Chief Executive Officer and a member of the board of American Food and Drug. Prior to that, he served as President and Chief Operating Officer of Acme Markets, Inc. from 1985 to 1987; Senior Vice President Marketing of Acme Markets, Inc. from 1984 to 1985; Executive Vice President Drug Buying / Marketing and General Manager Superstores of American Stores' Sav-On Drugs division in southern California from 1982 to 1984; and, from 1968 to 1982, served in various positions with Jewel Companies Inc. Mr. Eck holds a Bachelor degree in history and political science from the University of Montana. Mr. Eck is a director of eStyle ("babystyle").

Gerald R. Gallagher: Mr. Gallagher has been a director of ULTA since December 1998. Mr. Gallagher has been a General Partner of Oak Investment Partners, a venture capital partnership, since 1987. Prior to 1987, Mr. Gallagher was Vice Chairman of Dayton Hudson Corporation where, he served in both operating and staff positions from 1977 to 1987; and a retail industry analyst at Donaldson,

Lufkin & Jenrette prior to 1977. Mr. Gallagher holds a Bachelor degree from Princeton University and a Master of Business Administration from the University of Chicago. Mr. Gallagher is a director of Cheddar's Casual Café (member of the compensation committee), eStyle (member of the compensation committee), Lucy Activewear (member of the audit committee) and Xiotech.

Terry J. Hanson: Mr. Hanson has been a director of ULTA since January 1990 and is one of ULTA's co-founders. He served as President and Chief Operating Officer from January 1990 until September 1994 and as President and Chief Executive Officer from September 1994 until December 1999. From December 1999 until July 2000, Mr. Hanson served as Chairman of the board of directors. He also served as ULTA.com's Chairman of the board of directors, Chief Executive Officer and as a director from August 2000 until February 2002. Subsequently, Mr. Hanson served as President of Pearle Vision, Inc. from May 2003 until October 2004 and has been Managing Partner of RIMC LLC since December 2004. He also held positions at American Drugstores, Inc. (Osco-Sav-On) from September 1969 to October 1989, where he served as President from 1988 until 1989 and as Executive Vice President, Vice President Chicagoland Operations, and Vice President Personnel from 1977 until 1988. Mr. Hanson holds a Bachelor degree and a Master of Science degree from North Dakota State University.

Charles Heilbronn: Mr. Heilbronn has been a director of ULTA since July 1995. Mr. Heilbronn has been Executive Vice President and Secretary of Chanel, Inc. since 1998, and, since December 2004, Executive Vice President of Chanel Limited, a privately-held international luxury goods company selling fragrance and cosmetics, women's clothing, shoes and accessories, leather goods, fine jewelry and watches. Prior to that, Mr. Heilbronn was Vice President and General Counsel of Chanel Limited and Senior Vice President, General Counsel and Secretary of Chanel, Inc. from 1987 to December 2004. Mr. Heilbronn served as a director of RedEnvelope from October 2002 to August 2006, and is currently a director of Doublemousse B.V., Chanel, Inc. (U.S.) and various other Chanel companies or their affiliates in the United States and worldwide, as well as several unrelated private companies. He is also a *Membre du Conseil de Surveillance* (a non-executive board of trustees) of Bourjois SAS, a French company. Mr. Heilbronn received a Master in Law from Universite de Paris V, Law School and an LLM from New York University Law School.

Steven E. Lebow: Mr. Lebow has been a director of ULTA since May 1997. Mr. Lebow has been a Managing Partner and Co-Founder of GRP Partners, a venture capital firm, since 2000. Prior to 2000, Mr. Lebow spent 21 years at Donaldson, Lufkin & Jenrette in a variety of positions, most recently as Chairman of Global Retail Partners, and as Managing Director and head of the Retail Group within the Investment Banking Division. Mr. Lebow holds a Bachelor degree in political science and economics from the University of California Los Angeles and a Master of Business Administration from the Wharton School of Business at the University of Pennsylvania. Mr. Lebow is a director of eStyle ("babystyle"), EnvestNet Asset Management and Bill Me Later, Inc.

Yves Sisteron: Mr. Sisteron has been a director of ULTA since July 1993. Mr. Sisteron has been a Managing Partner and Co-Founder of GRP Partners, a venture capital firm, since 2000. Prior to that, Mr. Sisteron was a managing director at Donaldson Lufkin & Jenrette overseeing the operations of Global Retail Partners, which he started with Mr. Lebow in 1996. From 1989 to 1996, Mr. Sisteron managed the U.S. investments of Fourcar B.V., a division of Carrefour S.A. Mr. Sisteron holds a Juris Doctorate degree and LLM degree from the University of Law (Lyon) and a LLM degree ("MCJ") from the New York University School of Law. Mr. Sisteron is a director of UGO, Inc. (member of compensation committee), EnvestNet Asset Management

(member of compensation committee), HealthDataInsights, Kyriba, Inc., Qualys, Inc., Netsize, S.A., and Actimagine, Inc.

Board of directors composition

Our board of directors currently has nine members. Each director was elected to the board of directors to serve until a successor is duly elected and qualified or until his or her earlier death, resignation or removal. Our Second Amended and Restated Voting Agreement, or the voting agreement, entered into as of December 18, 2000, which by its terms will terminate upon the consummation of this offering, designates that Mr. Sisteron is to be elected as a director of the company representing GRP II, L.P. and its affiliates and Mr. Heilbronn is to be elected as a director of the company representing Doublemousse B.V., and if either of them are unwilling or unable to serve as director, Mr. Lebow is to be elected in his place. The voting agreement also provides that Oak Investment Partners has the right to elect one member of the board of directors, with Mr. Gallagher currently serving as Oak Investment Partners' director. Upon the consummation of this offering, a majority of our board of directors, consisting of Messrs. Defforey, DiRomualdo, Eck, Gallagher, Hanson, Heilbronn, Lebow and Sisteron, will satisfy the current independence requirements of the NASDAQ Global Select Market and the SEC.

Upon the consummation of this offering, our bylaws will provide that our board of directors consists of no less than three persons. The exact number of members of our board of directors will be determined from time to time by resolution of a majority of our full board of directors. Our board of directors will be divided into three classes as described below, with each director serving a three-year term and one class being elected at each year's annual meeting of stockholders. Messrs. Eck, Sisteron and Hanson will serve initially as Class I directors (with a term expiring in 2008). Messrs. Gallagher, Defforey and DiRomualdo will serve initially as Class II directors (with a term expiring in 2009). Messrs. Heilbronn and Lebow and Ms. Kirby will serve initially as Class III directors (with a term expiring in 2010).

Board of directors committees

Our board of directors has an audit committee, a compensation committee and a nominating and corporate governance committee. Upon the consummation of this offering, the composition and functioning of all of our committees will comply with all applicable requirements of the NASDAQ and the SEC.

Audit committee. Upon the consummation of this offering, the audit committee will consist of Messrs. Defforey (Chairman), DiRomualdo and Hanson. The board of directors has determined that each committee member qualifies as a "nonemployee director" under SEC rules and regulations, as well as the independence requirements of the NASDAQ. The board of directors has determined that Mr. Defforey qualifies as an "audit committee financial expert" under SEC rules and regulations. The audit committee assists the board of directors in monitoring the integrity of our financial statements, our independent auditors' qualifications and independence, the performance of our audit function and independent auditors, and our compliance with legal and regulatory requirements. The audit committee has direct responsibility for the appointment, compensation, retention (including termination) and oversight of our independent auditors, and our independent auditors report directly to the audit committee.

Compensation committee. Upon the consummation of this offering, the compensation committee will consist of Messrs. Eck (Chairman), Lebow and Heilbronn. The board of directors has determined that each committee member qualifies as a “nonemployee director” under SEC rules and regulations, as well as the independence requirements of the NASDAQ. The primary duty of the compensation committee is to discharge the responsibilities of the board of directors relating to compensation practices for our executive officers and other key associates, as the committee may determine, to ensure that management’s interests are aligned with the interests of our equity holders. The compensation committee also reviews and makes recommendations to the board of directors with respect to our employee benefits plans, compensation and equity-based plans and compensation of directors. The compensation committee approves the compensation and benefits of the chief executive officer and all other executive officers. The board of directors ratifies the compensation of the Chief Executive Officer.

Nominating and corporate governance committee. Upon the consummation of this offering, the nominating and corporate governance committee will consist of Messrs. Heilbronn (Chairman), Lebow and Gallagher. The board of directors has determined that each committee member qualifies as a “nonemployee director” under SEC rules and regulations, as well as the independence requirements of the NASDAQ. The primary responsibility of the nomination and corporate governance committee is to recommend to the board of directors candidates for nomination as directors. The committee reviews the performance and independence of each director, and in appropriate circumstances, may recommend the removal of a director for cause. The committee oversees the evaluation of the board of directors and management. The committee also recommends to the board of directors policies with respect to corporate governance.

Compensation

Compensation discussion and analysis

Philosophy and overview of compensation

Our executive compensation philosophy is to provide compensation opportunities that attract, retain and motivate talented key executives. We accomplish this by:

- evaluating the competitiveness and effectiveness of our compensation programs by benchmarking against other comparable businesses based on industry, size, results and other relevant business factors;
- linking annual incentive compensation to the company's performance on key financial, operational and strategic goals that support stockholder value;
- focusing a significant portion of the executive's compensation on equity based incentives to align interests closely with stockholders; and
- managing pay for performance such that pay is tied to business and individual performance.

Our compensation program consists of a fixed base salary, variable cash bonus and stock option awards, with a significant portion weighted towards the variable components. This mix of compensation is intended to ensure that total compensation reflects our overall success or failure and to motivate executive officers to meet appropriate performance measures.

Because we have been a private company, historically our compensation committee has made compensation recommendations to the board of directors and the full board of directors has approved the compensation of our executive officers. After completion of this offering, the compensation committee will determine the compensation of our executive officers.

From time to time, the compensation committee has used compensation consultants in order to determine whether our compensation programs and pay levels are competitive in the marketplace. However, the compensation committee did not rely upon any compensation consultant in setting compensation for our named executive officers, or NEOs, for 2006. Rather compensation decisions in 2006 were, in part, driven by company discussions with recruiting consultants and experiences with the hiring of certain key executives, including our Chief Operating Officer and Chief Financial Officer. Based on their compensation levels, which the compensation committee determined were necessary to hire talented executives, and in a review of general and retail industry surveys, the compensation committee determined that the compensation of our Chief Executive Officer, as well as that of other executives, should be increased to reflect the competitive marketplace, and to achieve a level of internal pay consistency. Consequently, we entered into a new employment agreement with our Chief Executive Officer, as described below.

In 2007, in order to assist the compensation committee in its responsibilities (including evaluating the competitiveness of executive compensation levels), the compensation committee retained an independent outside consultant (Towers Perrin). This outside consultant was engaged directly by the compensation committee. Specifically, the consultant's role was to work with the compensation committee to benchmark our compensation to the marketplace, develop an ongoing equity based program and provide advice with respect to the overall structure of our compensation programs. The consultants competitive market data was based on a review of a

peer group of 18 retail industry companies, including: Guitar Center, Inc., The Children's Place; CHICOS FAS Inc.; Timberland Co.; Revlon Inc.; DSW, Inc.; Urban Outfitters; Guess, Inc.; J.Crew Group Inc.; Fossil Inc.; Coldwater Creek; Panera Bread Co.; Oakley Inc.; Sharper Image Corp.; Kenneth Cole Prod. Inc.; Lifetime Fitness Inc.; Hibbert Sports, Inc.; and K-Swiss Inc. To assist us in our 2007 equity program grants, our consultant also prepared a binomial option valuation model.

In making its individual compensation determinations, the Compensation Committee considers the report of individual performances prepared by Ms. Kirby in her capacity of Chief Executive Officer. The compensation committee also considers the accounting and tax impact of each element of compensation and in the past has tried to minimize the compensation expense impact of equity grants on our financial statements, while minimizing the tax consequences to executives.

The following briefly describes each element of our executive compensation program:

Base salary

Base salaries are reviewed annually and are set based on individual performance, individual contract negotiation, competitiveness versus the external market, and internal merit increase budgets. Factors that are taken into account to increase or decrease compensation include significant changes in individual job responsibilities, performance and/or our growth.

Annual bonuses

Each year the compensation committee recommends, and the board of directors approves, performance targets for Ms. Kirby and Mr. Barkus. If 100% of these pre-established performance targets are met, then Ms. Kirby will earn a target bonus of $812,500 per year and Mr. Barkus will earn a bonus of $725,000. At least 91% of the performance targets must be achieved in order for Ms. Kirby or Mr. Barkus to receive any bonus. In fiscal 2006, Ms. Kirby's and Mr. Barkus' performance targets were based on an internally defined operating earnings target, or bonus operating earnings, with a target of $43,792,000. Actual fiscal 2006 bonus operating earnings was $51,406,000, or an achievement of 117.4% of the target.

The established bonus operating earnings targets for 2007 represent a substantial stretch beyond the actual results achieved in 2006. In setting these performance objectives, and based on 2007 results to date, we realize that the achievement of the planned performance will be challenging. However, we believe that stretch performance objectives are appropriate in pursuit of continuous improvement.

Mr. Bodnar became an employee on October 22, 2006, and has a target bonus of 40% of his base salary.

Based on achievement of 117.4% of the bonus operating earnings performance target, Ms. Kirby and Mr. Barkus each were entitled to 100% of their target bonus. Based on the terms of his employment, Mr. Bodnar was entitled to 100% of his target bonus, pro rated to reflect the period of his employment. Because they exceeded their performance targets, the compensation committee determined in its discretion as approved by the Board, to pay Ms. Kirby $100,000, Mr. Barkus $75,000 and Mr. Bodnar $10,000 as discretionary bonuses. Based on the terms of employment for Ms. Kirby and Messrs. Barkus and Bodnar, the board has the discretion to increase awards in the event the targets are either not achieved or exceeded.

In addition to his annual performance bonus, as long as Mr. Barkus is employed on the last day of each fiscal year, he will receive a bonus of $100,000 beginning with the 2006 fiscal year and ending with the 2011 fiscal year. Such bonus was agreed to in June of 2006, as a means of

allowing Mr. Barkus the opportunity to receive compensation he would have otherwise lost because the exercise price of his options was higher than originally intended under the terms of his employment agreement. In particular, Mr. Barkus was to receive his options on the date of the first board of directors meeting following his start date with us, which would have been in January 2006. Mr. Barkus accepted employment and the number of options with the expectation that such an option grant would have a certain value. However, such grant was delayed by the board of directors until April 2006. Between such dates, the board of directors, based on all known facts and circumstances, determined that the fair market value of our stock had increased, and correspondingly the exercise price of his options also increased. This increase in the exercise price diminished the ultimate value of the option grant. As a result, the board of directors elected to provide the bonus as a means of providing Mr. Barkus with potential total compensation on the level anticipated at the time of his employment agreement.

Mr. Weber did not receive a bonus for fiscal 2006, as his employment terminated during the year.

Stock options

We have historically granted stock options to a broad group of employees. Employees receive grants of stock options upon hire or promotion. We have also made grants to executives from time to time, at the discretion of the board of directors, based on performance and for retention purposes. Grants made to senior executives such as Ms. Kirby, Messrs. Barkus and Bodnar, however, are not determined based on a set formula. Rather the amount of their option grants is separately determined by the compensation committee. In particular, Messrs. Barkus and Bodnar's option grants in fiscal 2006 were negotiated as part of their initial compensation packages at the time of their hire. In determining the amount of such grants, the compensation committee assessed the potential value that it thought such options would deliver to Messrs. Barkus and Bodnar over a period of years based on its assumptions as to the growth in the value of our common stock. It then determined whether the potential value realizable was reasonable given the executive's level of responsibility and experience.

In making such assessment, the compensation committee considered competitive data available to it through its consultants and reviewed various hypothetical results based on a variety of potential appreciation rates for the value of our stock over the vesting period, recognizing that there was no certainty there would be any material appreciation or that the company would become a public company, and that fundamentally the judgment of what level of options is reasonable for the particular person or position is related to the executive's level of responsibility and experience, but is still subjective. The timing of these grants was in each case a function of the date of the individual's hire, the completion of a stock valuation, and the date of the next following board of directors meeting.

Option grants to executive officers have the following characteristics:

- all options have an exercise price equal to the fair market value of our common stock on the date of grant, which is determined by our board of directors based on all known facts and circumstances, including valuations prepared by a nationally recognized independent third-party appraisal firm;
- Except for grants to Ms. Kirby described below and the grants to Mr. Barkus under his employment agreement, options vest ratably, on an annual basis over a three or four-year period; and

- options granted under the 2002 Plan expire ten years after the date of grant. Options granted under the Old Plan expire 14 years after the date of grant.

Pursuant to the terms of his employment agreement, Mr. Barkus was to receive a grant of 1,000,000 stock options at the first board of directors meeting following commencement of his employment. Of those 1,000,000 options, 198,000 options were to vest on the date of grant and 198,000 and 204,000 options were to vest on the first and second anniversaries of the date of grant, respectively, for a total of 600,000 of the 1,000,000 options. In addition, 400,000 of the options vest only after an initial public offering of our common stock, with 50% of such options vesting on each of the first and second anniversaries of an initial public offering. The intention of these options was to provide Mr. Barkus with an incentive to complete an initial public offering and provide our investors with a means of realizing value. Because of a delay in the board of directors being able to determine the fair market value of our common stock, Mr. Barkus did not receive his option grants until April of 2006. As a result of this delay, the exercise price of the options increased. Accordingly, the board of directors determined to grant Mr. Barkus additional guaranteed bonus compensation of $100,000 each year, as described above. The board of directors also later determined to change the reference date for vesting in his first 600,000 options from the grant date to the commencement date of his employment, December 12, 2005.

Upon his commencement of employment in October 2006, Mr. Bodnar was granted 200,000 options that vest over four years as described above. In addition, the board of directors agreed to grant to Mr. Bodnar at its July 2007 meeting an additional 70,000 options. Such options will vest over four years as described and will have an exercise price equal to the fair market value of our common stock on the date of grant.

Until June of 2006, Ms. Kirby held 3,000,000 stock options, all of which were fully vested. In June 2006, Ms. Kirby exercised all of these options. At that time, we loaned Ms. Kirby $4,094,340, which was the amount necessary for her to exercise all of her stock options and pay associated taxes. This loan was intended to allow Ms. Kirby to gain favorable tax treatment by exercising the options while the value of our common stock was relatively low and begin her capital gain holding period. The terms of the loan are more fully described below in the description of Ms. Kirby's employment agreement. On June 29, 2007 Ms. Kirby repaid all outstanding balances on such loan.

As Ms. Kirby did not have any equity compensation subject to vesting, the board of directors granted Ms. Kirby up to 1,300,000 options at its July 2007 meeting, as follows:

- 500,000 options with an exercise price equal to the fair market value of our common stock on the date of grant, and which vest in four installments starting with 25% at the effective date of an initial public offering and 25% per year for the next three anniversary dates of an initial public offering;
- 500,000 options with an exercise price of $, which is anticipated to be in excess of the fair market value of our common stock on the date of grant. These options will also vest in four installments starting with 25% at the effective date of an initial public offering and 25% per year for the next three anniversary dates of the initial public offering; and
- up to an additional 300,000 options to be granted one-third annually starting one year after an initial public offering, but only if a sustained 25% plus increase in share price is achieved that year. Vesting will be ratable over two years beginning on the first anniversary of the grant. The exercise price will be equal to the fair market value on the date the options are granted.

As a result, Ms. Kirby will realize value only if there is an initial public offering, and with respect to a majority portion of such options only if stockholders also receive additional value on their investment following an initial public offering.

Our policy is to set the exercise price of options based on their fair market value on the date of grant and all options have been granted at meetings of the board of directors after consideration and determination of the fair market value of our common stock based on all known facts and circumstances, including valuations prepared by a nationally recognized independent third-party appraisal firm.

Benefits and perquisites

None of the NEOs is eligible for special perquisites or other benefits that are not available to all of our employees. We offer a 401(k) plan with matching contributions equal to 40% of contributions made up to 3% of compensation, group health, life, accident and disability insurance. In addition, all employees are entitled to a discount on purchases at our stores.

Summary compensation table

The following table sets forth the compensation of our Chief Executive Officer, our Chief Operating Officer, our Chief Financial Officer and our former Chief Financial Officer for our fiscal year ending February 3, 2007. We refer to these four individuals collectively as the NEOs.

Name and principal position	Year ($)	Salary ($)	Bonus ($)	Option awards(1) ($)	Non-equity incentive plan compensation ($)	All other compensation ($)	Total ($)
Lyn P. Kirby *President, Chief Executive Officer and Director (Principal Executive Officer)*	2006	598,651	100,000	—	750,000	—	1,448,651
Bruce E. Barkus *Chief Operating Officer(2)*	2006	580,008	175,000	296,530	725,000	102,896	1,879,434
Gregg R. Bodnar *Chief Financial Officer (Principal Financial Officer)(3)*	2006	74,043	10,000	37,006	30,335	58,572	209,956
Charles R. Weber *Former Chief Financial Officer(4)*	2006	230,525	—	—	—	2,640	233,165

(1) Represents the aggregate expense recognized for financial statement reporting purposes in 2006, disregarding the purposes of forfeitures related to vesting conditions, in accordance with the FASB's SFAS No. 123(R), *Share-Based Payment*, for stock option awards granted during 2006 and prior to 2006 for which we continue to recognize expense in 2006. The assumptions we used for calculating the grant date fair values are set forth in Note 11 to our consolidated financial statements included in this prospectus.

(2) Mr. Barkus received $102,896 as reimbursement for relocation expenses.

(3) Mr. Bodnar's salary is from his commencement of employment in October of 2006. His annual base salary for 2006 was set at $275,000. He received $58,572 as reimbursement for relocation expenses.

(4) Mr. Weber terminated his employment on October 7, 2006. He received $2,640 in matching contributions to our 401(k) plan.

Grants of plan-based awards

The following table sets forth certain information with respect to grants of plan-based awards for fiscal 2006 to the NEOs.

Name	Grant Date	Estimated future payouts under non-equity incentive plan awards			Number of securities underlying options	Exercise or base price of option awards(2)	Grant date fair value of option award(3)
		Threshold	Target	Maximum			
Lyn P. Kirby	2/23/2006(1)	$ 75,000	$ 750,000	$ 750,000	—	—	—
Bruce E. Barkus	2/23/2006(1)	72,500	725,000	725,000	—	—	—
	4/26/2006				400,000	$ 2.60	—
	4/26/2006				600,000	2.60	$ 296,530
Gregg R. Bodnar	10/24/2006(1)	3,033	30,335	30,335	—	—	—
	10/24/2006	—	—	—	200,000	5.80	37,006
Charles R. Weber		—	—	—	—	—	—

(1) Amounts shown represent ranges of potential payouts under annual performance-based bonus program as of the award date. Actual bonus amounts paid for 2006 performance are shown in the Summary compensation table under "Non-equity incentive plan compensation."

(2) The exercise price of all the option grants was the price determined to be the fair market value of our common stock on the grant date by our board of directors in light of all the facts and circumstances known to the board of directors, including valuation reports presented by a nationally recognized independent third-party appraisal firm.

(3) In determining the estimated fair value of our option awards as of the grant date, we used the Black-Scholes option-pricing model. The assumptions underlying our model are described in the notes to our consolidated financial statements (Note 11—Share-based awards), included in this prospectus.

Outstanding equity awards to Named Executive Officers as of end of fiscal 2006

The following table presents information concerning options to purchase shares of our common stock held by the NEOs as of the end of fiscal 2006.

Name	Option awards			
	Number of securities underlying unexercised options exercisable	Number of securities underlying unexercised options unexercisable	Option exercise price per share	Option expiration date
Lyn P. Kirby	—	—	—	—
Bruce E. Barkus(1)	346,000	604,000	$ 2.60	4/26/2016
Gregg R. Bodnar(2)	—	200,000	5.80	10/24/2016
Charles R. Weber	—	—	—	—

(1) Mr. Barkus received 1,000,000 options on April 26, 2006, of which 198,000 shares were vested on the date of grant, 198,000 vested on December 12, 2006, 204,000 vest on December 12, 2007, 200,000 vest on the first anniversary of an initial public offering and 200,000 vest on the second anniversary of an initial public offering. Mr. Barkus transferred these options to a revocable trust of which he is the beneficiary. Such transfer was made for estate planning purposes by gift without any payment therefor.

(2) Mr. Bodnar's options were granted on October 24, 2006 and vest 25% on each anniversary of the date of grant. Mr. Bodnar transferred these options to a revocable trust of which he is the beneficiary. Such transfer was made for estate planning purposes by gift without any payment therefor.

Option exercises during fiscal 2006

The following table sets forth information regarding options held by the NEOs that were exercised during fiscal 2006.

Name	Number of shares acquired on exercise		Value realized on exercise (1)
Lyn P. Kirby	3,000,000	$	6,120,000
Bruce E. Barkus	50,000		160,000
Gregg R. Bodnar	—		—
Charles R. Weber	1,214,894		6,307,190

(1) There was no public trading of our common stock on the dates of exercise. Accordingly, these values are calculated based on the aggregate difference between the exercise price of the option and the last determination of fair market value of our common stock by our board of directors based on all known facts and circumstances, including valuations prepared by a nationally recognized independent third-party appraisal firm.

Employment contracts

We have entered into employment agreements only with our CEO and COO. No other executives have employment agreements and all are employed on an at will basis.

Lyn P. Kirby

On June 23, 2006, we entered into a new employment agreement with Ms. Kirby. Under such agreement, Ms. Kirby serves as our President and Chief Executive Officer, but may transition such duties to a successor and assume the role of Executive Chairman. The term of the agreement is through the last day of the fiscal year ending in February 2008, but with annual renewals thereafter unless 60 days prior notice of non-renewal is given. By the terms of her agreement, Ms. Kirby is entitled to receive an annual base salary of $600,000, as may be adjusted from time to time. For the current fiscal year, Ms. Kirby's adjusted salary is $650,000. Ms. Kirby may also earn annual cash bonus targeted at 125% of her base salary based upon the attainment of pre-established performance criteria.

Ms. Kirby was eligible for a loan from us up to $4,094,340 for her to exercise previously granted and vested options. In June 2006, we made such a loan, which was secured by the shares purchased upon exercise of her options and was fully recourse against her other assets. The loan carried interest at 5.06% per year. Ms. Kirby was required to pay the outstanding interest with any bonus compensation that she received while the loan remained outstanding. Ms. Kirby was able to prepay the loan at anytime, but was required to repay the loan in full (i) immediately prior to our becoming an "issuer" under the Sarbanes-Oxley Act of 2002, (ii) expiration of the time period provided under the terms of her option agreements and our stockholders' agreements for the repurchase of shares following her termination of employment; or (iii) after five years. On June 29, 2007, Ms. Kirby repaid the outstanding balance on the loan.

Under the employment agreement, if her employment is terminated by us without "cause," by her for "good reason," or upon the non-renewal of her employment agreement, Ms. Kirby will

receive severance equal to one year's base salary (at the rate in effect on her termination date) payable over twelve months. Such severance is subject to her delivery of a general release of claims. In the event of her death or disability, Ms. Kirby will receive a cash payment equal to one year's base salary (at the rate in effect at that time) less any amounts she is eligible to receive from any company provided disability insurance.

Ms. Kirby also has signed our company's policy regarding non-competition, non-solicitation, and confidential information that will apply during her employment and for a period of one year following her termination.

Bruce E. Barkus

We entered into an employment agreement with Mr. Barkus as of December 12, 2005. Under this agreement, Mr. Barkus serves as our Chief Operating Officer. The term of such agreement is through the last day of the fiscal year ending in February 2009, but will renew annually thereafter unless 60 days notice of non-renewal is given. By the terms of this agreement, Mr. Barkus is entitled to receive an annual base salary of $580,000, as may be adjusted from time to time. Mr. Barkus may also earn an annual cash bonus beginning with the 2006 fiscal year, targeted at $725,000 based upon the attainment of pre-established performance criteria. On June 28, 2006, we amended his employment agreement to provide an additional guaranteed annual cash bonus of $100,000 each year beginning in fiscal 2006 until the fiscal year ending in 2012, provided he is employed by us on such date.

On April 26, 2006 we granted Mr. Barkus options to purchase up to 1,000,000 shares of our common stock, 198,000 of which vested on the date of grant and 198,000 and 204,000 of which were to vest on the first and second anniversaries of December 12, 2005, respectively, for a total of 600,000 of the 1,000,000 options. In addition, 400,000 of the options vest only after an initial public offering of our common stock, with 50% of such options vesting on each of the first and second anniversaries of an initial public offering. These options were all granted with an exercise price per share equal to the fair market value of our common stock on the date of grant, as determined by our board of directors based on all known facts and circumstances, including valuations prepared by a nationally recognized independent third-party appraisal firm. All shares of common stock acquired upon exercise of such option are subject to repurchase rights upon the termination of employment at the then fair market value as described in the 2002 Plan, however, such repurchase rights will expire upon the closing of this offering.

If we terminate Mr. Barkus, without "cause," he resigns for "good reason," or his employment terminates upon the non-renewal of his employment agreement, he will receive severance equal to one year's base salary (at the rate in effect on termination) payable over twelve months. Such severance is subject to his delivery of a general release of claims. In the event of his death or disability, Mr. Barkus will receive a cash payment equal to one year's base salary (at the rate in effect at that time) less any amount he is eligible to receive from any company provided disability insurance.

Mr. Barkus has also signed our policy regarding non-competition, non-solicitation, and confidential information that will apply during his employment and for a period of one year following termination.

Potential payments upon termination or change in control

The following chart set forth the amount that each of the NEOs would receive assuming that their employment was terminated involuntarily on the last day of the 2006 fiscal year, February 3, 2007. The amount set forth below regarding change in control is based on the acceleration of the vesting of otherwise unvested stock options and assuming the fair market value of our common stock as of February 3, 2007 of $5.80, which was the last determination of fair market value of our common stock by our board of directors prior to such date.

Name	Involuntary not for cause termination/ good reason	Death/ disability	Change in control
Lyn P. Kirby	$ 600,000	$ 600,000	—
Bruce E. Barkus	580,000	580,000	$ 1,932,800
Gregg R. Bodnar	—	—	—
Charles R. Weber(1)	—	—	—

(1) Mr. Weber's employment terminated on October 7, 2006 and he received no severance in connection therewith.

Non-executive director compensation for fiscal 2006

During fiscal 2006, no fees, options or shares of stock were paid or awarded to any of the non-executive members of our board of directors. The following table provides information related to the compensation of our non-employee directors for fiscal 2006:

	Director compensation				
Name	Fees earned or paid in cash	Stock compensation (1)(2)	Option compensation	All other compensation	Total
Hervé J.F. Defforey	—	—	—	—	—
Robert F. DiRomualdo	—	$ 83,856	—	—	$ 83,856
Dennis K. Eck	—	209,640	—	—	209,640
Gerald R. Gallagher	—	—	—	—	—
Terry J. Hanson	—	—	—	—	—
Charles Heilbronn	—	—	—	—	—
Steven E. Lebow	—	—	—	—	—
Yves Sisteron	—	—	—	—	—

(1) Represents the aggregate expense recognized for financial statement reporting purposes in 2006, disregarding the purposes of forfeitures related to vesting conditions, in accordance with the FASB's SFAS No. 123(R), *Share-Based Payment*, for stock option awards granted prior to 2006 for which we continue to recognize expense in 2006. The assumptions we used for calculating the grant date fair values are set forth in Note 11 to our consolidated financial statements included in this prospectus.

(2) On June 21, 2004, we issued 500,000 shares of common stock to Mr. Eck, pursuant to a restricted stock agreement. As of February 3, 2007, 125,000 shares remained unvested, but vested in full on May 1, 2007. On June 21, 2004, we issued 200,000 shares of common stock to Mr. DiRomualdo, pursuant to a restricted stock agreement under which 25% of the shares vest annually beginning February 26, 2005, with full vesting on February 26, 2008. As of February 3, 2007, Mr. DiRomualdo held 100,000 unvested shares.

Equity Incentive Plans

We have granted options pursuant to three plans: the 2002 Plan, the Old Plan and the Consultants Plan. We will refer to the 2002 Plan, the Old Plan and the Consultants Plan together as the Prior Plans.

2007 Incentive Award Plan

We recently adopted the 2007 Incentive Award Plan, or the 2007 Plan. Following its adoption, awards are only being made under the 2007 Plan, and no further awards will be made under the Prior Plans.

The 2007 Plan provides for the grant of incentive stock options as defined in section 422 of the Internal Revenue Code of 1986, as amended, nonstatutory stock options, restricted stock, restricted stock units, stock appreciation rights, or SARs, deferred stock, dividend equivalents, performance based awards (including performance share awards, performance stock units and performance bonus awards) and stock payments, (collectively referred to as "Awards") to our employees, consultants and directors.

Share reserve

The 2007 Plan reserves for issuance upon grant or exercise of Awards up to 6,500,000 shares of our common stock plus any shares which are not issued under the Prior Plans. After our common stock is listed on a securities exchange, and other subsequent conditions are met, no more than 4,550,000 shares will be granted or $5,000,000 paid in cash pursuant to Awards which are intended to be performance based compensation within the meaning of Internal Revenue Code Section 162(m) to any one participant in a calendar year. The shares subject to the 2007 Plan, the limitations on the number of shares that may be awarded under the 2007 Plan and shares and option prices subject to awards outstanding under the 2007 Plan will be adjusted as the plan administrator deems appropriate to reflect stock dividends, stock splits, combinations or exchanges of shares, merger, consolidation, or other distributions of company assets. As of the date hereof, no shares of common stock or Awards have been granted under the 2007 Plan.

Shares withheld for taxes, shares used to pay the exercise price of an option in a net exercise and shares tendered to us to pay the exercise price of an option or other Award may be available for future grants of Awards under the 2007 Plan. In addition, shares subject to stock Awards that have expired, been forfeited or otherwise terminated without having been exercised may be subject to new Awards. Shares issued under the 2007 Plan may be previously authorized but unissued shares or reacquired shares bought on the open market or otherwise.

Administration

Generally, the board of directors will administer the 2007 Plan, unless the board delegates this task to a committee of outside directors. Pursuant to its charter, the board has delegated administration of our equity incentive plans to the compensation committee. However, with respect to Awards made to our non-employee directors or to individuals subject to Section 16 of the Securities Exchange Act of 1934, the full board will act as the administrator of the 2007 Plan. The compensation committee or the full board, as appropriate, has the authority to:

- select the individuals who will receive Awards;

- determine the type or types of Awards to be granted;
- determine the number of Awards to be granted and the number of shares to which the Award relates;
- determine the terms and conditions of any Award, including the exercise price and vesting;
- determine the terms of settlement of any Award;
- prescribe the form of Award agreement;
- establish, adopt or revise rules for administration of the 2007 Plan;
- interpret the terms of the 2007 Plan and any matters arising under the 2007 Plan; and
- make all other decisions and determinations as may be necessary to administer the 2007 Plan.

The board may delegate its authority to grant or amend Awards with respect to participants other than senior executive officers, employees covered by Section 162(m) of the Internal Revenue Code or the officers to whom the authority to grant or amend Awards has been delegated.

The compensation committee, with the approval of the board, may also amend the 2007 Plan. Amendments to the 2007 Plan are subject to stockholder approval to the extent required by law, or The Nasdaq National Market rules or regulations. Additionally, stockholder approval will be specifically required to increase the number of shares available for issuance under the 2007 Plan or to extend the term of an option beyond ten years.

Eligibility

Awards under the 2007 Plan may be granted to individuals who are our employees or employees of our subsidiaries, our non-employee directors and our consultants and advisors. However, options which are intended to qualify as incentive stock options may only be granted to employees.

Awards

The following will briefly describe the principal features of the various Awards that may be granted under the 2007 Plan.

Options—Options provide for the right to purchase our common stock at a specified price, and usually will become exercisable in the discretion of the compensation committee in one or more installments after the grant date. The option exercise price may be paid in cash, shares of our common stock which have been held by the option holder for a period of time as determined by the compensation committee, other property with value equal to the exercise price, through a broker assisted cash-less exercise or such other methods as the compensation committee may approve from time to time. Options may take two forms, nonqualified options, or NQOs, and incentive stock options, or ISOs.

NQOs may be granted for any term specified by the compensation committee, but shall not exceed ten years. NQOs may not be granted at an exercise price that is less than 100% of the fair market value of our common stock on the date of grant.

ISOs will be designed to comply with the provisions of the Internal Revenue Code and will be subject to certain restrictions contained in the Internal Revenue Code in order to qualify as ISOs. Among such restrictions, ISOs must:

- have an exercise price not less than the fair market value of our common stock on the date of grant, or if granted to certain individuals who own or are deemed to own at least 10% of the total combined voting power of all of our classes of stock (10% stockholders), then such exercise price may not be less than 110% of the fair market value of our common stock on the date of grant;
- be granted only to our employees and employees of our subsidiary corporations;
- expire with a specified time following the option holders termination of employment;
- be exercised within ten years after the date of grant, or with respect to 10% stockholders, no more than five years after the date of grant;
- not be first exercisable for more than $100,000 worth, determined based on the exercise price.

No ISO may be granted under the 2007 Plan after ten years from the date the 2007 Plan is approved by our stockholders.

Restricted Stock—A restricted stock award is the grant of shares of our common stock at a price determined by the compensation committee (which price may be zero), is nontransferable and unless otherwise determined by the compensation committee at the time of award, may be forfeited upon termination of employment or service during a restricted period. The compensation committee shall also determine in the award agreement whether the participant will be entitled to vote the shares of restricted stock and or receive dividends on such shares.

Stock Appreciation Rights—SARs provide for payment to the holder based upon increases in the price of our common stock over a set base price. SARs may be granted in connection with stock options or other Awards or separately. SARs granted in connection with options will be exercisable only when and to the extent the option is exercisable and will only entitle the holder to the difference between the option exercise price and the fair market value of our common stock on the date of exercise. Payment for SARs may be made in cash, our common stock or any combination of the two.

Restricted Stock Units—Restricted stock units represent the right to receive shares of our common stock at a specified date in the future, subject to forfeiture of such right. If the restricted stock unit has not been forfeited, then on the date specified in the restricted stock we shall deliver to the holder of the restricted stock unit, unrestricted shares of our common stock which will be freely transferable.

Dividend Equivalents—Dividend equivalents represent the value of the dividends per share we pay, calculated with reference to the number of shares covered by an Award (other than a dividend equivalent award) held by the participant.

Performance Based Awards—Performance based awards are denominated in shares of our common stock, stock units or cash, and are linked to the satisfaction of performance criteria established by the compensation committee. If the compensation committee determines that the performance based award to an employee is intended to meet the requirements of “qualified performance based compensation” and therefore is deductible under Section 162(m) of the Internal Revenue Code, then the performance based criteria upon which the Awards will be based

shall be with reference to any one or more of the following: net earnings (either before or after interest, taxes, depreciation and amortization), economic value-added, sales or revenue, net income (either before or after taxes), operating earnings, cash flow (including, but not limited to, operating cash flow and free cash flow), cash flow, return on capital, return on invested capital, return on net assets, return on stockholders' equity, return on assets, stockholder returns, return on sales, gross or net profit margin, productivity, expense, margins, operating efficiency, customer satisfaction, working capital, earnings per share, price per share of our common stock, market capitalization and market share, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to results of a peer group.

Stock Payments—Payments to participants of bonuses or other compensation may be made under the 2007 Plan in the form our common stock.

Deferred Stock—Deferred stock typically is awarded without payment of consideration and is subject to vesting conditions, including satisfaction of performance criteria. Like restricted stock, deferred stock may not be sold or otherwise transferred until the vesting conditions are removed or expire. Unlike restricted stock, deferred stock is not actually issued until the deferred stock award has vested. Recipients of deferred stock also will have no voting or dividend rights prior to the time when the vesting conditions are met and the deferred stock is delivered.

Changes in Control

All Awards granted under the 2007 Plan will be exercisable in full upon the occurrence of a change in control unless the Award is assumed by any successor in such change in control, or the award agreement otherwise provides. In connection with a change in control, the compensation committee may cause the Awards to terminate but shall give the holder of the Awards the right to exercise their outstanding Awards or receive their other rights under the Awards outstanding for some period of time prior to the change in control, even though the Awards may not be exercisable or otherwise payable.

Adjustments upon Certain Events

The number and kind of securities subject to an Award and the exercise price or base price may be adjusted in the discretion of the compensation committee to reflect any stock dividends, stock split, combination or exchange of shares, merger, consolidation, or other distribution (other than normal cash dividends) of company assets to stockholders, or other similar changes affecting the shares. In addition, upon such events the compensation committee may provide for (i) the termination of any Awards in exchange for cash equal to the amount the holder would otherwise be entitled if they had exercised the Award, (ii) the full vesting, exercisability or payment of any Award, (iii) the assumption of such Award by any successor, (iv) the replacement of such Award with other rights or property, (v) the adjustment of the number, type of shares and/or the terms and conditions of the Awards which may be granted in the future, or (v) that Awards cannot vest, be exercised or become payable after such event.

Awards Not Transferable

Generally the Awards may not be pledged, assigned or otherwise transferred other than by will or by laws of descent and distribution. The compensation committee may allow Awards other than ISOs to be transferred for estate or tax planning purposes to members of the holder's family, charitable institutions or trusts for the benefit of family members. In addition, the

compensation committee may allow Awards to be transferred to so-called “blind trusts” by a holder of an Award who is terminating employment in connection with the holder’s service with the government, an educational or other non-profit institution.

Miscellaneous

As a condition to the issuance or delivery of stock or payment of other compensation pursuant to the exercise or lapse of restrictions on any Award, the company requires participants to discharge all applicable withholding tax obligations. Shares held by or to be issued to a participant may also be used to discharge tax withholding obligations, subject to the discretion of the compensation committee to disapprove of such use.

The 2007 Plan will expire and no further Awards may be granted after the tenth anniversary of its approval by our stockholders or if later the approval by our board of directors.

Prior Plans

Our board of directors administers the Prior Plans and as such has the power to determine the terms and conditions of the options and rights granted, including:

- the exercise price;
- the number of shares to be covered by each option;
- the vesting and exercisability of the options; and
- any restrictions regarding the options.

Shares purchased by exercise of options granted under the Prior Plans are generally subject to a repurchase right in our favor, and then our preferred stockholders, consecutively. These repurchase rights are exercisable only upon certain specified events, including, without limitation, an option holder’s termination, divorce, bankruptcy or insolvency. The repurchase right gives us, and then our preferred stockholders, the opportunity to purchase shares acquired upon exercise of options at a price per share equal to the fair market value of our common stock as of the date of repurchase, as determined by the board of directors based on all known facts and circumstances, including valuations prepared by a nationally recognized independent third-party appraisal firm. The repurchase right terminates upon a sale of the company or a qualified public offering such as this offering.

We and then the preferred stockholders, consecutively, also have a right of first refusal to purchase all, but not less than all, of any shares acquired upon exercise of options proposed to be transferred by the original option holder to third parties. This right is not applicable to transfers (i) pursuant to applicable laws of descent and distribution or (ii) among a participant’s spouse and descendants, and any trust, partnership or entity solely for the benefit of the option holder and/or the option holder’s spouse and/or descendants. Any transferee must become a party to and agree to be bound by the terms of the applicable Prior Plan. The right of first refusal terminates on the first to occur of (i) the ninth anniversary of the date of issuance of the restricted stock, (ii) a qualified public offering (such as this offering), and (iii) a sale of the company.

Options are generally not transferable. However, upon death, options may be transferred by the participant’s will or by the laws of descent and distribution. Each option is exercisable during the lifetime of the participant, only by such participant. However, with the consent of the board

of directors, options may be transferred by gift, without receipt of any consideration, to a member of the option holder's immediate family, including ancestors or siblings, or to a trust, partnership or entity for the benefit of the option holder and/or such immediate family members.

The following briefly describes the other unique features of each of the Prior Plans:

2002 Equity Incentive Plan

We adopted the 2002 Plan in September 2002 to replace the Old Plan and the Consultants Plan. The 2002 Plan provides for the grant of stock options to our employees, directors, and consultants. Under the 2002 Plan, we may grant both incentive stock options that qualify for favorable tax treatment under Section 422 of the Internal Revenue Code, and options that do not so qualify. The maximum aggregate number of shares of common stock issuable under the 2002 Plan is 5,686,799, plus any shares subject to options cancelled under the Old Plan, subject to adjustments to reflect certain transactions affecting the number of our common shares outstanding. As of May 5, 2007, we have 5,189,390 outstanding options under the 2002 Plan.

To date, all options granted under the 2002 Plan have a ten-year term. Unless otherwise specified at the time of the option grant, options under the 2002 Plan vest and become exercisable over four years at a rate of 25% per year provided the optionee remains employed. In addition, options become 100% vested and fully exercisable upon death or disability. Options are immediately cancelled and forfeited upon termination for cause. Options under the 2002 Plan only accelerate and become vested and exercisable in connection with a change in control of the company if they are not assumed by any successor entity in the transaction.

Options granted under the 2002 Plan must generally be exercised, to the extent vested, within twelve months of the optionee's termination by reason of death, disability or retirement, or within three months after such optionee's termination other than for death, disability, retirement or cause, but in no event later than the expiration of the ten-year option term.

Second Amended and Restated Restricted Stock Option Plan

We adopted the Old Plan in December, 1998. It has subsequently been amended from time to time, including an amendment that provides that no further grants will be made under the Old Plan after March 22, 2002. The maximum aggregate number of shares of common stock issuable under the Old Plan is 10,143,156, subject to adjustment in the event of certain corporate transactions affecting the number of shares outstanding. As of May 5, 2007, we have 861,011 outstanding options under the Old Plan.

Pursuant to the Old Plan, options have a fourteen-year term. Options granted under the Old Plan vested over four years in 25% installments on each anniversary of the date of grant. At this time, all options granted under the Old Plan are fully vested. However, options may be immediately cancelled and forfeited upon termination for cause.

In the case of a merger, consolidation, dissolution or liquidation of the company, the board of directors may accelerate the expiration date of any option granted under the Old Plan so long as participants receive a reasonable period of time to exercise any outstanding options prior to the accelerated expiration date. In the event of certain corporate transactions, such as a merger or sale of substantially all of our assets, the Old Plan provides that (i) all stock holders will receive the same form and amount of consideration per share of our common stock, or if any

holders are given an option as to the form or amount of consideration to be received, all holders will receive the same option; (ii) all common stock holders will, after considering the conversion price then in effect on our preferred stock, receive the same form and amount of consideration per share of our preferred stock; and (iii) all holders of then exercisable rights to acquire common stock will be given an opportunity to exercise their rights prior to the consummation of the corporate transaction and participate in the transaction as a common stock holder or receive consideration in exchange for such rights.

Restricted Stock Option Plan–Consultants

We adopted the Consultants Plan in July, 1999, to provide for grants of options to consultants. A total of 525,000 shares of common stock were reserved for issuance under the Consultants Plan, subject to adjustment to reflect certain corporate transactions affecting the number of shares outstanding. As of May 5, 2007, there are no outstanding options under the Consultants Plan. We ceased making grants under the Consultants Plan on March 12, 2002 upon adoption of the 2002 Plan.

In the case of a merger, consolidation, dissolution or liquidation of the company, the board of directors may accelerate the expiration date of any option so long as participants receive a reasonable period of time to exercise any outstanding options prior to the accelerated expiration date. The board of directors may also accelerate the dates on which any option shall be exercisable under the above circumstances or in any other case in our best interests. In the event of certain corporate transactions, such as a merger or sale of substantially all of our assets, the Consultants Plan provides that (i) all restricted stock holders will receive the same form and amount of consideration per share of our common stock, or if any holders are given an option as to the form or amount of consideration to be received, all holders will receive the same option; (ii) all common stock holders will, after considering the conversion price then in effect on our preferred stock, receive the same form and amount of consideration per share of our preferred stock; and (iii) all holders of then exercisable rights to acquire common stock will be given an opportunity to exercise their rights prior to the consummation of the corporate transaction and participate in the transaction as a common stock holder or receive consideration in exchange for such rights.

Compensation committee interlocks and insider participation

None of the members of our compensation committee has at any time been one of our officers or employees. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or compensation committee, or other committee serving an equivalent function, of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Limitation of liability and indemnification of officers and directors

Our amended and restated certificate of incorporation provides that to the fullest extent permitted by Delaware law our directors will not be liable to the company or its stockholders for monetary damages for a breach of fiduciary duty as a director. The duty of care generally requires that, when acting on behalf of the corporation, directors exercise an informed business judgment based on all material information reasonably available to them. Consequently, a

director will not be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- any act related to unlawful stock repurchases, redemptions or other distributions or payment of dividends; or
- any transaction from which the director derived an improper personal benefit.

If Delaware law is amended to authorize corporate action further eliminating or limiting the personal liability of a director, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law, as so amended. These limitations of liability do not generally affect the availability under Delaware law of equitable remedies such as injunctive relief, rescission, or other forms of non-monetary relief. and do not generally affect a director's responsibilities under any other laws, such as the federal securities laws or other state or federal laws.

As permitted by Delaware law, our amended and restated bylaws provide that:

- we shall indemnify our directors and officers, and may indemnify our employees and other agents, to the fullest extent permitted by the Delaware law and we may advance expenses to our directors, officers, and other agents in connection with a legal proceeding, subject to limited exceptions; and
- we may purchase and maintain insurance on behalf of our current or former directors, officers, employees, fiduciaries or agents against any liability asserted against them and incurred by them in any such capacity, or arising out of their status as such.

At present, there is no pending litigation or proceeding involving any of our directors, officers, employees or agents in which indemnification by us is sought, nor are we aware of any threatened litigation or proceeding that may result in a claim for indemnification.

Certain relationships and related party transactions

Since the beginning of fiscal 2004, we have engaged in the following transactions with our directors, executive officers, and holders of five percent or more of our common stock.

Stock option loan and transactions relating to our common stock

Pursuant to the terms of Ms. Kirby's employment agreement with ULTA, upon Ms. Kirby's request, the company loaned $4,094,340 to Ms. Kirby pursuant to a secured promissory note, dated June 30, 2006, to allow Ms. Kirby to exercise previously granted options to purchase shares of our common stock. This loan was secured by the shares purchased upon exercise of the options and was with recourse against Ms. Kirby's other assets. The loan carried interest at 5.06% per year. Ms. Kirby was required to pay the outstanding interest with any bonus compensation that she received while the loan remained outstanding. Ms. Kirby was able to prepay the loan at anytime, but was required to repay the loan in full (i) immediately prior to our becoming an "issuer" under the Sarbanes-Oxley Act of 2002, (ii) prior to expiration of the time period provided under the terms of her option agreements and our stockholders' agreements for the repurchase of shares following her termination of employment; or (iii) after five years. Ms. Kirby repaid the loan in full on June 29, 2007.

In December 2006, in connection with the retirement of Charles R. Weber, our former Chief Financial Officer, we made a payment of $759,932 to Mr. Weber pursuant to a stock purchase agreement. This payment was for our net obligation to Mr. Weber resulting from the following transactions: (i) our purchase from Mr. Weber, at $5.80 per share, of 334,680 previously-issued shares of our common stock; (ii) the exercise by Mr. Weber of 1,214,894 previously-granted stock options, applying proceeds from the above stock sale toward the exercise price; (iii) our purchase from Mr. Weber, at $5.80 per share, of 414,894 of the shares of common stock resulting from the above options exercise; and (iv) our withholding of $2,486,261, an amount requested by Mr. Weber, for taxes due upon exercise of his stock options. After the consummation of this transaction, Mr. Weber continued to own and hold 800,000 shares of our common stock, which, pursuant to the stock purchase agreement, he will be restricted from selling or otherwise transferring for 180 days following this offering.

On June 21, 2004, we issued 500,000 shares of common stock to one of our directors, Dennis Eck, pursuant to a restricted stock agreement under which 100% of the shares were vested as of May 1, 2007. Mr. Eck did not pay any consideration for this stock, and we recognized an aggregate expense of $209,640 for financial statement reporting purposes. See "Compensation—Non-Executive director compensation for fiscal 2006."

On June 21, 2004, we issued an additional 484,848 shares of common stock to Mr. Eck in exchange for $799,999.

On June 21, 2004, we issued 200,000 shares of common stock to one of our directors, Bob DiRomualdo, pursuant to a restricted stock agreement under which 25% of the shares vest annually beginning February 26, 2005. Mr. DiRomualdo will be 100% vested with respect to this stock as of February 26, 2008. Mr. DiRomualdo did not pay any consideration for this stock, and we recognized an aggregate expense of $83,856 for financial statement reporting purposes. See "Compensation—Non-Executive director compensation for fiscal 2006."

On June 21, 2004, we issued an additional 424,242 shares of common stock to Mr. DiRomualdo in exchange for $699,999.

Registration rights agreement

Upon the consummation of this offering, the holders of five percent or more of our common stock and certain of our directors, among others, will enter into a Third Amended and Restated Registration Rights Agreement with us relating to the shares of common stock they hold. See "Description of capital stock—Registration rights" and "Shares eligible for future sale—Registration rights."

Transactions with vendors

Charles Heilbronn, one of our directors, is Executive Vice President and Secretary, as well as a director, of Chanel, Inc. In 2004, 2005 and 2006, Chanel, Inc. sold to ULTA $3.8 million, $3.9 million and $4.6 million of fragrance, respectively, on an arms' length basis pursuant to Chanel's standard wholesale terms, and is expected to sell approximately $5.2 million of fragrance to ULTA during 2007.

Mr. Heilbronn is also a *Membre du Conseil de Surveillance* (a non-executive board of trustees) of Bourjois SAS (France), the parent company of Bourjois, Ltd. (U.S.). In 2004, 2005 and 2006, Bourjois, Ltd. sold to ULTA $2.1 million, $2.2 million and $2.6 million of beauty products, respectively, on an arms' length basis pursuant to Bourjois' standard wholesale terms, and is expected to sell approximately $3.0 million of beauty products to ULTA during 2007.

Review and approval of related party transactions

Our current policy regarding the review and approval of related-party transactions, which is not written, is for such transactions to be approved by a majority of the members of our board of directors who are not party to the transaction and do not have a direct or indirect material economic interest in an entity that is party to the transaction. With one exception, all of the transactions set forth above were approved by the board in accordance with this policy. Only the transactions involving Chanel, Inc., described above under "Transactions with vendors," were not approved pursuant to this policy because the board believed the transactions were so clearly arms'-length in nature that doing so was unnecessary.

Upon the consummation of this offering, our audit committee, pursuant to its amended charter, will review and approve all related-party transactions. For a discussion of the composition and responsibilities of our audit committee, see "Management—Board of directors committees."

Principal stockholders

The following table presents information concerning the beneficial ownership of the shares of our common stock as of May 5, 2007 by:

- each person we know to be the beneficial owner of 5% of more of our outstanding shares of common stock;
- each of our NEOs;
- each of our directors; and
- all of our executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to securities. Unless otherwise indicated below, to our knowledge, the persons and entities named in the table have sole voting and sole investment power with respect to all shares beneficially owned by them, subject to community property laws where applicable. Shares of our common stock subject to options that are currently exercisable or exercisable within 60 days of May 5, 2007 are deemed to be outstanding and to be beneficially owned by the person holding the options for the purpose of computing the percentage ownership of that person but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

This table lists applicable percentage ownership based on 77,411,747 shares of common stock outstanding as of May 5, 2007, after giving effect to the conversion of our outstanding convertible preferred stock into 65,702,530 shares of common stock concurrently with the closing of this offering. Unless otherwise indicated, the address for each of the beneficial owners in the table below is c/o Ulta Salon, Cosmetics & Fragrance, Inc., 1135 Arbor Drive, Romeoville, Illinois 60446.

	Number of shares beneficially owned		Percentage beneficially owned	
Name and address of beneficial owner	**Prior to offering**	**After offering**	**Prior to offering**	**After offering**
Five percent stockholders:				
GRP II, L.P. and affiliated entities(1) 2121 Avenue of the Stars 31st Floor Los Angeles, California 90067-5014 Attn: Steven Dietz	20,386,989		26.34%	
Doublemousse B.V.(2) Boerhaavelaan 22 2713 HX Zoetermeer The Netherlands Attn: Charles Heilbronn	17,451,696		22.54%	

Name and address of beneficial owner	Number of shares beneficially owned		Percentage beneficially owned	
	Prior to offering	After offering	Prior to offering	After offering
Five percent stockholders (continued):				
Oak Investment Partners VII, L.P. and affiliated entities(3) Oak Management Corporation Wells Fargo Center 90 South 7th Street Suite 4550 Minneapolis, Minnesota 55402 Attn: Gerald R. Gallagher	10,039,113		12.97%	
NEOs and directors:				
Lyn P. Kirby	4,000,000		5.17%	
Bruce E. Barkus(4)	396,000		*	
Gregg R. Bodnar	—		*	
Charles R. Weber(5)	800,000		1.03%	
Hervé J.F. Defforey(6)	20,511,989		26.50%	
Robert F. DiRomualdo	942,750		1.22%	
Dennis K. Eck(7)	1,109,848		1.43%	
Gerald R. Gallagher(8)	10,039,113		12.97%	
Terry J. Hanson(9)	1,627,329		2.10%	
Charles Heilbronn(10)	17,576,696		22.71%	
Steven E. Lebow(11)	21,798,242		28.16%	
Yves Sisteron(12)	20,692,868		26.73%	
All current directors and executive officers as a group (11 persons)(13)	57,920,857		74.82%	

* Less than 1%.

(1) Consists of (i) 10,961,224 shares held by GRP II, L.P. ("GRP II"), (ii) 4,641,753 shares held by Global Retail Partners, L.P. ("GRP I"), (iii) 1,383,146 shares held by DLJ Diversified Partners, L.P. ("DLJ Diversified"); (iv) 915,022 shares held by GRP Management Services Corp. ("GRPMSC") as escrow agent for GRP II; (v) 846,586 shares held by GRP II Investors, L.P. ("GRP II Investors"); (v) 513,546 shares held by DLJ Diversified Partners — A, L.P. ("DLJ Diversified A"); (vi) 319,573 shares held by Global Retail Partners Funding, Inc. ("GRP Funding"); (vii) 311,299 shares held by GRP II Partners, L.P. ("GRP II Partners"); (viii) 301,417 shares held by GRP Partners, L.P. ("GRP I Partners"); (ix) 82,249 shares held by GRPMSC as escrow agent for GRP II Investors; (x) 80,330 shares held by DLJ ESC II, L.P. ("DLJ ESC") and (xi) 30,844 shares held by GRPMSC as escrow agent for GRP II Partners. Each of GRP II, GRP II Investors and GRP II Partners may be deemed to share beneficial ownership of all of its shares held by GRPMSC as escrow agent (as described above). GRPVC, L.P. ("GRPVC") is the general partner of each of GRP II and GRP II Partners, and GRPMSC is the general partner of GRPVC. Merchant Capital, Inc. ("Merchant Capital") is the general partner of GRP II Investors. Global Retail Partners, Inc. ("GRP Inc") and Retail Capital Partners, L.P. ("Retail Capital") are the general partners of GRP I, and GRP Inc is the general partner of Retail Capital. GRP Inc is also the general partner of GRP I Partners. DLJ Diversified Partners, Inc. ("DLJ Diversified Inc") is the general partner of DLJ Diversified A and DLJ Diversified, and DLJ LBO Plans Management Corporation ("DLJLBO") is the general partner of DLJ ESC. Merchant Capital, GRP Inc, GRP Funding, DLJLBO and DLJ Diversified Inc (collectively, the "CS Entities") are each wholly-owned subsidiaries of Credit Suisse First Boston Private Equity, Inc. ("CSFBPE"), and CSFBPE is a wholly-owned subsidiary of Credit Suisse (USA), Inc. ("CS USA"). Credit Suisse Holdings (USA), Inc. ("CS Holdings") owns all of the voting stock of CS USA. Credit Suisse, a Swiss bank, owns a majority of the voting stock, and all of the non-voting stock, of CS Holdings. Credit Suisse's subsidiaries to the extent that they constitute the Investment Banking division, the Alternative Investments business within the Asset Management division and the U.S. private client services business within the Private Banking division of Credit Suisse (collectively, the "CS Reporting Person") may be deemed to share indirect beneficial ownership of the shares beneficially owned by the CS Entities. Therefore, the CS Reporting Person may be deemed to beneficially own 8,168,600 shares, which is 10.6% of the shares of common stock outstanding as of May 5, 2007 (after giving effect to the conversion of ULTA's outstanding convertible preferred stock into 65,702,530 shares of common stock concurrently with the closing of this offering). Pursuant to a services agreement, GRPMSC appoints a majority of the investment committee members of GRP I (which also controls the investment decisions of GRP I Partners). Mr. Lebow, Mr. Sisteron and Mr. Defforey are members of the investment committee of GRPMSC and, together with the other members, Steven Dietz and Brian McLoughlin

(collectively, the "GRP Principals"), may be deemed to possess indirect shared beneficial ownership of the shares owned by each of the foregoing entities. However, none of the GRP Principals, acting alone, has voting or investment power with respect to such shares and, as a result, each of them disclaims beneficial ownership of all such shares except to the extent of their pecuniary interest in such shares.

(2) Mr. Heilbronn has been granted a power of attorney and proxy to exercise voting and investment power with respect to all of the shares shown as beneficially owned by Doublemousse B.V. Pursuant to this authority, Mr. Heilbronn makes all voting and investment decisions with respect to all such shares and may be deemed to beneficially own all such shares.

(3) Of the 10,039,113 shares of common stock shown as beneficially owned by entities affiliated with Oak Investment Partners VII, L.P., Oak Investment Partners VII, L.P. holds 9,671,223 shares and 121,938 shares issuable pursuant to options exercisable at $0.40 per share, and Oak VII Affiliates Fund, L.P. holds 242,890 shares and 3,062 shares issuable pursuant to options exercisable at $0.40 per share. Oak Associates VII, LLC is the general partner of Oak Investment Partners VII, L.P. and Oak VII Affiliates, LLC is the general partner of Oak VII Affiliates Fund, L.P. Mr. Gallagher and four other individuals, Bandel L. Carano, Edward F. Glassmeyer, Fredric W. Harman and Anne H. Lamont, are the managing members of both Oak Associates VII, LLC and Oak VII Affiliates, LLC, and as such, may be deemed to possess shared beneficial ownership of the shares of common stock held by Oak Investment Partners VII, L.P. and Oak VII Affiliates Fund, L.P. However, none of the five individuals named above, acting alone, has voting or investment power with respect to such shares and, as a result, disclaim beneficial ownership of all such shares except to the extent of their pecuniary interest in such shares.

(4) Includes 125,000 shares held by Elaine M. Barkus and Bruce E. Barkus, as co-trustees of the Elaine M. Barkus Revocable Trust, and 271,000 shares issuable pursuant to options exercisable at $2.60 per share, over all of which Mr. Barkus has shared voting power and shared investment power.

(5) Mr. Weber is no longer an employee of ULTA. His address is Rec Room Inc., 1600 E. Algonquin Road, Algonquin, Illinois 60102-9669.

(6) Of the 20,511,989 shares of common stock shown as beneficially owned by Mr. Defforey, Mr. Defforey holds directly 125,000 shares issuable pursuant to options exercisable at $1.65 per share, over which he has sole voting power and sole investment power. The remaining 20,386,989 shares are held by the entities affiliated with GRP II, L.P. listed above in footnote (1). With the exception of the 125,000 shares held directly by Mr. Defforey, Mr. Defforey has shared voting power and shared investment power with respect to all remaining shares of common stock shown as beneficially owned by him, as indicated in footnote (1). Mr. Defforey disclaims beneficial ownership of all such remaining shares of common stock, and this prospectus shall not be deemed an admission that Mr. Defforey is a beneficial owner of such shares for purposes of the Securities Exchange Act of 1934, except to the extent of his pecuniary interest in such shares.

(7) Of the 1,109,848 shares of common stock shown as beneficially owned by Mr. Eck, Mr. Eck directly holds 928,598 shares and 31,250 shares issuable pursuant to options exercisable at $1.65 per share, over which he has sole voting power and sole investment power, and Sarah Louise Eck Thompson and Keith Lester Eck hold 100,000 and 50,000 shares, respectively. Under the terms of the Eck Family Trust, Mr. Eck has shared voting power and shared investment power with respect to the 150,000 shares held by Sarah Louise Eck Thompson and Keith Lester Eck. Mr. Eck disclaims beneficial ownership of all such shares held by Sarah Louise Eck Thompson and Keith Lester Eck, and this prospectus shall not be deemed an admission that Mr. Eck is a beneficial owner of such shares for purposes of the Securities Exchange Act of 1934.

(8) Mr. Gallagher beneficially owns all 10,039,113 shares of common stock and shares issuable pursuant to options held by the entities affiliated with Oak Investment Partners VII, L.P., as set forth above in footnote (3). Mr. Gallagher shares voting and investment power with respect to the 9,671,223 shares held by Oak Investment Partners VII, L.P. and the 242,890 shares held by Oak VII Affiliates Fund, L.P. with Bandel L. Carano, Edward F. Glassmeyer, Fredric W. Harman and Anne H. Lamont. However, none of these five individuals, acting alone, has voting or investment power with respect to such shares and, as a result, disclaim beneficial ownership of all such shares except to the extent of their pecuniary interest in such shares.

(9) Of the 1,627,329 shares of common stock shown as beneficially owned by Mr. Hanson, Mr. Hanson holds 1,227,329 shares directly and Hanson Family Investments, L.P. holds 400,000 shares. Mr. Hanson has sole voting power and sole investment power with respect to all such shares.

(10) Of the 17,576,696 shares of common stock shown as beneficially owned by Mr. Heilbronn, Mr. Heilbronn holds 125,000 shares directly and is deemed to beneficially own all 17,451,696 shares of common stock held by Doublemousse B.V. Mr. Heilbronn has sole voting power and sole investment power with respect to the 125,000 shares he holds directly, and he has been granted a power of attorney and proxy to exercise voting and investment power with respect to all of the shares shown as beneficially owned by Doublemousse B.V. Pursuant to this authority, Me. Heilbronn makes all voting and investment decisions with respect to all such shares and may be deemed to beneficially own all such shares.

(11) Of the 21,798,242 shares of common stock shown as beneficially owned by Mr. Lebow, Mr. Lebow holds 125,000 shares directly, Steven and Susan Lebow Trust dated 12-16-02 holds 1,025,823 shares, The Michael Harvey Lebow Irrevocable Trust holds 130,215 shares, and The Matthew Allan Lebow Irrevocable Trust holds 130,215 shares. The remaining 20,386,989 shares are held by the entities affiliated with GRP II, L.P. listed above in footnote (1). With the exception of the 125,000 shares held directly by Mr. Lebow, with respect to which he has sole voting power and sole investment power, Mr. Lebow has shared voting power and shared investment power with respect to all remaining shares of common stock shown as beneficially owned by him as indicated in footnote (1). Mr. Lebow disclaims beneficial ownership of all such remaining shares of common stock, and this prospectus shall not be deemed an admission that Mr. Lebow is a beneficial owner of such shares for purposes of the Securities Exchange Act of 1934, except to the extent of his pecuniary interest in such shares.

(12) Of the 20,692,868 shares of common stock shown as beneficially owned by Mr. Sisteron, Mr. Sisteron holds 282,945 shares directly and SEP for the benefit of Yves Sisteron, Donaldson Lufkin Jenrette Securities Corporation as custodian holds 22,934 shares. The remaining 20,386,989 shares are held by the entities affiliated with GRP II, L.P. listed above in footnote (1). With the exception of the 305,879 shares held directly by Mr. Sisteron and by SEP for the benefit of Yves Sisteron, Donaldson Lufkin Jenrette Securities Corporation as custodian, over which he has sole voting power and sole investment

power, Mr. Sisteron shares voting power and investment power with respect to all remaining shares of common stock shown as beneficially owned by him as indicated in footnote (1). Mr. Sisteron disclaims beneficial ownership of all such remaining shares, and this prospectus shall not be deemed an admission that Mr. Sisteron is a beneficial owner of such shares for purposes of the Securities Exchange Act of 1934, except to the extent of his pecuniary interest in such shares.

(13) Excludes shares beneficially owned by Mr. Weber because he is not a current executive officer of ULTA. Counts only once the 20,386,989 shares beneficially owned by Messrs. Defforey, Lebow and Sisteron, which are held by the entities affiliated with GRP II, L.P. listed above in footnote (1).

Selling stockholders

The following table presents information concerning the beneficial ownership of the shares of our common stock as of [   ], 2007 by each selling stockholder.

	Number of shares beneficially owned			Percentage beneficially owned		
Name of beneficial owner	Prior to offering	After offering	Number of shares offered	Prior to offering	After offering	Total shares offered if over-allotment option is exercised
Appomattox Foundation				*	*	
Bank of America Capital Corporation				*	*	
Bankamerica Ventures				*	*	
Bloomquist, Glynn				*	*	
DeGiaimo, Vincent				*	*	
Dyvig, Peter				*	*	
Eley, Stephen J.				*	*	
Fidas Business SA				*	*	
Fournier, Jacques				*	*	
Fournier, Marie-Pierre				*	*	
Goodrich, Hoyt J.				*	*	
Goodrich, Timothy				*	*	
Goodwin, J. Barton				*	*	
Hayes, Douglas and Connie				*	*	
Hewitt B. Shaw and R. Steven Kestner, current Co-Trustees U/A Robert G. Markey Trust				*	*	
Horton Jr., Theodore				*	*	
JPMorgan Chase Bank, as Trustee for General Motors Hourly Employees Pension Trust				*	*	
JPMorgan Chase Bank, as Trustee for General Motors Salaried Employees Pension Trust				*	*	
Kully, Thomas R. Revocable Trust				*	*	
Lazarus Family Investments, LLC				*	*	
Meisenbach, John				*	*	
Miller, James				*	*	
Ritt, Steve				*	*	

Name of beneficial owner	Number of shares beneficially owned		Number of shares offered	Percentage beneficially owned		Total shares offered if over-allotment option is exercised
	Prior to offering	After offering		Prior to offering	After offering	
Roth, Roger Morse				*	*	
Remey, Donald P.				*	*	
Schultz, Howard				*	*	
SG Cowen				*	*	
Smith, Orin				*	*	
Swift, Lisa Goodrich				*	*	
Woo, Warren				*	*	

* Less than 1%.

Description of capital stock

The following is a summary of the rights of our common stock and preferred stock and related provisions of our amended and restated certificate of incorporation, by-laws and stockholder rights agreement, as they will be in effect upon the consummation of this offering. This description is only a summary. For more detailed information, please see our amended and restated certificate of incorporation, by-laws and stockholder rights agreement, which will be filed as exhibits to the registration statement of which this prospectus is a part. The descriptions of the common stock and preferred stock reflect changes to our capital structure that will occur upon the consummation of this offering.

General

As of May 5, 2007, there were 11,709,217 shares of common stock, par value $.01 per share, issued and outstanding and 70,494,831.34 shares of preferred stock issued and outstanding, of which:

- 16,768,882 were designated as Series I convertible preferred stock, par value $.01 per share;
- 7,420,130 were designated as Series II convertible preferred stock, par value $.01 per share;
- 4,792,302 were designated as Series III non-convertible preferred stock, par value $.01 per share;
- 19,145,558 were designated as Series IV convertible preferred stock, par value $.01 per share;
- 21,447,959.34 were designated as Series V convertible preferred stock, par value $.01 per share; and
- 920,000 were designated as Series V-1 convertible preferred stock, par value $.01 per share.

Upon the consummation of this offering, all outstanding shares of our Series III non-convertible preferred stock will be redeemed for an aggregate of approximately $4.8 million (which will be paid using the proceeds from this offering) and all other outstanding shares of our preferred stock will be converted on a one-for-one basis into an aggregate of 65,702,530 shares of our common stock pursuant to our amended and restated certificate of incorporation. Upon the consummation of this offering, our authorized capital stock will consist of 400,000,000 shares of common stock, par value $.01 per share, and 70,000,000 shares of preferred stock, par value $.01, per share, all of which preferred stock shall be undesignated. Our board of directors may establish the rights and preference of the preferred stock from time to time, without stockholder approval.

Common stock

Outstanding shares

As of May 5, 2007, there were 11,709,217 shares of common stock issued and outstanding, held by 225 holders of record of our common stock.

Options

As of May 5, 2007, there were outstanding options to purchase 6,050,401 shares of our common stock, of which 3,255,294 were vested, at a weighted average exercise price for all outstanding

options of $2.34 per share. Substantially all of the shares issued upon the exercise of such options will be subject to 180-day lock-up agreements entered into with the underwriters.

Voting rights

Subject to any preferential voting rights of any outstanding preferred stock, each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders. Our amended and restated certificate of incorporation and by-laws do not provide for cumulative voting rights. Because of this the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.

Dividends

Subject to the preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive ratably those dividends, if any, as may be declared from time to time by our board of directors out of legally available funds.

Liquidation

Upon liquidation, dissolution or winding-up of the company, the holders of common stock are entitled to share ratably in all assets available for distributions after payment in full to creditors and payment of any liquidation preference, if any, in respect of then outstanding shares of preferred stock.

Rights and preferences

Shares of common stock are not convertible into any other class of capital stock. Holders of shares of common stock are not entitled to preemptive or subscription rights and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences, and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of any shares of any series of preferred stock which we may designate in the future.

Preferred stock

Upon the consummation of this offering, our board of directors will have the authority, without further action by the stockholders, to issue up to 70,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the rights, preferences and privileges of the shares of each series and any qualifications, limitations or restrictions thereon, and to increase or decrease the number of shares of any such series (but not below the number of shares of such series outstanding). The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances.

Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of the common stock and could have anti-takeover effects, including preferred stock or rights to acquire preferred stock in connection with our stockholder rights agreement discussed below. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in control and may adversely affect the market price

of the common stock and the voting and other rights of the holders of common stock. We have no current plans to issue any shares of preferred stock.

Registration rights

Upon the consummation of this offering, the Third Amended and Restated Registration Rights Agreement with certain of our stockholders, which is filed as an exhibit to the registration statement of which this prospectus is a part, will become effective. Pursuant to this agreement, certain holders of "Conversion Registrable Securities" (which include shares of common stock issued upon the conversion of Series I, Series II, Series IV, Series V and Series V-1 convertible preferred stock) may, at any time, subject to certain terms and conditions, require us to file with the SEC and cause to be declared effective a long-form registration statement on Form S-1 or a short-form registration on Form S-3 covering the resale of all shares of common stock held by such persons. Subject to the limitation that we will only be obligated to undertake an aggregate of three long-form registrations and three short-form registrations with respect to the Conversion Registrable Securities (the expenses related to which we will pay), we will be required to undertake such registration:

- Upon the request of the holders of no less than a majority of Conversion Registrable Securities in the case of a long-form registration; provided, that the anticipated aggregate offering price of the Conversion Registrable Securities covered by such registration exceeds $20 million net of underwriting discounts and commissions; or
- Upon the request of the holders of no less than 25% of Conversion Registrable Securities in the case of a short-form registration; provided, that the anticipated aggregate offering price of the Conversion Registrable Securities covered by such registration exceeds $5 million net of underwriting discounts and commissions.

Additionally, whenever we propose to register any of our common stock or other securities convertible or exchangeable into or exercisable for common stock, under the Securities Act, the holders of "Registrable Securities" (which includes Conversion Registrable Securities, any shares of common stock held by persons holding Conversion Registrable Securities, and shares of common stock held by Richard E. George and Terry J. Hanson, former executives of ULTA) will be entitled to customary "piggyback" registration rights, provided these shares may be excluded from the registration if they cause the number of shares in the offering to exceed the number of shares that the underwriters reasonably believe is compatible with the success of the offering.

Stockholder rights agreement

Upon the consummation of this offering, our board of directors will have adopted a stockholder rights agreement. Pursuant to the stockholder rights agreement, our board of directors will declare a dividend distribution of one preferred stock purchase right for each outstanding share of our common stock to stockholders of record as of a specified date. The preferred stock rights will trade with, and not apart from, our common stock unless certain prescribed triggering events occur. The stockholder rights agreement will be designed and implemented to enhance the ability of our board of directors to protect stockholder interests and to ensure that stockholders receive fair treatment in the event of any coercive takeover attempt. The stockholder rights agreement, however, is intended to discourage takeover attempts opposed by

the board of directors, and may affect takeover attempts, including those that particular stockholders may deem in their best interests.

Delaware anti-takeover law and provisions of our amended and restated certificate of incorporation and by-laws

Delaware anti-takeover law

We are subject to Section 203 of the Delaware General Corporation Law. Section 203 generally prohibits a public Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to the date of the transaction, the business combination is approved by the board of directors of the corporation and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least $66^2/_3$% of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 generally defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, lease, exchange, mortgage, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of stock which is owned by the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

Amended and Restated Certificate of Incorporation and Amended and Restated By-Laws

Provisions of our amended and restated certificate of incorporation and by-laws, which will become effective upon the consummation of this offering, may delay or discourage transactions

involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock. Among other things, our amended and restated certificate of incorporation and by-laws:

- divide our board of directors into three classes;
- do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose);
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that special meetings of our stockholder may be called only by the chairman of the board of directors, our chief executive officer or by the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors; and
- provide that the authorized number of directors may be changed only by resolution of the board of directors.

Transfer agent and registrar

Upon the consummation of this offering, the transfer agent and registrar for our common stock will be American Stock Transfer & Trust Company. Its address is 59 Maiden Lane, Plaza Level, New York, New York 10038.

NASDAQ Global Select Market quotation

We are applying to have our common stock listed on the NASDAQ Global Select Market under the symbol “ULTA.”

Shares eligible for future sale

Prior to this offering, there has been no public market for our common stock, and we cannot predict the effect, if any, that market sales of shares of our common stock or the availability of shares of our common stock for sale will have on the market price of our common stock prevailing from time to time. Nevertheless, sales of substantial amounts of our common stock, including shares issued upon exercise of outstanding options, in the public market after this offering could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through the sale of our equity securities.

Upon the completion of this offering, based on the number of shares outstanding as of May 5, 2007, we will have shares of common stock outstanding, assuming no exercise of the underwriters' over allotment option and no exercise of outstanding options. Of the outstanding shares, all of the shares sold in this offering will be freely tradable, except that any shares held by our affiliates, as that term is defined in Rule 144 under the Securities Act, may only be sold in compliance with the limitations described below.

The remaining 77,411,747 shares of common stock will be deemed restricted securities as defined under Rule 144. Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rule 144, 144(k) or 701 promulgated under the Securities Act, which rules are summarized below. Subject to the lock-up period described below, all of these restricted securities will be available for sale in the public market beginning 180 days after the date of this prospectus under Rule 144, subject in some cases to volume limitations, Rule 144(k) or Rule 701.

Rule 144

In general, under Rule 144 as currently in effect, a person, or group of persons whose shares are required to be aggregated, who has beneficially owned shares that are restricted securities as defined in Rule 144 for at least one year is entitled to sell, within any three-month period commencing 90 days after the date of this prospectus, a number of shares that does not exceed the greater of:

- 1% of the then outstanding shares of our common stock, which will be approximately shares immediately after this offering; or
- the average weekly trading volume in our common stock on the NASDAQ Global Select Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

In addition, a person who is not deemed to have been an affiliate at any time during the three months preceding a sale and who has beneficially owned the shares proposed to be sold for at least two years would be entitled to sell these shares under Rule 144(k) without regard to the requirements described above. To the extent that shares were acquired from one of our affiliates, a person's holding period for the purpose of effecting a sale under Rule 144 would commence on the date of transfer from the affiliate.

Rule 701

Shares issued in reliance on Rule 701, such as the shares of common stock acquired upon the exercise of options or pursuant to other rights granted under the Old Plan and the 2002 Plan,

are also restricted, and may be resold, to the extent not restricted by the terms of the lock-up agreements by non-affiliates beginning 90 days after the date of this prospectus, subject only to the manner of sale provisions of Rule 144, and by affiliates under Rule 144, without compliance with its one-year minimum holding period. Of the 6,050,401 shares issuable upon exercise of options under the Old Plan and the 2002 Plan as of May 5, 2007, 5,189,390 shares are subject to a 180-day lock-up requirement pursuant to the terms of the 2002 Plan.

Lock-up agreements

All of our directors and officers and substantially all of our stockholders and our option holders are obligated, pursuant to either (i) lock-up agreements, (ii) the 2002 Plan, or (iii) in the case of stockholders who received shares of common stock upon conversion of our preferred stock, the registration agreement to which they are a party, not to sell, transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for shares of our common stock without, in the case of parties to a lock-up agreement, the prior written consent of J.P. Morgan Securities Inc. and Wachovia Capital Markets, LLC, for a period of 180 days, subject to a possible extension under certain circumstances, after the date of this prospectus. The holders of approximately 99% of our outstanding shares of common stock are subject to the obligations described above regarding the 180 day lock-up period. The lock-up agreements are described below under “Underwriting;” the equity incentive plans are described above under “Executive compensation-Stock plans;” and the registration agreement is described above under “Description of capital stock-Registration rights.”

Options

As of May 5, 2007, options to purchase a total of 6,050,401 shares of our common stock were outstanding. We intend to file a registration statement on Form S-8 under the Securities Act to register all shares of our common stock subject to outstanding options, all shares of our common stock issued upon exercise of stock options and all shares of our common stock issuable under our stock option and employee stock purchase plans. Accordingly, shares of our common stock issued under these plans will be eligible for sale in the public markets, subject to vesting restrictions, Rule 144 limitations applicable to affiliates and the lock-up agreements described above.

Registration rights

After the consummation of this offering and the expiration of the lock-up period described above, the holders of 68,411,623 shares of our common stock will be entitled to certain rights with respect to the registration of such shares under the Securities Act, under the terms of a registration agreement between us and the holders of these securities.

We will bear the registration expenses if these registration rights are exercised as described above under “Description of capital stock-Registration rights,” other than underwriting discounts and commissions. These registration rights terminate as to a holder’s shares when that holder may sell those shares under Rule 144(k) of the Securities Act.

Material U.S. federal income tax consequences to non-U.S. holders

The following discussion describes the material U.S. federal income tax consequences to non-U.S. holders (as defined below) of the acquisition, ownership and disposition of our common stock issued pursuant to this offering. This discussion is not a complete analysis of all the potential U.S. federal income tax consequences relating thereto, nor does it address any tax consequences arising under any state, local or foreign tax laws or U.S. federal estate or gift tax laws. This discussion is based on the Internal Revenue Code of 1986, as amended, Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the Internal Revenue Service, all as in effect as of the date of this offering. These authorities may change, possibly retroactively, resulting in U.S. federal income tax consequences different from those discussed below. No ruling has been or will be sought from the IRS with respect to the matters discussed below, and there can be no assurance that the IRS will not take a contrary position regarding the tax consequences of the acquisition, ownership or disposition of our common stock, or that any such contrary position would not be sustained by a court.

This discussion is limited to non-U.S. holders who purchase our common stock issued pursuant to this offering and who hold our common stock as a capital asset within the meaning of Section 1221 of the Internal Revenue Code (generally, property held for investment). This discussion does not address all U.S. federal income tax considerations that may be relevant to a particular holder in light of that holder's particular circumstances. This discussion also does not consider any specific facts or circumstances that may be relevant to holders subject to special rules under the U.S. federal income tax laws, including, without limitation, U.S. expatriates, partnerships and other pass-through entities, "controlled foreign corporations," "passive foreign investment companies," corporations that accumulate earnings to avoid U.S. federal income tax, financial institutions, insurance companies, brokers, dealers or traders in securities, commodities or currencies, tax-exempt organizations, tax-qualified retirement plans, persons subject to the alternative minimum tax, and persons holding our common stock as part of a hedge, straddle or other risk reduction strategy, or as part of a conversion transaction or other integrated investment.

WE RECOMMEND PROSPECTIVE INVESTORS CONSULT THEIR TAX ADVISORS REGARDING THE PARTICULAR U.S. FEDERAL INCOME TAX CONSEQUENCES TO THEM OF ACQUIRING, OWNING AND DISPOSING OF OUR COMMON STOCK, AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER ANY STATE, LOCAL OR FOREIGN TAX LAWS AND ANY OTHER U.S. FEDERAL TAX LAWS.

Definition of non-U.S. holder

For purposes of this discussion, a non-U.S. holder is any beneficial owner of our common stock that is not a "U.S. person" or a partnership for U.S. federal income tax purposes. A U.S. person is any of the following:

- a citizen or resident of the United States;
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income tax regardless of its source; or

- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more U.S. persons or (2) has validly elected to be treated as a U.S. person for U.S. federal income tax purposes.

If a partnership (or other entity taxed as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of a partner in the partnership generally will depend on the status of the partner and the activities of the partnership. Accordingly, partnerships that hold our common stock and partners in such partnerships are urged to consult their tax advisors regarding the specific U.S. federal income tax consequences to them of the ownership and disposition of our common stock.

Distributions on our common stock

Payments on our common stock will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and will first be applied against and reduce a holder's adjusted tax basis in the common stock, but not below zero. Any excess will be treated as capital gain.

Dividends paid to a non-U.S. holder of our common stock that are not effectively connected with such holder's conduct of a U.S. trade or business generally will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends, or such lower rate specified by an applicable tax treaty. To receive the benefit of a reduced treaty rate, a non-U.S. holder must furnish to us or our paying agent a valid IRS Form W-8BEN (or applicable successor form) certifying such holder's qualification for the reduced rate. This certification must be provided to us or our paying agent prior to the payment of dividends and must be updated periodically. Non-U.S. holders that do not timely provide us or our paying agent with the required certification, but which qualify for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS.

If a non-U.S. holder holds our common stock in connection with the conduct of a trade or business in the United States, and dividends paid on the common stock are effectively connected with such holder's U.S. trade or business, the non-U.S. holder will be exempt from U.S. federal withholding tax. To claim the exemption, the non-U.S. holder must furnish to us or our paying agent a properly executed IRS Form W-8ECI (or applicable successor form).

Any dividends paid on our common stock that are effectively connected with a non-U.S. holder's U.S. trade or business (or if required by an applicable tax treaty, attributable to a permanent establishment maintained by the non-U.S. holder in the United States) generally will be subject to U.S. federal income tax on a net income basis in the same manner as if such holder were a resident of the United States, unless an applicable tax treaty provides otherwise. A non-U.S. holder that is a foreign corporation also may be subject to a branch profits tax equal to 30% (or such lower rate specified by an applicable tax treaty) of a portion of its effectively connected earnings and profits for the taxable year. Non-U.S. holders are urged to consult any applicable tax treaties which may provide different rules.

A non-U.S. holder who claims the benefit of an applicable income tax treaty generally will be required to satisfy applicable certification and other requirements prior to the distribution date. Non-U.S. holders should consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty.

Gain on disposition of our common stock

A non-U.S. holder generally will not be subject to U.S. federal income tax on any gain realized upon the sale or other disposition of our common stock unless:

- the gain is effectively connected with the non-U.S. holder's conduct of a trade or business in the United States, or if required by an applicable tax treaty, attributable to a permanent establishment maintained by the non-U.S. holder in the United States; or
- the non-U.S. holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met.

Unless an applicable tax treaty provides otherwise, gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis in the same manner as if such holder were a resident of the United States. Non-U.S. holders that are foreign corporations also may be subject to a branch profits tax equal to 30% (or such lower rate specified by an applicable tax treaty) of a portion of its effectively connected earnings and profits for the taxable year. Non-U.S. holders are urged to consult any applicable tax treaties which may provide different rules.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a flat 30% rate, but may be offset by U.S. source capital losses.

In addition to the foregoing, any gain to a non-U.S. holder upon the sale or disposition of our common stock will be subject to U.S. federal income tax if our common stock constitutes a U.S. real property interest by reason of our status as a U.S. real property holding corporation, or a USRPHC, during the relevant statutory period. We believe we currently are not and will not become a USRPHC. However, because the determination of whether we are a USRPHC depends on the fair market value of our U.S. real property interests relative to the fair market value of our other business assets, there can be no assurance that we will not become a USRPHC in the future. In the event we do become a USRPHC, as long as our common stock is regularly traded on an established securities market, our common stock will be treated as U.S. real property interests only with respect to a non-U.S. holder that actually or constructively holds more than five percent of our common stock.

Information reporting and backup withholding

We must report annually to the IRS and to each non-U.S. holder the amount of dividends on our common stock paid to such holder and the amount of any tax withheld with respect to those dividends. These information reporting requirements apply even if no withholding was required because the dividends were effectively connected with the holder's conduct of a U.S. trade or business, or withholding was reduced or eliminated by an applicable tax treaty. This information also may be made available under a specific treaty or agreement with the tax authorities in the country in which the non-U.S. holder resides or is established. Backup withholding (currently at a 28% rate) generally will not apply to payments of dividends to a non-U.S. holder of our common stock provided the non-U.S. holder furnishes to us or our paying agent the required certification as to its non-U.S. status (such as by providing a valid IRS Form W-8BEN or W-8ECI), or an exemption is otherwise established, unless we or our paying agent has actual knowledge, or reason to know, that the holder is a U.S. person that is not an exempt recipient.

Payments of the proceeds from a disposition by a non-U.S. holder of our common stock made by or through a foreign office of a broker generally will not be subject to information reporting

or backup withholding. However, information reporting (but not backup withholding) will apply to those payments if the broker does not have documentary evidence that the beneficial owner is a non-U.S. holder, an exemption is not otherwise established, and the broker is:

- a U.S. person;
- a controlled foreign corporation for U.S. federal income tax purposes;
- a foreign person 50% or more of whose gross income is effectively connected with a U.S. trade or business for a specified three-year period; or
- a foreign partnership if at any time during its tax year (1) one or more of its partners are U.S. persons who hold in the aggregate more than 50% of the income or capital interest in such partnership or (2) it is engaged in the conduct of a U.S. trade or business.

Payment of the proceeds from a non-U.S. holder's disposition of our common stock made by or through the U.S. office of a broker generally will be subject to information reporting and backup withholding unless the non-U.S. holder certifies as to its non-U.S. status under penalties of perjury (such as by providing a valid IRS Form W-8BEN or W-8ECI) or otherwise establishes an exemption from information reporting and backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

Underwriting

J.P. Morgan Securities Inc. and Wachovia Capital Markets, LLC are acting as joint book-running managers, and Thomas Weisel Partners LLC, Cowen and Company, LLC and Piper Jaffray & Co. are acting as co-managers for this offering.

We, the selling stockholders and the underwriters named below have entered into an underwriting agreement covering the common stock to be sold in this offering. Each underwriter has severally agreed to purchase, and we and the selling stockholders have agreed to sell to each underwriter, the number of shares of common stock set forth opposite its name in the following table.

Name	Number of shares
J.P. Morgan Securities Inc.	
Wachovia Capital Markets, LLC	
Thomas Weisel Partners LLC	
Cowen and Company, LLC	
Piper Jaffray & Co.	
Total	

The underwriting agreement provides that if the underwriters take any of the shares presented in the table above, then they must take all of the shares. No underwriter is obligated to take any shares allocated to a defaulting underwriter except under limited circumstances. The underwriting agreement provides that the obligations of the underwriters are subject to certain conditions precedent, including the absence of any material adverse change in our business and the receipt of certain certificates, opinions and letters from us, our counsel and our independent auditors.

The underwriters propose to offer the shares of common stock directly to the public at the initial public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession not in excess of $ per share. Any such dealers may resell shares to certain other brokers or dealers at a discount of up to $ per share from the initial public offering price. After the initial public offering of the shares, the offering price and other selling terms may be changed by the underwriters. Sales of shares made outside of the United States may be made by affiliates of the underwriters. The underwriters have advised us that they do not intend to confirm discretionary sales in excess of 5% of the shares of common stock offered in this offering.

If the underwriters sell more shares than the total number shown in the table above, the underwriters have the option to buy up to an additional shares of common stock from the selling stockholders to cover such sales. They may exercise this option during the 30-day period from the date of this prospectus. If any shares are purchased under this option, the underwriters will purchase shares in approximately the same proportion as shown in the table above. If any additional shares of common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the initial shares are being offered.

At our request, the underwriters have reserved for sale, at the initial public offering price, up to shares offered by this prospectus for sale to some of our directors, officers, employees, existing stockholders and related persons. If these persons purchase reserved shares, this will

reduce the number of shares available for sale to the general public. Any reserved shares that are not orally confirmed for purchase within one day of the pricing of this offering will be offered by the underwriters to the general public on the same terms as the other shares offered by this prospectus.

The underwriting fee is equal to the public offering price per share of common stock less the amount paid by the underwriters to us per share of common stock. The underwriting fee is $ per share. The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

	Paid by ULTA		Paid by Selling Stockholders	
	Without over-allotment exercise	With over-allotment exercise	Without over-allotment exercise	With over-allotment exercise
Per share	$	$	$	$
Total	$	$	$	$

The underwriters have advised us that they may make short sales of our common stock in connection with this offering, resulting in the sale by the underwriters of a greater number of shares than they are required to purchase pursuant to the underwriting agreement. The short position resulting from those short sales will be deemed a "covered" short position to the extent that it does not exceed the shares subject to the underwriters' overallotment option and will be deemed a "naked" short position to the extent that it exceeds that number. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the trading price of the common stock in the open market that could adversely affect investors who purchase shares in this offering. The underwriters may reduce or close out their covered short position either by exercising the overallotment option or by purchasing shares in the open market. In determining which of these alternatives to pursue, the underwriters will consider the price at which shares are available for purchase in the open market as compared to the price at which they may purchase shares through the overallotment option. Any "naked" short position will be closed out by purchasing shares in the open market. Similar to the other stabilizing transactions described below, open market purchases made by the underwriters to cover all or a portion of their short position may have the effect of preventing or retarding a decline in the market price of our common stock following this offering. As a result, our common stock may trade at a price that is higher than the price that otherwise might prevail in the open market.

The underwriters have advised us that, pursuant to Regulation M under the Securities Act, they may engage in transactions, including stabilizing bids or the imposition of penalty bids, that may have the effect of stabilizing or maintaining the market price of the shares of common stock at a level above that which might otherwise prevail in the open market. A "stabilizing bid" is a bid for or the purchase of shares of common stock on behalf of the underwriters for the purpose of fixing or maintaining the price of the common stock. A "penalty bid" is an arrangement permitting the underwriters to claim the selling concession otherwise accruing to an underwriter or syndicate member in connection with the offering if the common stock originally sold by that underwriter or syndicate member is purchased by the underwriters in the open market pursuant to a stabilizing bid or to cover all or part of a syndicate short position. The underwriters have advised us that stabilizing bids and open market purchases may be

effected on the NASDAQ Global Select Market in the over-the counter market or otherwise and, if commenced, may be discontinued at any time.

One of more underwriters may facilitate the marketing of this offering online directly or through one of its affiliates. In those cases, prospective investors may view offering terms and a prospectus online and, depending upon the particular underwriter, place orders online or through their financial advisor.

We estimate that the total expenses of this offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding the underwriting discounts and commissions, will be approximately $.

We and the selling stockholders have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act.

We have agreed that we will not offer, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, or file with the SEC a registration statement under the Securities Act relating to, any shares of our common stock or securities convertible into or exchangeable or exercisable for any shares of our common stock, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing, without the prior written consent of J.P. Morgan Securities Inc. and Wachovia Capital Markets, LLC for a period of 180 days after the date of this prospectus. Notwithstanding the foregoing, if (1) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to us occurs; or (2) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

All of our directors and officers and substantially all of our stockholders are obligated, pursuant to either (i) lock-up agreements, (ii) the equity incentive plan under which they received shares, or (iii) in the case of stockholders who received common stock upon conversion of our preferred stock, the registration agreement to which they are a party, for a period of 180 days after the date of this prospectus, without, in the case of parties to a lock-up agreement, the prior written consent of J.P. Morgan Securities Inc. and Wachovia Capital Markets, LLC, subject to a possible extension under certain circumstances, not to (1) offer, pledge, announce the intention to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock (including, without limitation, common stock that may be deemed to be beneficially owned by such persons in accordance with the rules an regulations of the SEC and securities that may be issued upon exercise of a stock option or warrant) or (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the common stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of common stock or such other securities, in cash or otherwise. Notwithstanding the foregoing, if (1) during the last 17 days of the 180-day restricted period, we issue an earnings release or material news or a material event relating to our company occurs; or (2) prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day period, the restrictions described above shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. The holders of approximately

99% of our outstanding shares of common stock are subject to the obligations described above regarding the 180-day lock-up period.

We are applying to have our common stock approved for listing on the NASDAQ Global Select Market under the symbol "ULTA."

Prior to this offering, there has been no public market for our common stock. We and the underwriters will negotiate the initial public offering price. In determining the initial public offering price, we and the underwriters expect to consider a number of factors in addition to prevailing market conditions, including:

- the information set forth in this prospectus and otherwise available to the underwriters;
- the history of and prospects for our industry;
- an assessment of our management;
- our present operations;
- our historical results of operations;
- the trend of our revenues and earnings; and
- our earnings prospects.

We and the underwriters will consider these and other relevant factors in relation to the price of similar securities of generally comparable companies. Neither we nor the underwriters can assure investors that an active trading market will develop for the common stock, or that the common stock will trade in the public market at or above the initial public offering price.

From time to time in the ordinary course of their respective businesses, certain of the underwriters and their affiliates perform various financial advisory, investment banking and commercial banking services for us and our affiliates.

An affiliate of J.P. Morgan Securities Inc. is a lender and the documentation agent under our credit facility. An affiliate of Wachovia Capital Markets, LLC is a co-arranger and the collateral agent under our credit facility. To the extent any of the proceeds of this offering are applied to repay loans outstanding under our credit facility, such affiliates will receive a portion of the amounts so repaid under such facility.

Legal matters

The validity of the common stock offered hereby will be passed upon for us by Latham & Watkins LLP, Chicago, Illinois, and for the underwriters by Winston & Strawn LLP, Chicago, Illinois. Certain legal matters have been passed upon for the selling stockholders by [ ]. Latham & Watkins LLP holds 42,889 shares of our common stock and a partner of Latham & Watkins LLP and members of his family have an interest, through a living trust and a trust for the benefit of his children, in 102,567 shares of our common stock.

Experts

The consolidated financial statements of Ulta Salon, Cosmetics & Fragrance, Inc. at January 28, 2006 and February 3, 2007, and for each of the three years in the period ended February 3, 2007, appearing in this Prospectus and Registration Statement have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

Where you can find more information

We have filed with the SEC a registration statement on Form S-1 under the Securities Act of 1933 registering the common stock to be sold in this offering. As permitted by the rules and regulations of the SEC, this prospectus does not contain all of the information included in the registration statement and the exhibits and schedules filed as a part of the registration statement. For more information concerning us and the common stock to be sold in this offering, you should refer to the registration statement and to the exhibits and schedules filed as part of the registration statement. Statements contained in this prospectus regarding the contents of any agreement or other document filed as an exhibit to the registration statement are not necessarily complete, and in each instance reference is made to the copy of the agreement filed as an exhibit to the registration statement each statement being qualified by this reference.

The registration statement, including the exhibits and schedules filed as a part of the registration statement, may be inspected at the public reference room of the SEC at 100 F Street, N.E., Room 1580, Washington, DC 20549 and copies of all or any part thereof may be obtained from that office upon payment of the prescribed fees. You may call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference room and you can request copies of the documents upon payment of a duplicating fee, by writing to the SEC. In addition, the SEC maintains a website that contains reports, proxy and information statements and other information regarding registrants, including us, that file electronically with the SEC which can be accessed at http://www.sec.gov.

As a result of the filing of the registration statement, we will become subject to the information and reporting requirements of the Securities Exchange Act of 1934, and will file periodic proxy statements and will make available to our stockholders annual reports containing audited consolidated financial information for each year and quarterly reports for the first three quarters of each year containing unaudited interim consolidated financial information.

Ulta Salon, Cosmetics & Fragrance, Inc.

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Report of independent registered public accounting firm

The Board of Directors and Stockholders
Ulta Salon, Cosmetics & Fragrance, Inc.

We have audited the accompanying consolidated balance sheets of Ulta Salon, Cosmetics & Fragrance, Inc. and subsidiary (the Company) as of January 28, 2006 and February 3, 2007, and the related consolidated statements of income, cash flows, and stockholders' equity for each of the three years in the period ended February 3, 2007. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Ulta Salon, Cosmetics & Fragrance, Inc. and subsidiary at January 28, 2006 and February 3, 2007, and the consolidated results of their operations and their cash flows for each of the three years in the period ended February 3, 2007, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 2 to the financial statements, effective January 29, 2006, the Company changed its method of accounting for share-based compensation upon the adoption of Statement of Financial Accounting Standards No. 123(R), *Share-Based Payment*.

/s/ Ernst & Young

Chicago, Illinois
April 11, 2007

Ulta Salon, Cosmetics & Fragrance, Inc.

Consolidated balance sheets

(Dollars in thousands)	January 28, 2006	February 3, 2007	May 5, 2007	Pro Forma Note Payable and Stockholders' Equity May 5, 2007
			(unaudited)	(unaudited)
Assets				
Current assets:				
Cash and cash equivalents	$ 2,839	$ 3,645	$ 3,161	
Receivables, net	15,757	18,476	17,137	
Merchandise inventories	109,374	129,237	152,867	
Prepaid expenses and other current assets	14,942	15,276	19,041	
Deferred income taxes	2,539	5,412	5,694	
Total current assets	145,451	172,046	197,900	
Property and equipment, net	133,003	162,080	174,916	
Deferred income taxes	3,962	4,125	4,728	
Other assets	199	346	308	
Total assets	$ 282,615	$ 338,597	$ 377,852	
Liabilities and stockholders' equity				
Current liabilities:				
Current portion—notes payable	$ —	$ —	$ 28,053	
Accounts payable	34,435	43,071	50,922	
Accrued liabilities	26,496	38,604	33,055	
Accrued income taxes	8,047	2,266	—	
Total current liabilities	68,978	83,941	112,030	
Notes payable—less current portion	45,381	50,737	55,038	
Deferred rent	40,449	50,367	52,633	
Total liabilities	154,808	185,045	219,701	
Commitments and contingencies *(Note 4)*	—	—	—	
Series III redeemable preferred stock	4,792	4,792	4,792	

(Dollars in thousands)	January 28, 2006	February 3, 2007	May 5, 2007	Pro Forma Note Payable and Stockholders' Equity May 5, 2007
			(unaudited)	(unaudited)
Stockholders' equity:				
Preferred stock	208,475	223,059	226,803	
Treasury stock—preferred, at cost	(12)	(12)	(1,815)	
Common stock, $.01 par value, 106,500,000 shares authorized, 7,141,678, 11,723,579, and 12,095,816 shares issued, and 7,140,878, 11,340,480, and 11,709,217 shares outstanding at January 28, 2006, February 3, 2007, and May 5, 2007 (unaudited), respectively, and shares outstanding pro forma (unaudited)	71	117	121	
Treasury stock—common, at cost	—	(2,217)	(2,244)	
Additional paid-in capital	6,533	15,501	16,333	
Deferred stock-based compensation	(431)	—	—	
Related party notes receivable	(373)	(4,467)	(4,094)	
Accumulated deficit	(91,199)	(83,240)	(81,665)	
Accumulated other comprehensive income (loss)	(49)	19	(80)	
Total stockholders' equity	123,015	148,760	153,359	
Total liabilities and stockholders' equity	$ 282,615	$ 338,597	$ 377,852	

See accompanying notes.

Ulta Salon, Cosmetics & Fragrance, Inc.

Consolidated statements of income

(Dollars in thousands, except per share data)	Year ended January 29, 2005	Year ended January 28, 2006	Year ended February 3, 2007	Three months ended April 29, 2006 (unaudited)	Three months ended May 5, 2007 (unaudited)
Net sales	$ 491,152	$ 579,075	$ 755,113	$ 159,468	$ 194,113
Cost of sales	346,585	404,794	519,929	108,813	134,600
Gross profit	144,567	174,281	235,184	50,655	59,513
Selling, general, and administrative expenses	121,999	140,145	188,000	41,316	47,982
Pre-opening expenses	4,072	4,712	7,096	826	1,656
Operating income	18,496	29,424	40,088	8,513	9,875
Interest expense	2,835	2,951	3,314	742	996
Income before income taxes	15,661	26,473	36,774	7,771	8,879
Income tax expense	6,201	10,504	14,231	3,071	3,560
Net income	$ 9,460	$ 15,969	$ 22,543	$ 4,700	$ 5,319
Less preferred stock dividends	11,692	12,922	14,584	3,450	3,744
Net income (loss) available to common stockholders	$ (2,232)	$ 3,047	$ 7,959	$ 1,250	$ 1,575
Net income (loss) per common share:					
Basic	$ (0.44)	$ 0.47	$ 0.87	$ 0.18	$ 0.14
Diluted	$ (0.44)	$ 0.21	$ 0.29	$ 0.06	$ 0.07
Basic weighted average number of shares of common stock outstanding	5,032,612	6,478,217	9,130,697	6,960,640	11,368,805
Diluted weighted average number of shares of common stock outstanding	5,032,612	76,297,969	79,026,350	76,617,578	80,652,941

(Dollars in thousands, except per share data)	Year ended			Three months ended	
	January 29, 2005	January 28, 2006	February 3, 2007	April 29, 2006	May 5, 2007
				(unaudited)	
Pro forma net income available to common stockholders					
Pro forma net income per common share:					
Pro forma basic					
Pro forma diluted					
Pro forma basic weighted average number of shares of common stock outstanding					
Pro forma diluted weighted average number of shares of common stock outstanding					

See accompanying notes.

Ulta Salon, Cosmetics & Fragrance, Inc.

Consolidated statements of cash flows

(Dollars in thousands)	Year ended January 29, 2005	Year ended January 28, 2006	Year ended February 3, 2007	Three months ended April 29, 2006 (unaudited)	Three months ended May 5, 2007 (unaudited)
Operating activities					
Net income	$ 9,460	$ 15,969	$ 22,543	$ 4,700	$ 5,319
Adjustments to reconcile net income to net cash provided by (used in) operating activities:					
Depreciation and amortization	18,304	22,285	29,736	6,048	9,840
Deferred income taxes	961	(3,037)	(3,080)	—	(822)
Non-cash stock compensation charges	634	468	983	228	289
Excess tax benefits from stock-based compensation	—	(213)	(5,360)	—	—
Loss on disposal of property and equipment	1,167	1,230	3,518	656	135
Change in operating assets and liabilities:					
Accounts receivable	(8,548)	(830)	(2,719)	5,272	1,338
Merchandise inventories	(21,514)	(5,134)	(19,863)	(9,610)	(23,630)
Prepaid expenses and other assets	(3,157)	(2,542)	(449)	(1,991)	(3,758)
Accounts payable	15,308	(5,505)	8,636	(3,796)	7,851
Accrued liabilities	10,595	7,753	11,767	(9,928)	(12,999)
Deferred rent	6,051	7,157	9,918	215	2,266
Net cash provided by (used in) operating activities	29,261	37,601	55,630	(8,206)	(14,171)
Investing activities					
Purchases of property and equipment, net	(34,807)	(41,607)	(62,331)	(5,304)	(17,757)
Receipt of related party notes receivable	—	—	—	—	373
Issuance of related party notes receivable	—	—	(2,414)	—	—
Net cash used in investing activities	(34,807)	(41,607)	(64,745)	(5,304)	(17,384)
Financing activities					
Proceeds on long-term borrowings	532,002	644,817	851,468	184,053	239,123
Payments on long-term borrowings	(528,010)	(641,652)	(846,112)	(170,689)	(206,769)
Excess tax benefits from stock-based compensation	—	213	5,360	—	—
Proceeds from issuance of common stock	1,801	615	1,422	233	547
Purchase of treasury stock	—	—	(2,217)	—	(1,830)
Principal payments under capital lease obligations	(421)	(167)	—	—	—
Proceeds from issuance of preferred stock	—	15	—	—	—
Net cash provided by financing activities	5,372	3,841	9,921	13,597	31,071
Net increase (decrease) in cash and cash equivalents	(174)	(165)	806	87	(484)
Cash and cash equivalents at beginning of period	3,178	3,004	2,839	2,839	3,645
Cash and cash equivalents at end of period	$ 3,004	$ 2,839	$ 3,645	$ 2,926	$ 3,161
Supplemental cash flow information					
Cash paid for interest	$ 2,516	$ 3,218	$ 3,798	$ 742	$ 574
Cash paid for income taxes	$ 3,277	$ 9,766	$ 17,193	$ 11,778	$ 7,121
Non-cash investing and financing activities:					
Unrealized (gain) / loss on interest rate swap hedge, net of tax	$ (634)	$ (427)	$ (68)	$ (45)	$ 99
Issuance of related party notes receivable for exercise of stock options	$ —	$ —	$ (1,680)	—	—

See accompanying notes.

Ulta Salon, Cosmetics & Fragrance, Inc.

Consolidated statements of stockholders’ equity

	Series I convertible, voting preferred stock		Series II convertible, voting preferred stock		Series IV convertible, voting preferred stock		Series V convertible, voting preferred stock		Series V-1 convertible, voting preferred stock		Total preferred stock	
Par value		$.01		$.01		$.01		$.01		$.01		
authorized shares		17,207,532		7,634,207		19,183,653		22,500,000		4,600,000		
(Dollars in thousands, except per share data)	Issued shares	Amount	Issued shares	Amount	Issued shares	Amount	Issued shares	Amount	Issued shares	Amount	Issued shares	Amount
Balance—January 31, 2004	16,769,101	$ 31,818	7,634,207	$ 74,455	19,183,653	$ 34,565	21,447,959	$ 41,287	920,000	$ 1,721	65,954,920	$183,846
Issuance of stock	—	—	—	—	—	—	—	—	—	—	—	—
Accretion of dividends	—	3,419	—	—	—	3,673	—	4,416	—	184	—	11,692
Unrealized gain on interest rate swap hedge, net of $414 income tax	—	—	—	—	—	—	—	—	—	—	—	—
Net income for the year ended January 29, 2005	—	—	—	—	—	—	—	—	—	—	—	—
Comprehensive income	—	—	—	—	—	—	—	—	—	—	—	—
Stock compensation charge	—	—	—	—	—	—	—	—	—	—	—	—
Deferred stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—
Balance—January 29, 2005	16,769,101	35,237	7,634,207	74,455	19,183,653	38,238	21,447,959	45,703	920,000	1,905	65,954,920	195,538
Issuance of stock	146,130	15	—	—	—	—	—	—	—	—	146,130	15
Accretion of dividends	—	3,788	—	—	—	4,058	—	4,873	—	203	—	12,922
Unrealized gain on interest rate swap hedge, net of $279 income tax	—	—	—	—	—	—	—	—	—	—	—	—
Net income for the year ended January 28, 2006	—	—	—	—	—	—	—	—	—	—	—	—
Comprehensive income	—	—	—	—	—	—	—	—	—	—	—	—
Excess tax benefits from stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—
Stock compensation charge	—	—	—	—	—	—	—	—	—	—	—	—
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—
Balance—January 28, 2006	16,915,231	39,040	7,634,207	74,455	19,183,653	42,296	21,447,959	50,576	920,000	2,108	66,101,050	208,475
Issuance of stock	—	—	—	—	—	—	—	—	—	—	—	—
Purchase of treasury stock	—	—	—	—	—	—	—	—	—	—	—	—
Accretion of dividends	—	4,277	—	—	—	4,575	—	5,503	—	229	—	14,584
Issuance of related party notes receivable	—	—	—	—	—	—	—	—	—	—	—	—
Unrealized gain on interest rate swap hedge, net of $44 income tax	—	—	—	—	—	—	—	—	—	—	—	—
Net income for the year ended February 3, 2007	—	—	—	—	—	—	—	—	—	—	—	—
Comprehensive income	—	—	—	—	—	—	—	—	—	—	—	—
Excess tax benefits from stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—
Reclassification of deferred compensation on SFAS 123R adoption	—	—	—	—	—	—	—	—	—	—	—	—
Stock compensation charge	—	—	—	—	—	—	—	—	—	—	—	—
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—
Balance—February 3, 2007	16,915,231	$ 43,317	7,634,207	$ 74,455	19,183,653	$ 46,871	21,447,959	$ 56,079	920,000	$ 2,337	66,101,050	$223,059

See accompanying notes.

Ulta Salon, Cosmetics & Fragrance, Inc.

Consolidated statements of stockholders' equity

Par value authorized shares (Dollars in thousands, except per share data)	Treasury—preferred stock Treasury shares	Treasury—preferred stock Amount	Common stock $.01 106,500,000 Issued shares	Common stock $.01 106,500,000 Amount	Treasury—common stock Treasury shares	Treasury—common stock Amount	Additional paid-In capital	Deferred stock-based compensation	Related party notes receivable	Accumulated deficit	Accumulated other comprehensive income (loss)	Total stockholders' equity
Balance—January 31, 2004	(38,095)	$ (12)	4,102,764	$ 41	(800)	$ —	$ 2,400	$ —	$ (373)	$ (92,014)	$ (1,110)	$ 92,778
Issuance of stock	—	—	1,411,626	53	—	—	1,749	—	—	—	—	1,802
Accretion of dividends	—	—	—	—	—	—	—	—	—	(11,692)	—	—
Unrealized gain on interest rate swap hedge, net of $414 income tax	—	—	—	—	—	—	—	—	—	—	634	634
Net income for the year ended January 29, 2005	—	—	—	—	—	—	—	—	—	9,460	—	9,460
Comprehensive income	—	—	—	—	—	—	—	—	—	—	—	10,094
Stock compensation charge	—	—	—	—	—	—	209	—	—	—	—	209
Deferred stock-based compensation	—	—	700,000	7	—	—	1,148	(1,155)	—	—	—	—
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	425	—	—	—	425
Balance—January 29, 2005	(38,095)	(12)	6,214,390	101	(800)	—	5,506	(730)	(373)	(94,246)	(476)	105,308
Issuance of stock	—	—	927,288	(30)	—	—	645	—	—	—	—	630
Accretion of dividends	—	—	—	—	—	—	—	—	—	(12,922)	—	—
Unrealized gain on interest rate swap hedge, net of $279 income tax	—	—	—	—	—	—	—	—	—	—	427	427
Net income for the year ended January 28, 2006	—	—	—	—	—	—	—	—	—	15,969	—	15,969
Comprehensive income	—	—	—	—	—	—	—	—	—	—	—	16,396
Excess tax benefits from stock-based compensation	—	—	—	—	—	—	213	—	—	—	—	213
Stock compensation charge	—	—	—	—	—	—	169	—	—	—	—	169
Amortization of deferred stock-based compensation	—	—	—	—	—	—	—	299	—	—	—	299
Balance—January 28, 2006	(38,095)	(12)	7,141,678	71	(800)	—	6,533	(431)	(373)	(91,199)	(49)	123,015
Issuance of stock	—	—	4,581,901	46	—	—	3,056	—	—	—	—	3,102
Purchase of treasury stock	—	—	—	—	(382,299)	(2,217)	—	—	—	—	—	(2,217)
Accretion of dividends	—	—	—	—	—	—	—	—	—	(14,584)	—	—
Issuance of related party notes receivable	—	—	—	—	—	—	—	—	(4,094)	—	—	(4,094)
Unrealized gain on interest rate swap hedge, net of $44 income tax	—	—	—	—	—	—	—	—	—	—	68	68
Net income for the year ended February 3, 2007	—	—	—	—	—	—	—	—	—	22,543	—	22,543
Comprehensive income	—	—	—	—	—	—	—	—	—	—	—	22,611
Excess tax benefits from stock-based compensation	—	—	—	—	—	—	5,360	—	—	—	—	5,360
Reclassification of deferred compensation on SFAS 123R adoption	—	—	—	—	—	—	(431)	431	—	—	—	—
Stock compensation charge	—	—	—	—	—	—	690	—	—	—	—	690
Amortization of deferred stock-based compensation	—	—	—	—	—	—	293	—	—	—	—	293
Balance—February 3, 2007	(38,095)	$ (12)	11,723,579	$ 117	(383,099)	$ (2,217)	$ 15,501	$ —	$ (4,467)	$ (83,240)	$ 19	$ 148,760

See accompanying notes.

Ulta Salon, Cosmetics & Fragrance, Inc.

Consolidated statements of stockholders' equity

Par value authorized shares (Dollars in thousands, except per share data)	Series I convertible, voting, preferred stock $0.01 17,207,532 Issued shares	Series I Amount	Series II convertible, voting, preferred stock $0.01 7,634,207 Issued shares	Series II Amount	Series IV convertible, voting, preferred stock $0.01 19,183,653 Issued shares	Series IV Amount	Series V convertible, voting, preferred stock $0.01 22,500,000 Issued shares	Series V Amount	Series V-1 convertible, voting, preferred stock $0.01 4,600,000 Issued shares	Series V-1 Amount	Total preferred stock Issued shares	Total preferred stock Amount	Treasury—preferred stock Issued shares	Treasury—preferred stock Amount	Common stock $0.01 106,500,000 Issued shares	Common stock Amount	Treasury—common stock Issued shares	Treasury—common stock Amount	Additional paid-in capital	Related party notes receivable	Accumulated deficit	Accumulated other comprehensive income (loss)	stoc
Balance—February 3, 2007	16,915,231 $	43,317	7,634,207 $	74,455	19,183,653 $	46,871	21,447,959 $	56,079	920,000 $	2,337	66,101,050	$223,059	(38,095)	$(12)	11,723,579 $	117	(383,099) $	(2,217) $	15,501 $	(4,467) $	(83,240) $	19	$
								(unaudited)															
Issuance of stock	—	—	—	—	—	—	—	—	—	—	—	—	—	—	372,237	4	—	—	543	—	—	—	
Purchase of treasury stock	—	—	—	—	—	—	—	—	—	—	—	—	(360,425)	(1,803)	—	—	(3,500)	(27)	—	—	—	—	
Accretion of dividends	—	1,088	—	—	—	1,173	—	1,423	—	60	—	3,744	—	—	—	—	—	—	—	—	(3,744)	—	
Receipt of related party notes receivable	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	373	—	—	
Unrealized loss on interest rate swap hedge, net of $66 income tax	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(99)	
Net income for the period ended May 5, 2007	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	5,319	—	
Comprehensive income	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Stock compensation charge	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	217	—	—	—	
Amortization of deferred stock- based compensation	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	72	—	—	—	
Balance—May 5, 2007	16,915,231 $	44,405	7,634,207 $	74,455	19,183,653 $	48,044	21,447,959 $	57,502	920,000 $	2,397	66,101,050	$226,803	(398,520) $	(1,815)	12,095,816 $	121	(386,599) $	(2,244) $	16,333 $	(4,094) $	(81,665) $	(80)	$

See accompanying notes.

Ulta Salon, Cosmetics & Fragrance, Inc.

Notes to consolidated financial statements

1. Business and basis of presentation

The accompanying consolidated financial statements of Ulta Salon, Cosmetics & Fragrance, Inc. (the Company) include Ulta Salon, Cosmetics & Fragrance, Inc. and its wholly owned subsidiary, Ulta Internet Holdings, Inc. (Internet). All intercompany balances and transactions have been eliminated. The operations of Internet were merged into the Company during 2006, resulting in its dissolution as a separate legal entity on November 30, 2006.

The Company was incorporated in the state of Delaware on January 9, 1990, to operate specialty retail stores selling cosmetics, fragrance, haircare and skincare products, and related accessories and services. The stores also feature full-service salons. As of May 5, 2007, the Company operated 203 stores in 26 states, as shown in the table below:

State	Number of stores
Arizona	19
California	24
Colorado	9
Delaware	1
Florida	9
Georgia	11
Illinois	26
Indiana	4
Iowa	1
Kansas	1
Kentucky	2
Maryland	3
Michigan	3
Minnesota	6
Nevada	5
New Jersey	9
New York	6
North Carolina	8
Oklahoma	4
Oregon	1
Pennsylvania	11
South Carolina	3
Texas	26
Virginia	7
Washington	3
Wisconsin	1
Total	**203**

Unaudited interim results

The accompanying consolidated balance sheet as of May 5, 2007, and the consolidated statements of income and cash flows for the three months ended April 29, 2006 and May 5, 2007, and the consolidated statement of stockholders' equity for the three months ended May 5, 2007, are unaudited. The unaudited interim consolidated financial information has been prepared in accordance with U.S. generally accepted accounting principles for interim financial information and with the U.S. Securities and Exchange Commission's Article 10, Regulation S-X. The unaudited interim financial information has been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to fairly state the Company's consolidated

financial position as of May 5, 2007 and its results of operations and cash flows for the three months ended April 29, 2006 and May 5, 2007. The consolidated financial data and other information disclosed in these notes to the financial statements as of May 5, 2007 and for the three months ended April 29, 2006 and May 5, 2007 are unaudited. The Company's business is subject to seasonal fluctuation. Significant portions of the Company's net sales and net income are realized during the fourth quarter of the fiscal year due to the holiday selling season. The results for the three months ended May 5, 2007 are not necessarily indicative of the results to be expected for the fiscal year ending February 2, 2008, or for any other future interim period or for any future year.

Unaudited pro forma consolidated financial data

The Company has filed a Registration Statement (Form S-1) with the United States Securities and Exchange Commission for its proposed initial public offering of shares of its common stock.

The unaudited pro forma consolidated financial data reflects adjustments to our historical financial statements to reflect the following transactions in conjunction with the Company's initial public offering:

- Automatic conversion of all outstanding shares of our preferred stock, other than our Series III preferred stock, into an aggregate of 65,702,530 shares of common stock upon the consummation of the offering.
- The redemption of our Series III preferred stock for approximately $4.8 million concurrently with the closing of the offering,
- The sale of shares of common stock at an initial public offering price of $ per share, after deducting underwriting discounts and commissions and estimated offering expenses
- The payment of approximately $ million of accumulated dividends in arrears on our preferred stock upon the consummation of the offering.

The unaudited pro forma note payable and stockholders' equity assumes the transactions summarized above had occurred on May 5, 2007. The unaudited pro forma net income and net income per share assume the transactions described above occurred at the beginning of the period for fiscal 2006 and first quarter fiscal 2007.

2. Summary of significant accounting policies

Fiscal year

The Company's fiscal year is the 52 or 53 weeks ending on the Saturday closest to January 31. The Company's fiscal years ended January 29, 2005 (fiscal 2004), January 28, 2006 (fiscal 2005), and February 3, 2007 (fiscal 2006) were 52, 52, and 53 week years, respectively. The Company's fiscal quarters ended April 29, 2006 and May 5, 2007 both include 13 weeks.

Reclassifications

Certain reclassifications have been made to the fiscal year 2004 and 2005 financial statements to conform to the fiscal 2006 presentation.

Use of estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the accounting period. Actual results could differ from those estimates.

Cash and cash equivalents

Cash and cash equivalents include cash on hand and highly liquid investments with maturities of three months or less from the date of purchase.

Receivables

Receivables consist principally of amounts receivable from vendors related to allowances earned but not yet received. These receivables are computed based on provisions of the vendor agreements in place and the Company's completed performance. Our vendors are primarily U.S.-based producers of consumer products. The Company does not require collateral on its receivables and does not accrue interest. Credit risk with respect to receivables is limited due to the diversity of vendors comprising the Company's vendor base. The Company performs ongoing credit evaluations of its vendors and evaluates the collectibility of its receivables based on the length of time the receivable is past due and historical experience. The allowance for receivables totaled $224,000 and $422,000 as of January 28, 2006 and February 3, 2007, respectively.

Merchandise inventories

Merchandise inventories are stated at the lower of cost or market. Cost is determined using the weighted-average cost method and includes costs incurred to purchase and distribute goods. Inventory cost also includes vendor allowances related to co-op advertising, markdowns, and volume discounts. The Company maintains reserves for lower of cost or market and shrinkage.

Fair value of financial instruments

The carrying value of cash and cash equivalents, accounts receivable, and accounts payable approximates their estimated fair values due to the short maturities of these instruments. The estimated fair value of the Company's variable rate debt approximates its carrying value since the rate of interest on the variable rate debt is revised frequently based upon current LIBOR, or the lenders' base rate. See Note 8 for the fair value of the Company's interest rate swap agreement.

Derivative financial instruments

All of the Company's derivative financial instruments are designated and qualify as cash flow hedges. Accordingly, the effective portion of the gain or loss on the derivative instrument is reported as a component of accumulated other comprehensive income and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. The remaining gain or loss, the ineffective portion, on the derivative instrument, if other than inconsequential, is recognized in current earnings during the period of change. Derivatives are recorded in the consolidated balance sheets at fair value.

Property and equipment

The Company's property and equipment are stated at cost net of accumulated depreciation and amortization. Maintenance and repairs are charged to operating expense as incurred. The Company's assets are depreciated or amortized using the straight-line method, over the shorter of their estimated useful lives or the expected lease term as follows:

Equipment and fixtures	3 to 10 years
Leasehold improvements	10 years
Electronic equipment and software	3 to 5 years

The Company capitalizes costs incurred during the application development stage in developing or obtaining internal use software. These costs are amortized over the estimated useful life of the software.

The Company capitalizes interest related to construction projects and depreciates that amount over the lives of the related assets.

The Company periodically evaluates whether changes have occurred that would require revision of the remaining useful life of equipment and leasehold improvements or render them not recoverable. If such circumstances arise, the Company uses an estimate of the undiscounted sum of expected future operating cash flows during their holding period to determine whether the long-lived assets are impaired. If the aggregate undiscounted cash flows are less than the carrying amount of the assets, the resulting impairment charges to be recorded are calculated based on the excess of the carrying value of the assets over the fair value of such assets, with the fair value determined based on an estimate of discounted future cash flows.

Customer loyalty program

The Company maintains several customer loyalty programs. The Company's national program provides reward point certificates for free beauty products. Customers earn purchased-based reward points and redeem the related reward certificate during specific promotional periods during the year. The Company is also piloting a loyalty program in several markets in which customers earn purchased-based points on an annual basis which can be redeemed at any time. The Company accrues the anticipated redemptions related to these programs at the time of the initial purchase based on historical experience. The accrued liability related to both of the loyalty programs at January 28, 2006 and February 3, 2007 was $1,293,000 and $2,808,000, respectively. The cost of these programs, which was $3,108,000, $4,369,000, and $6,660,000 in fiscal 2004, 2005, and 2006, respectively, is included in cost of sales on the consolidated statements of income.

Deferred rent

Many of the Company's operating leases contain predetermined fixed increases of the minimum rental rate during the lease. For these leases, the Company recognizes the related rental expense on a straight-line basis over the expected lease term, including cancelable option periods where failure to exercise such options would result in an economic penalty, and records the difference between the amounts charged to expense and the rent paid as deferred rent. The lease term commences on the earlier of the date when the Company becomes legally obligated for rent payments or the date the Company takes possession of the leased space.

As part of many lease agreements, the Company receives construction allowances from landlords for tenant improvements. These leasehold improvements made by the Company are capitalized and amortized over the shorter of their estimated useful lives or the lease term. The construction allowances are recorded as deferred rent and amortized on a straight-line basis over the lease term as a reduction of rent expense.

Revenue recognition

Net sales include merchandise sales and salon service revenue. Revenue from merchandise sales at stores is recognized at the time of sale, net of estimated returns. E-commerce sales are recorded upon the shipment of merchandise. Salon revenue is recognized when services are rendered. Revenues from gift cards are deferred and recognized when redeemed. Company coupons and other incentives are recorded as a reduction of net sales. State sales taxes are presented on a net basis as the Company considers itself a pass-through conduit for collecting and remitting state sales tax.

Vendor allowances

The Company receives allowances from vendors in the normal course of business including advertising and markdown allowances, purchase volume discounts and rebates, and reimbursement for defective merchandise, and certain selling and display expenses.

Substantially all vendor allowances are recorded as a reduction of the vendor's product cost and are recognized in cost of sales as the product is sold.

Advertising

Advertising expense consists principally of paper, print, and distribution costs related to the Company's advertising circulars. The Company expenses the production and distribution costs related to its advertising circulars in the period the related promotional event occurs. As of January 28, 2006 and February 3, 2007, all advertising costs had been expensed. Total advertising costs, exclusive of incentives from vendors and start-up advertising expense, amounted to $30,108,000, $34,829,000 and $43,383,000 for fiscal 2004, 2005, and 2006, respectively.

Pre-opening expenses

Non-capital expenditures incurred prior to the grand opening of a new store are charged against earnings as incurred.

Cost of sales

Cost of sales includes the cost of merchandise sold including all vendor allowances, which are treated as a reduction of merchandise costs; warehousing and distribution costs including labor and related benefits, freight, rent, depreciation and amortization, real estate taxes, utilities, and insurance; store occupancy costs including rent, depreciation and amortization, real estate taxes, utilities, repairs and maintenance, insurance, licenses, and cleaning expenses; salon payroll and benefits; and shrink and inventory valuation reserves.

Selling, general, and administrative expenses

Selling, general, and administrative expenses includes payroll, bonus, and benefit costs for retail and corporate employees; advertising and marketing costs; occupancy costs related to our corporate office facilities; public company expense including Sarbanes-Oxley compliance expenses; stock-based compensation expense; depreciation and amortization for all assets

except those related to our retail and warehouse operations which is included in cost of sales; and legal, finance, information systems and other corporate overhead costs.

Income taxes

Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities used for financial reporting purposes and the amounts used for income tax purposes and the amounts reported were derived using the enacted tax rates in effect for the year the differences are expected to reverse.

Share-based compensation

Effective January 29, 2006, the Company adopted the fair value recognition and measurement provisions of Statement of Financial Accounting Standards No. 123(R), *Share-Based Payment* (SFAS 123(R)). Pursuant to SFAS 123(R), share-based compensation cost is measured at grant date, based on the fair value of the award, and is recognized as expense over the requisite service period for awards expected to vest. As a non-public entity that previously used the minimum value method for pro forma disclosure purposes under SFAS 123, the Company was required to adopt the prospective method of accounting under SFAS 123(R). Under this transitional method, the Company is required to record compensation expense in the consolidated statements of income for all awards granted after the adoption date and to awards modified, repurchased or cancelled after the adoption date using the fair value provisions of SFAS 123(R).

Prior to January 29, 2006, the Company accounted for share-based awards using the intrinsic value method of accounting in accordance with Accounting Principles Board Opinion No. 25, *Accounting for Stock issued to Employees* (APB 25). Under the provisions of APB 25, no compensation expense was recognized when stock options were granted with exercise prices equal to or greater than market value at the grant date. Prior period pro forma net income and earnings per share amounts are not presented in accordance with the provisions of SFAS 123(R).

During fiscal 2006, the Company recorded $665,000 of share-based compensation expense pursuant to the provisions of SFAS 123(R), and recognized $2,807,000 of compensation expense pursuant to APB 25 (see Note 11).

Self-insurance

The Company is self-insured for certain losses related to employee health and workers' compensation although stop loss coverage with third-party insurers is maintained to limit the Company's liability exposure. Liabilities associated with these losses are estimated in part by considering historical claims experience, industry factors, severity factors, and actuarial assumptions. Should a different amount of liabilities develop compared to what was estimated, reserves may need to be adjusted accordingly in future periods.

Net income per common share

Basic net income per common share is computed by dividing income available to common stockholders by the weighted-average number of shares of common stock outstanding during the period. Diluted net income per share includes dilutive common stock equivalents, using the treasury stock method, and assumes that the convertible preferred shares outstanding were converted, with related preferred stock dividend requirements and outstanding common shares adjusted accordingly, except when the effect would be antidilutive.

Comprehensive income

Comprehensive income is comprised of net income and gains and losses from derivative instruments designated as cash flow hedges, net of tax. Total comprehensive income is as follows:

(Dollars in thousands)	Year ended January 29, 2005	Year ended January 28, 2006	Year ended February 3, 2007	Three months ended April 29, 2006	Three months ended May 5, 2007
				(unaudited)	
Net income	$ 9,460	$ 15,969	$ 22,543	$ 4,700	$ 5,319
Unrealized gain (loss) on interest rate swap hedge, net of tax	634	427	68	45	(99)
Comprehensive income	$ 10,094	$ 16,396	$ 22,611	$ 4,745	$ 5,220

Recent accounting pronouncements

In July 2006, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes—an Interpretation of FASB Statement No. 109* (FIN 48). FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return, and provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006. The Company adopted the provisions of FIN 48 on February 4, 2007. The adoption had no effect on the Company’s consolidated financial position or results of operations.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* (SFAS 157). SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with U.S. GAAP and expands disclosures about fair value measurements. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The Company does not expect the adoption of SFAS 157 to have a material effect on the Company’s consolidated financial position or results of operations.

In September 2006, the Securities and Exchange Commission released Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (SAB 108). SAB 108 provides guidance on how the effects of the carryover or reversal of prior year financial statement misstatements should be considered in quantifying a current year misstatement. The adoption of SAB 108 by the Company as of February 3, 2007, did not have any impact on the Company’s consolidated financial position or results of operations.

In February 2007, the FASB issued SFAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, which permits all entities to choose to measure eligible items at fair value on specified election dates. The associated unrealized gains and losses on the items for which the fair value option has been elected shall be reported in earnings. SFAS 159 is effective for financial statements issued for fiscal years beginning after November 15, 2007. Currently, the

Company is not able to estimate the impact SFAS 159 will have on its consolidated financial statements.

3. Property and equipment

Property and equipment consist of the following:

(Dollars in thousands)	January 28, 2006	February 3, 2007
Equipment and fixtures	$ 88,431	$ 107,033
Leasehold improvements	100,447	119,750
Electronic equipment and software	32,059	45,701
Construction-in-progress	6,212	7,006
	227,149	279,490
Less accumulated depreciation and amortization	(94,146)	(117,410)
Property and equipment, net	$ 133,003	$ 162,080

For the fiscal years 2004, 2005, and 2006, the Company capitalized interest of $0, $280,000, and $399,000, respectively.

4. Commitments and contingencies

Leases

The Company leases stores, distribution facilities, and certain equipment. Original noncancelable lease terms range from three to ten years, and store leases generally contain renewal options for additional years. A number of the Company's store leases provide for contingent rentals based upon sales. Contingent rent amounts were insignificant in fiscal 2004, 2005, and 2006. Total rent expense under operating leases was $28,443,000, $34,564,000, and $41,135,000 in fiscal 2004, 2005, and 2006, respectively.

Future minimum lease payments under operating leases as of February 3, 2007, are as follows:

Fiscal year (Dollars in thousands)	Operating leases
2007	$ 53,494
2008	58,161
2009	56,865
2010	51,262
2011	45,966
2012 and thereafter	155,893
Total minimum lease payments	$ 421,641

Included in the operating lease schedule above is $95,280,000 of minimum lease payments for stores that will open in fiscal 2007.

Litigation

The Company is involved from time to time in legal proceedings and claims arising in the normal conduct of its business. Although the outcome of any pending legal proceeding or claim cannot be predicted with certainty, management believes that the ultimate resolution of such claims would not have a material effect on the Company's financial position or results of operations.

5. Accrued liabilities

Accrued liabilities consist of the following:

(Dollars in thousands)	January 28, 2006	February 3, 2007
Accrued payroll, bonus, and employee benefits	$ 7,316	$ 13,728
Accrued vendor liabilities	4,168	6,110
Accrued customer liabilities	5,536	6,921
Accrued taxes, other	3,750	4,944
Other accrued liabilities	5,726	6,901
Accrued liabilities	$ 26,496	$ 38,604

6. Income taxes

The provision for income taxes consists of the following:

	Year ended		
(Dollars in thousands)	January 29, 2005	January 28, 2006	February 3, 2007
Current:			
Federal	$ 4,513	$ 11,790	$ 15,165
State	727	1,562	2,102
Total current	5,240	13,352	17,267
Deferred:			
Federal	852	(2,523)	(2,228)
State	109	(325)	(808)
Total deferred	961	(2,848)	(3,036)
Provision for income taxes	$ 6,201	$ 10,504	$ 14,231

A reconciliation of the federal statutory rate to the Company's effective tax rate is as follows:

	Year ended		
	January 29, 2005	January 28, 2006	February 3, 2007
Federal statutory rate	35.0%	35.0%	35.0%
State effective rate, net of federal tax benefit	4.4	4.5	3.4
Other	0.2	0.2	0.3
Effective tax rate	39.6%	39.7%	38.7%

Significant components of the Company's deferred tax assets and liabilities are as follows:

(Dollars in thousands)	January 28, 2006	February 3, 2007
Deferred tax assets:		
Net operating loss carryforwards	$ 1,078	$ 1,433
Property and equipment	—	633
Accrued liabilities	947	946
Inventory valuation	158	86
Employee benefits	1,594	1,350
Reserves not currently deductible	5,676	10,360
Total deferred tax assets	9,453	14,808
Deferred tax liabilities:		
Property and equipment	742	—
Deferred rent and construction allowances	1,847	5,271
Total deferred tax liabilities	2,589	5,271
Valuation allowance	(363)	—
Net deferred tax asset	$ 6,501	$ 9,537

At February 3, 2007, the Company had net operating loss carryforwards (NOLs) for federal and state income tax purposes of approximately $2,640,000 and $10,700,000, respectively, which expire between 2007 and 2013. Based on Internal Revenue Code Section 382 relating to changes in ownership of the Company, utilization of the federal NOLs is subject to an annual limitation of $440,000 for federal NOLs created prior to April 1, 1997.

The Company adopted the provisions of FIN 48 on February 4, 2007. The adoption had no effect on the Company's consolidated financial position or results of operations. The Company does not currently maintain a liability for unrecognized tax benefits. The Company's policy is to recognize income tax-related interest and penalties as part of income tax expense. Income tax-related interest and penalties recorded in the consolidated financial statements was $0 for all periods presented. The Company conducts business only in the United States. Accordingly, the tax years that remain open to examination by U.S. federal, state, and local tax jurisdictions is generally three years, or fiscal 2004, 2005, and 2006.

7. Notes payable

The Company's credit facility is with LaSalle Bank National Association as the administrative agent, Wachovia Capital Finance Corporation as collateral agent, and JP Morgan Chase Bank as documentation agent. This facility provides maximum credit of $100,000,000 and a $50,000,000 accordion option through May 31, 2010. The credit facility agreement contains a restrictive financial covenant on tangible net worth. Substantially all of the Company's assets are pledged as collateral for outstanding borrowings under the facility. Outstanding borrowings bear interest at the prime rate or the Eurodollar rate plus 1.25% up to $50,000,000 and 1.50% thereafter. The advance rates on owned inventory are 80% (85% from September 1 to January 31). The interest rate on the outstanding borrowings as of January 28, 2006 and February 3, 2007, was 6.146% and 7.025%, respectively. The Company had approximately $49,045,000 and $48,937,000 of availability as of January 28, 2006 and February 3, 2007, respectively, excluding the accordion option.

The Company has an ongoing letter of credit that renews annually in October, the balance of which was $326,000 at January 28, 2006 and February 3, 2007.

At May 5, 2007, the Company has classified $55,038,000 of outstanding borrowings under the facility as long-term as this is the minimum amount that the Company believes will remain outstanding for an uninterrupted period over the next year.

8. Financial instruments

On December 31, 2001, the Company entered into an interest rate swap agreement with a notional amount of $25,000,000 that qualified as a cash flow hedge to obtain a fixed interest rate on variable rate debt and reduce certain exposures to interest rate fluctuations. The swap expired on December 29, 2006. The swap resulted in fixed rate payments at an interest rate of 5.185%.

On January 31, 2007, the Company entered into an interest rate swap agreement under the original master agreement, with a notional amount of $25,000,000 and a term of three years with fixed interest rate payments at an interest rate of 5.11%.

At January 28, 2006 and February 3, 2007, the interest rate swap had a negative fair value of $80,000 and a positive fair value of $32,000, respectively. The increase in market value during fiscal 2004, 2005, and 2006 related to the effective portion of the cash flow hedges were recorded as an unrecognized gain (loss) in the other comprehensive income section of stockholders' equity in the consolidated balance sheets. Amounts related to any ineffectiveness are recorded as interest expense.

Interest rate differentials paid or received under this agreement are recognized as adjustments to interest expense. The Company does not hold or issue interest rate swap agreements for trading purposes. In the event that a counterparty fails to meet the terms of the interest rate swap agreement, the Company's exposure is limited to the interest rate differential. The Company manages the credit risk of counterparties by dealing only with institutions that the Company considers financially sound. The Company considers the risk of nonperformance to be remote.

9. Preferred stock

The following series of Preferred Stock were outstanding at January 28, 2006 and February 3, 2007:

	Series (Dollars in thousands, except per share data)					
Preferred stock	**I**	**II**	**III**	**IV**	**V**	**V-1**
Issuance date	**4/01/97, 5/30/97, and 2/2/05**	**4/1/97**	**4/1/97**	**7/29/98**	**12/18/00, 7/10/01, and 2/2/02**	**12/18/00 and 7/10/01**
Shares issued	16,915,231	7,634,207	4,792,302	19,183,653	17,797,640	4,570,319
Gross proceeds	$ 16,418	$ —	$ —	$ 19,757	$ 25,495	$ 6,855
January 28, 2006						
Shares outstanding	16,915,231	7,634,207	4,792,302	19,145,558	21,447,959	920,000
Dividends in arrears	$ 23,461	$ —	$ —	$ 23,136	$ 19,819	$ 784
Liquidation value	$ 40,410	$ 76,342	$ 4,792	$ 43,227	$ 51,991	$ 2,164
February 3, 2007						
Shares outstanding	16,915,231	7,634,207	4,792,302	19,145,558	21,447,959	920,000
Dividends in arrears	$ 27,738	$ —	$ —	$ 27,711	$ 25,322	$ 1,013
Liquidation value	$ 44,687	$ 76,342	$ 4,792	$ 47,802	$ 57,494	$ 2,393

Restrictions

Agreements entered into as part of the sale of Preferred Stock contain restrictive covenants, the most restrictive of which limit the payment of dividends, require approval by the Board of Directors for significant capital expenditures, restrict the issuance of debt or additional shares of Preferred Stock, and the issuance or redemption of Common Stock other than shares issued to employees of the Company pursuant to the Amended and Restated Restricted Stock Plan or its Stock Option Plans (see Note 11).

Cumulative dividends

Dividends accrue on each share of Series I, Series IV, Series V, and Series V-1 Preferred Stock at 10% per annum of the Liquidation Value thereof from and including the date of issuance. Dividends do not accrue on shares of Series II Preferred Stock unless the Company's Board of Directors adopts a resolution authorizing the accrual of dividends on such shares, in which case dividends shall accrue on each share at 10% per annum of the Liquidation Value thereof from the date specified in such authorizing resolution. All dividends on account of Series I, Series IV, Series V, Series V-1, and, if applicable, Series II Preferred Stock shall accrue and accumulate whether or not they have been declared and whether or not there are profits, surpluses, or other funds of the Company legally available for the payment of dividends. No dividends shall accrue on, or with respect to, any shares of Series III Preferred Stock. No dividends shall be paid unless approved by the Board of Directors.

Voting, conversion, and liquidation rights

Holders of Series I, Series II, Series IV, Series V, and Series V-1 Preferred Stock are entitled to vote on all matters submitted to the holders of the Common Stock. Holders of Common Stock and Series I, Series II, Series IV, Series V, and Series V-1 Preferred Stock vote together as a single class. On certain matters, the holders of each class of voting Preferred Stock have the right to vote as

a separate class. Each share of Common Stock is entitled to one vote, and each holder of shares of Series I, Series II, Series IV, Series V, and Series V-1 Preferred Stock is entitled to the number of votes equal to the largest number of full shares of Common Stock into which the shares of Series I, Series II, Series IV, Series V, and Series V-1 Preferred Stock held by such holder could be converted.

Holders of Series I, Series II, Series IV, Series V, and Series V-1 Preferred Stock may convert all, or a portion, of their shares into Common Stock. The number of common shares to be issued upon conversion is computed by multiplying the number of shares of Series I or Series II Preferred Stock to be converted by 1.002, the number of shares of Series IV Preferred Stock to be converted by 1.05, and the number of shares of Series V and Series V-1 Preferred Stock to be converted by 1.50, and dividing the result by the conversion price then in effect. The conversion price for Series I and Series II Preferred stock is $1.002. The conversion price for Series IV Preferred Stock is $1.05. The conversion Price for Series V and Series V-1 Preferred Stock is $1.50. The conversion price is subject to adjustment pursuant to the terms of the agreement.

All Preferred Stock has preference over Common Stock in the event the Company is liquidated. Distribution to holders of Preferred Stock upon liquidation would be made in the following order: (1) Liquidation Value of Series V Preferred Stock and Series V-1 Preferred Stock, (2) Liquidation Value of Series I Preferred Stock and Series IV Preferred Stock, (3) Liquidation Value of Series II Preferred Stock (excluding accrued and unpaid dividends), (4) Liquidation Value of Series III Preferred Stock, and (5) accrued and unpaid dividends on Series II Preferred Stock.

Redemption rights

Upon a qualified public offering or sale of the Company, all Series III Preferred Stock must be redeemed. The Company has determined that the Series III Preferred Stock should be presented in the mezzanine section of the balance sheet as provided by guidance contained in EITF Topic D-98, "*Classification and Measurement of Redeemable Securities*." Under this guidance, classification in the permanent equity section is not considered appropriate because the Series III Preferred Stock is redeemable upon majority vote of the board of directors to sell the Company or authorize a qualified public offering and such board is controlled by the preferred security holders.

10. Common stock

The Company has the following shares of common stock with a par value of $.01 per share authorized, reserved, and outstanding at February 3, 2007:

Common stock authorized	106,500,000
Common stock reserved for:	
Conversion of Series I Preferred Stock	17,207,532
Conversion of Series II Preferred Stock	7,634,207
Conversion of Series IV Preferred Stock	19,183,653
Conversion of Series V Preferred Stock	22,500,000
Conversion of Series V-1 Preferred Stock	4,600,000
Exercise of options	15,829,955
Exercise of consultant options	525,000
Total common stock reserved	87,480,347
Total common stock outstanding	11,340,480

11. Share-based awards

Amended and restated restricted stock option plan

The Company has an Amended and Restated Restricted Stock Option Plan (the Amended Plan), principally to compensate and provide an incentive to key employees and members of the Board of Directors, under which it may grant options to purchase Preferred Stock and Common Stock. Options generally are granted with the exercise price equal to the fair value on the date of grant. Options vest over four years at the rate of 25% per year from the date of issuance and must be exercised within the earlier to occur of 14 years from the date of grant or the maximum period allowed by applicable state law.

2002 equity incentive plan

In April 2002, the Company adopted the 2002 Equity Incentive Plan (the 2002 Plan) to attract and retain the best available personnel for positions of substantial authority and to provide additional incentive to employees, directors, and consultants to promote the success of the Company's business. Options granted on or after April 26, 2002, were granted pursuant to the 2002 Plan. The 2002 Plan incorporates several important features that are typically found in agreements adopted by companies that report their results to the public. First, the maximum term of an option was reduced from 14 to ten years in order to comply with various state laws. Second, the 2002 Plan provided more flexibility in the vesting period of options offered to grantees. Third, the 2002 Plan allowed for the offering of incentive stock options to employees in addition to nonqualified stock options. Unless provided otherwise by the administrator of the 2002 Plan, options vest over four years at the rate of 25% per year from the date of grant. Options are granted with the exercise price equal to the fair value on the date of grant.

The Company estimates the grant date fair value of stock options using a Black-Scholes valuation model using the following weighted-average assumptions for fiscal 2004, 2005, and 2006 are as follows:

	2004	2005	2006
Volatility rate	—	—	45%
Average risk-free interest rate	4.70%	4.30%	4.79%
Average expected life (years)	7.0	7.0	5.5
Dividend yield	None	None	None

An additional assumption included in our Black-Scholes valuation model is the fair value of the Company's shares, which is determined by our board of directors based on all known facts and circumstances, including valuations prepared by a nationally recognized independent third-party appraisal firm. The expected volatility is based on the historical volatility of a peer group of publicly-traded companies. The risk free interest rate is based on the U.S. Treasury yield curve in effect on the date of grant for the respective expected life of the option. The expected life represents the time the options granted are expected to be outstanding. The Company has elected to use the shortcut approach in accordance with SAB 107, *Share-Based Payment*, to develop the expected life. The weighted-average grant date fair value of options granted in fiscal 2006 was $1.69.

The Company recognizes compensation cost related to the stock options on a straight-line method over the requisite service period.

At February 3, 2007, there was approximately $2,200,000 of total unrecognized compensation cost related to unvested options. The cost is expected to be recognized over a weighted-average period of approximately three years.

There were no significant new grants during the three month periods ended April 29, 2006 or May 5, 2007.

A summary of the status of the Company's stock option activity under the Amended Plan and 2002 Plan is presented in the following table:

	Common stock options					
	January 29, 2005		January 28, 2006		February 3, 2007	
Options outstanding	Shares	Weighted-average exercise price	Shares	Weighted-average exercise price	Shares	Weighted-average exercise price
Beginning of year	8,414,743	$ 0.66	9,765,538	$ 0.87	9,713,003	$ 1.02
Granted	2,073,029	1.65	1,312,815	2.10	2,105,000	3.93
Exercised	(251,500)	0.20	(768,300)	0.48	(4,560,651)	0.68
Canceled	(470,734)	0.86	(597,050)	1.48	(735,719)	0.96
End of year	9,765,538	$ 0.87	9,713,003	$ 1.02	6,521,633	$ 2.21
Exercisable at end of year	5,974,305	$ 0.56	6,410,103	$ 0.68	3,242,893	$ 1.47

	Preferred stock options					
	January 29, 2005		January 28, 2006		February 3, 2007	
Options outstanding	**Shares**	**Weighted-average exercise price**	**Shares**	**Weighted-average exercise price**	**Shares**	**Weighted-average exercise price**
Beginning of year	146,130	$ 0.10	146,130	$ 0.10	—	—
Exercised	—	—	(146,130)	0.10	—	—
End of year	146,130	$ 0.10	—	—	—	—
Exercisable at end of year	146,130	$ 0.10	—	—	—	—

The Company recognized $209,000, $169,000, and $25,000 of stock compensation expense during fiscal 2004, 2005, and 2006, respectively, for options granted during fiscal years 2001 and 2002 under the Amended Plan. The stock compensation charge reflected in the consolidated financial statements represents the difference at the measurement date between the exercise price and the deemed fair value of the Common Stock underlying the options. This amount has been fully amortized at February 3, 2007.

Included in the grants for the year ended February 3, 2007, are 400,000 performance-based options whose vesting is contingent upon an initial public offering of the Company's common stock. The fair value of these grants was estimated on the date of the grant using the Black-Scholes valuation model as described above. No compensation cost is recognized for these options until it is probable the performance measure will be achieved.

During the year ended February 3, 2007, two former officers of the Company exercised vested options for 448,644 shares of common stock, which were immediately repurchased by the Company for $2,489,000. Compensation expense was recognized for this amount which represents the excess of the fair value of the common stock over the exercise price of the options.

Restricted Stock Option Plan—Consultants

During fiscal 1999, the Company established a Restricted Stock Option Plan—Consultants (the Consultant Plan) under which the Company may grant options to purchase Common Stock to various consultants who, from time to time, provide critical services to the Company. Options are granted with the exercise price equal to the fair value on the date of grant. Options vest over varying time periods depending on the arrangement with each consultant and must be exercised within 4 years and 90 days from the date of grant.

A summary of the status of the Company's stock option activity under the Consultant Plan as of January 28, 2006 and February 3, 2007, is presented in the following table:

	Common stock options					
	January 29, 2005		January 28, 2006		February 3, 2007	
Options outstanding	**Shares**	**Weighted-average exercise price**	**Shares**	**Weighted-average exercise price**	**Shares**	**Weighted-average exercise price**
Beginning of year	318,000	$ 0.50	85,000	$ 0.70	21,250	$ 0.70
Exercised	—	—	(63,750)	0.70	(21,250)	0.70
Canceled	(233,000)	0.43	—	—	—	—
End of year	85,000	$ 0.70	21,250	$ 0.70	—	—
Exercisable at end of year	42,500	$ 0.70	—	—	—	—

The following table presents information related to options outstanding and options exercisable at February 3, 2007, under the Amended and 2002 Plans based on ranges of exercise prices:

	Options outstanding			Options exercisable		
Range of exercise prices	**Number of options**	**Weighted-average remaining contractual life**	**Weighted-average exercise price**	**Number of options**	**Weighted-average remaining contractual life**	**Weighted-average exercise price**
$0.01 - 0.11	230,071	7	$ 0.10	230,071	7	$ 0.10
0.11 - 0.70	859,597	9	0.62	859,597	9	0.62
0.71 - 1.65	2,265,150	8	1.55	1,421,771	8	1.50
1.65 - 2.60	2,321,815	11	2.35	631,454	11	2.38
2.61 - 5.80	845,000	11	5.80	100,000	11	5.80
	6,521,633	10	$ 2.21	3,242,893	9	$ 1.47

Amended and restated restricted stock plan

During 2004, the Company issued 700,000 restricted common shares with a fair value of $1.65 per share at the date of grant to certain directors pursuant to the Amended Plan. The restricted shares cannot be sold or otherwise transferred during the vesting period, which ranges from three to four years from the issuance date. The Company retains a reacquisition right in the event the director ceases to be a member of the Board of Directors of the Company under

certain conditions. The awards are expensed on a straight-line basis over the vesting period. A summary of restricted stock activity under the plan is as follows:

	Shares	Weighted-average grant date fair value
Nonvested at January 28, 2006	261,000	$ 1.65
Vested	179,800	1.65
Nonvested at February 3, 2007	81,200	$ 1.65

The compensation expense recorded was $425,000, $299,000, and $293,000 in fiscal 2004, 2005, and 2006, respectively. There was $136,000 of unearned compensation cost related to the restricted shares granted under the plan at February 3, 2007. The cost is expected to be recognized over a weighted-average period of one year.

12. Net income per common share

The following is a reconciliation of net income and the number of shares of common stock used in the computation of net income per basic and diluted share:

(Dollars in thousands, except per common share data)	Year ended			Three months ended	
	January 29, 2005	January 28, 2006	February 3, 2007	April 29, 2006	May 5, 2007
				(unaudited)	
Numerator for diluted net income per common share—net income	$ 9,460	$ 15,969	$ 22,543	$ 4,700	$ 5,319
Convertible preferred shares—dividends	11,692	12,922	14,584	3,450	3,744
Numerator for basic net income per common share	$ (2,232)	$ 3,047	$ 7,959	$ 1,250	$ 1,575

(Dollars in thousands, except per common share data)	Year ended			Three months ended	
	January 29, 2005	January 28, 2006	February 3, 2007	April 29, 2006	May 5, 2007
				(unaudited)	
Denominator for basic net income per share weighted-average common shares	5,032,612	6,478,217	9,130,697	6,960,640	11,368,805
Dilutive effect of stock options and nonvested stock	—	3,718,702	3,794,603	3,555,888	3,473,479
Dilutive effect of convertible preferred stock	—	66,101,050	66,101,050	66,101,050	65,810,657
Denominator for diluted net income per common share	5,032,612	76,297,969	79,026,350	76,617,578	80,652,941
Net income (loss) per common share:					
Basic	$ (0.44)	$ 0.47	$ 0.87	$ 0.18	$ 0.14
Diluted	$ (0.44)	$ 0.21	$ 0.29	$ 0.06	$ 0.07
Pro forma numerator for basic and diluted net income available to common stockholders					
Pro forma basic weighted average shares outstanding:					
Basic weighted average shares outstanding					
Conversion of preferred stock into common stock					
Common shares issued in offering					
Pro forma denominator for basic net income per common share					

(Dollars in thousands, except per common share data)	Year ended			Three months ended	
	January 29, 2005	January 28, 2006	February 3, 2007	April 29, 2006	May 5, 2007
				(unaudited)	
Pro forma diluted weighted average shares outstanding:					
Diluted weighted average shares outstanding					
Redemption of Series III preferred stock					
Common shares issued in offering					
Pro forma denominator for diluted net income per common share					
Pro forma net income per common share:					
Pro forma basic					
Pro forma diluted					

The denominator for diluted net income per common share for fiscal 2005 and 2006 excludes 1,296,815 and 1,075,000 employee options, respectively, due to their anti-dilutive effects. Fiscal 2006 also excludes 400,000 of employee options which vest upon future performance criteria. The denominator for diluted net income per common share for fiscal 2004 excludes 3,647,645 employee options and 65,954,920 shares of cumulative preferred shares due to their anti-dilutive effects.

13. Employee benefit plan

The Company provides a 401(k) retirement plan covering all employees who qualify as to age, length of service, and hours employed. In fiscal 2004, 2005, and 2006, the plan was funded through employee contributions and a Company match of 40% of the first 3% of employee contributions. For fiscal years 2004, 2005, and 2006, the Company match was $250,000, $256,000, and $300,000, respectively.

14. Related-party transactions

During fiscal 1997, 1998, and 2001, certain officers of the Company were issued shares of Series V, IV, and I Preferred Stock, respectively, in exchange for promissory notes. These notes bear interest at a rate of 6.85% per annum and are due and payable at the earlier of 90 days

after termination of employment or various dates through November 4, 2007, subject to certain exceptions.

During fiscal 2006, an officer of the Company entered into a promissory note for $4,094,000 in exchange for exercising options for 3,000,000 common shares amounting to $1,680,000 and payment of tax withholding of $2,414,000 by the Company on behalf of the officer. The note bears interest at a rate of 5.06% per annum and is due at the earlier of an initial public offering of the Company's common stock or five years from issuance date.

As of January 28, 2006 and February 3, 2007, the outstanding amount on these loans was $373,000 and $4,467,000, respectively. These notes receivable are reflected as a reduction of equity in the accompanying consolidated statements of stockholders' equity.

15. Subsequent events (unaudited)

On June 29, 2007, we amended our existing credit agreement with our bank group. The terms of our credit agreement were modified to increase the maximum credit from $100 million to $150 million and maintain a $50 million accordion option and extend the expiration of the agreement, by one additional year, to May 31, 2011. Outstanding borrowings bear interest at the prime rate or Eurodollar rate plus 1.00% up to $100 million and 1.25% thereafter. Debt covenants, collateral, and advance rates are consistent with the previous agreement.

The related party note receivable of $4,094,000 was paid in full on June 29, 2007.

In June 2007, we finalized a lease for a second distribution facility located in Phoenix, Arizona. The lease expires in March 2019. Minimum lease payments, excluding CAM, insurance, and real estate taxes, are approximately $18.4 million over the lease term.

In April 2007, we finalized a lease for additional office space in Romeoville, Illinois. The lease expires in August 2018. Minimum lease payments, excluding CAM, insurance, and real estate taxes, are approximately $15.6 million over the lease term.

16. Valuation and qualifying accounts

Description (Dollars in thousands)	Balance at beginning of period	Charged to costs and expenses	Deductions	Balance at end of period
Year ended February 3, 2007				
Allowance for doubtful accounts	$ 224	$ 338	$ (140)(1)	$ 422
Shrink reserve	722	2,003	(1,720)	1,005
Inventory—lower of cost or market reserve	758	359	(416)	701
Year ended January 28, 2006				
Allowance for doubtful accounts	55	169	—	224
Shrink reserve	829	2,246	(2,353)	722
Inventory—lower of cost or market reserve	612	758	(612)	758
Year ended January 29, 2005				
Allowance for doubtful accounts	33	65	(43)(1)	55
Shrink reserve	2,093	5,215	(6,479)	829
Inventory—lower of cost or market reserve	2,013	612	(2,013)	612

(1) Represents write-off of uncollectible accounts.

Store Locations (207 stores in 26 states)

Note: As of May 31st, 2007.

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Through and including , 2007 (the 25th day after the date of this prospectus) federal securities law may require all dealers that effect transactions in these securities, whether or not participating in this offering, to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Part II

Information not required in prospectus

Item 13. Other expenses of issuance and distribution

The following table sets forth all costs and expenses, other than the underwriting discounts and commissions payable by us in connection with the sale and distribution of the common stock being registered. All amounts shown are estimates except for the Securities and Exchange Commission registration fee, the NASD filing fee and the NASDAQ Global Select Market application fee.

Securities and Exchange Commission registration fee	$	3,531
NASD filing fee	$	12,000
NASDAQ Global Select Market application fee	$	100,000
Blue sky qualification fees and expenses		*
Printing and engraving expenses		*
Legal fees and expenses		*
Accounting fees and expenses		*
Transfer agent and registrar fees		*
Miscellaneous expenses		*
Total		*

* To be completed by amendment.

Item 14. Indemnification of directors and officers

Section 102 of the Delaware General Corporation Law, or DGCL, as amended, allows a corporation to limit or eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the DGCL provides, among other things, that we may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding—other than an action by or in the right of ULTA—by reason of the fact that the person is or was a director, officer, agent, or employee of ULTA, or is or was serving at our request as a director, officer, agent or employee of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding. The power to indemnify applies (a) if such person is successful on the merits or otherwise in defense of any action, suit or proceeding or (b) if such person acting in good faith and in a manner he reasonably believed to be in the best interest, or not opposed to the best interest, of ULTA, and with respect to any criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful. The power to

indemnify applies to actions brought by or in the right of ULTA as well but only to the extent of defense expenses, including attorneys' fees but excluding amounts paid in settlement, actually and reasonably incurred and not to any satisfaction of judgment or settlement of the claim itself, and with the further limitation that in such actions no indemnification shall be made in the event of any adjudication of liability to ULTA, unless the court believes that in light of all the circumstances indemnification should apply.

Section 174 of the DGCL provides, among other things, that a director, who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

Our amended and restated certificate of incorporation, attached as Exhibit 3.1 hereto, provides that we shall indemnify our directors against liability to the corporation or stockholders to the fullest extent permissible under the DGCL. Our Amended and Restated Bylaws, attached as Exhibit 3.2 hereto, provides that we shall indemnify our directors, officers and those serving at the request of the corporation to the fullest extent permissible under the DGCL, including in circumstances in which indemnification is otherwise discretionary under the DGCL. We also intend to maintain director and officer liability insurance, if available on reasonable terms. These indemnification provisions may be sufficiently broad to permit indemnification of our officers and directors for liabilities, including reimbursement of expenses incurred, arising under the Securities Act of 1933, as amended, which we refer to as the Securities Act.

The underwriting agreement, a form of which is attached as Exhibit 1.1 hereto, provides for indemnification by the underwriters of us and our officers and directors for certain liabilities, including matters arising under the Securities Act.

Item 15. Recent sales of unregistered securities

Since May 31, 2004, we have issued unregistered securities in the transactions described below:

During the period beginning May 31, 2004 through June 30, 2007, we granted stock options relating to our common stock to employees, directors and consultants under the 2002 Plan for an aggregate of 4,736,815 shares of common stock at a weighted average exercise price of $2.95 per share.

During the period beginning May 31, 2004 through June 30, 2007, we issued an aggregate of 5,545,238 shares of common stock to current and former employees, directors and consultants of the company upon exercise of vested stock options. The shares were issued at a weighted average exercise price of $0.69 per share for an aggregate purchase price of $3,842,500.

On June 21, 2004, we issued 500,000 shares of common stock to one of our directors, Dennis Eck, pursuant to a restricted stock agreement under which 100% of the shares were vested as of May 1, 2007. Mr. Eck did not pay any consideration for this stock.

On June 21, 2004, we issued an additional 484,848 shares of common stock to Mr. Eck in exchange for $799,999.

On June 21, 2004, we issued 200,000 shares of common stock to one of our directors, Bob DiRomualdo, pursuant to a restricted stock agreement under which 25% of the shares vest annually beginning February 26, 2005. Mr. DiRomualdo will be 100% vested with respect to this stock as of February 26, 2008. Mr. DiRomualdo did not pay any consideration for this stock.

On June 21, 2004, we issued an additional 424,242 shares of common stock to Mr. DiRomualdo in exchange for $699,999.

On November 15, 2005, we issued 47,619 shares of common stock to a new hire, Michael Lovsin, in connection with his becoming an employee of the company, in exchange for $100,000.

On December 3, 2005, we issued 47,619 shares of common stock to a new hire, Robert Santosuosso, in connection with his becoming an employee of the company, in exchange for $100,000.

On February 2, 2005, we issued 146,130 shares of Series I convertible preferred stock to Yves Sisteron upon the exercise by Mr. Sisteron of an option to purchase such shares, in exchange for $14,613.

These securities were offered and sold by us in reliance upon the exemptions provided for in Section 4(2), Regulation D or Rule 701 promulgated under the Securities Act relating to sales not involving any public offering. The sales were made without the use of an underwriter and the certificates representing the securities sold contain a restrictive legend that prohibits transfers without registration or an applicable exemption.

Item 16. Exhibits and financial statement schedules

(a) Exhibits.

Exhibit number	Description of document
1.1*	Form of Underwriting Agreement.
3.1	Amended and Restated Certificate of Incorporation.
3.2	Amended and Restated Bylaws.
4.1*	Specimen Common Stock Certificate.
4.2	Third Amended and Restated Registration Rights Agreement between Ulta Salon, Cosmetics & Fragrance, Inc. and the stockholders party thereto.
4.3	Second Amended and Restated Reclassification and Sale of Shares Agreement, dated as of December 18, 2000, between Ulta Salon, Cosmetics & Fragrance, Inc. and the stockholders and warrant holders party thereto.
4.3(a)	Amendment to the Second Amended and Restated Reclassification and Sale of Shares Agreement, dated as of May 25, 2001, between Ulta Salon, Cosmetics & Fragrance, Inc. and the stockholders party thereto.
4.4	Stockholder Rights Agreement.
5.1*	Opinion of Latham & Watkins LLP.
10.1	Employment Agreement, dated as of June 23, 2006, between Ulta Salon, Cosmetics & Fragrance, Inc. and Lyn Kirby.
10.2	Secured Promissory Notes, dated as of June 30, 2006, by Lyn Kirby in favor of Ulta Salon, Cosmetics & Fragrance, Inc.

Exhibit number	Description of document
10.3	Employment Agreement, dated as of December 12, 2005, between Ulta Salon, Cosmetics & Fragrance, Inc. and Bruce Barkus.
10.3(a)	Amendment to Employment Agreement, dated as of June 28, 2006, between Ulta Salon, Cosmetics & Fragrance, Inc. and Bruce Barkus
10.4	Restricted Stock Agreement, dated as of June 21, 2004 between Ulta Salon, Cosmetics & Fragrance, Inc. and Dennis Eck.
10.5	Restricted Stock Agreement, dated as of June 21, 2004 between Ulta Salon, Cosmetics & Fragrance, Inc. and Robert DiRomualdo.
10.6	Stock Purchase Agreement, executed on December 21, 2006, between Ulta Salon, Cosmetics & Fragrance, Inc. and Charles R. Weber.
10.7	Ulta Salon, Cosmetics & Fragrance, Inc. Second Amended and Restated Restricted Stock Option Plan.
10.7(a)	Amendment to Ulta Salon, Cosmetics & Fragrance, Inc. Second Amended and Restated Restricted Stock Option Plan.
10.8	Ulta Salon, Cosmetics & Fragrance, Inc. Second Amended and Restated Restricted Stock Plan.
10.9	Ulta Salon, Cosmetics & Fragrance, Inc. 2002 Equity Incentive Plan.
10.10	Lease Agreement, dated June 22, 1999, between ULTA3 Cosmetics & Salon, Inc. and 1135 Arbor Drive Investors LLC.
10.11	Lease, dated September 11, 2002, between Ulta Salon, Cosmetics & Fragrance, Inc. and The Prudential Insurance Company of America.
10.11(a)	First Amendment to Lease, dated August 24, 2004, between Ulta Salon, Cosmetics & Fragrance, Inc. and The Prudential Insurance Company of America.
10.12	Lease, dated October 31, 2006, between Ulta Salon, Cosmetics & Fragrance, Inc. and The Prudential Insurance Company of America.
10.13	Office Lease, dated as of April 17, 2007, between Ulta Salon, Cosmetics & Fragrance, Inc. and Bolingbrook Investors, LLC.
10.14*	Lease, effective as of June 21, 2007, by and between Southwest Valley Partners, LLC and Ulta Salon, Cosmetics & Fragrance, Inc.
10.15	Third Amendment and Restated Loan and Security Agreement, dated as of June 29, 2007, by and among Ulta Salon, Cosmetics & Fragrance, Inc., LaSalle Bank National Association, Wachovia Capital Finance Corporation (Central) and JPMorgan Chase Bank, N.A.
23.1	Consent of Ernst & Young LLP, independent registered public accounting firm
23.2*	Consent of Latham & Watkins LLP (included in Exhibit 5.1)

* To be filed by amendment.

(b) Financial statement schedules.

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the consolidated financial statements or notes thereto.

Item 17. Undertakings

(a) The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(b) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this amendment to the registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Chicago, State of Illinois, on August 17, 2007.

ULTA SALON, COSMETICS & FRAGRANCE, INC.

By: /s/ Gregg R. Bodnar
Gregg R. Bodnar
Chief Financial Officer and Assistant Secretary

Pursuant to the requirements of the Securities Act of 1933, this amendment to the registration statement has been signed by the following persons in the capacities and on the dates indicated:

Signature	Title	Date
* Lynelle P. Kirby	President, Chief Executive Officer and Director (*Principal Executive Officer*)	August 17, 2007
/s/ Gregg R. Bodnar Gregg R. Bodnar	Chief Financial Officer and Assistant Secretary (*Principal Financial and Accounting Officer*)	August 17, 2007
* Hervé J.F. Defforey	Director	August 17, 2007
* Robert F. DiRomualdo	Director	August 17, 2007
* Dennis K. Eck	Chairman	August 17, 2007
* Gerald R. Gallagher	Director	August 17, 2007
* Terry J. Hanson	Director	August 17, 2007
* Charles Heilbronn	Director	August 17, 2007

Signature	Title	Date
* Steven E. Lebow	Director	August 17, 2007
* Yves Sisteron	Director	August 17, 2007

* By: /s/ Gregg R. Bodnar
Gregg R. Bodnar
Attorney-in-Fact

EXHIBIT INDEX

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23.1	Consent of Ernst & Young LLP, independent registered public accounting firm
23.2*	Consent of Latham & Watkins LLP (included in Exhibit 5.1)

* To be filed by amendment.

EXHIBIT 3.1

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ULTA SALON, COSMETICS & FRAGRANCE, INC.

Pursuant to Sections 242 and 245
Of the General Corporation Law of the State of Delaware

Ulta Salon, Cosmetics & Fragrance, Inc., a corporation existing under the laws of the State of Delaware ("the Corporation"), does hereby certify as follows:

1. That the name of the Corporation is Ulta Salon, Cosmetics & Fragrance, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 1990 under the name R.G. Trends Corporation. A Restated Certificate of Incorporation was filed on January 19, 1990 with the Secretary of State of the State of Delaware. A Certificate of Amendment was filed with the Secretary of State of the State of Delaware on June 7, 1990, which changed the name of the Corporation to "Ulta3, Inc.". A Certificate of Amendment was filed with the Secretary of State of the State of Delaware on September 17, 1991. A Certificate of Amendment was filed on January 31, 1992 with the Secretary of State of the State of Delaware. A Certificate of Amendment was filed with the Secretary of State of the State of Delaware on February 7, 1992, which changed the name of the Corporation to "Ulta^{3} The Cosmetic Savings Store, Inc". A Certificate of Amendment of Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on July 12, 1995, which, among other things, changed the name of the Corporation to "Ulta^{3} Cosmetics & Salon, Inc". The Restated Certificate of Incorporation of the Corporation was amended by a Certificate of Amendment of Restated Certificate of Incorporation filed on April 1, 1997. A Restated Certificate of Incorporation was filed April 1, 1997 with Secretary of State of the State of Delaware. The Restated Certificate of Incorporation was amended by a Certificate of Amendment of Restated Certificate of Incorporation filed April 30, 1998 and by a Certificate of Amendment of Restated Certificate of Incorporation filed on July 29, 1999, which changed the name of the Corporation to the name "Ulta Salon, Cosmetics & Fragrance, Inc." A Restated Certificate of Incorporation of the Corporation was filed December 18, 2000 with the Secretary of State of Delaware. A Certificate of Amendment was filed with the Secretary of State of Delaware on January 31, 2002. A Certificate of Correction was filed with the State of Delaware on September 19, 2002, which corrected a certain error in the Restated Certificate of Incorporation dated as of December 18, 2000. A Certificate of Amendment was filed with the Secretary of State of Delaware on __________, 2007, which added seventy million (70,000,000) shares of preferred stock to the authorized capital stock of the Corporation and designated a series of junior participating preferred stock.

2. This Amended and Restated Certificate of Incorporation (including Exhibit A attached hereto, this "Restated Certificate of Incorporation") restates and integrates and also further amends the Certificate of Incorporation of the Corporation. This Restated Certificate of Incorporation was proposed by the Board of Directors and duly adopted by the stockholders of the Corporation in the manner, and by the vote prescribed by, Sections 228, 242 and 245 of the

General Corporation Law of the State of Delaware (as the same exists or may hereafter be amended, the "DGCL"). The text of the Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

ARTICLE ONE

The name of the Corporation is Ulta Salon, Cosmetics & Fragrance, Inc.

ARTICLE TWO

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware, 19808. The name of its registered agent at such address is The Prentice-Hall Corporation System, Inc.

ARTICLE THREE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE FOUR

(a) Authorized Shares. The total number of shares of capital stock which the Corporation has the authority to issue is 470,000,000 shares, consisting of:

(i) 400,000,000 shares of common stock, par value $.01 per share (the "Common Stock"); and

(ii) 70,000,000 shares of preferred stock, par value $.01 per share (the "Preferred Stock"), of which 400,000 shares are designated as Series A Junior Participating Preferred Stock with the voting powers, designations, powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, if any, of the Series A Preferred Stock are set forth in Exhibit A attached hereto

Notwithstanding the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), the number of authorized shares of Preferred Stock and Common Stock may, without a class or series vote, be increased or decreased (but not below the number of shares thereof then outstanding) from time to time by the affirmative vote of the holders of a majority in voting power of the outstanding shares of the Corporation's stock entitled to vote, voting together as a single class.

(b) Preferred Stock. The Board of Directors is hereby expressly authorized, subject to limitations prescribed by law, to provide by resolution or resolutions for the issuance of the shares of Preferred Stock in one or more series and, by filing a certificate of designation pursuant to the DGCL setting forth a copy of such resolution or resolutions, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers (including voting powers, if any), preferences, and rights of the shares of each such series and the qualifications, limitations, and restrictions thereof. The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

(i) the number of shares constituting such series and the distinctive designation of that series;

(ii) the dividend rate, if any, on the shares of such series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

(iii) whether such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

(iv) whether such series shall have conversion privileges and, if so, the terms and conditions of conversion, including provision for adjustment of the conversion rate upon such events as the Board of Directors shall determine;

(v) whether or not the shares of such series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

(vi) whether such series shall have a sinking fund for the redemption or purchase of shares of the series, and, if so, the terms and amount of such sinking fund;

(vii) the rights of the shares of such series in the event of voluntary or involuntary dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and

(viii) any other powers, preferences, rights, qualifications, limitations, and restrictions of such series.

(c) Common Stock. Except as otherwise provided in this Amended and Restated Certificate of Incorporation (including any certificate of designation with respect to any

series of Preferred Stock) or by applicable law, the voting, dividend and liquidation rights of the holders of Common Stock are as follows:

(i) Voting Rights. Each record holder of Common Stock shall be entitled at any annual or special meeting of stockholders, with respect to each share of Common Stock held by such holder as of the applicable record date, to one (1) vote per share in person or by proxy on all matters submitted to a vote of the stockholders of the Corporation. There shall be no cumulative voting.

(ii) Dividends and Distributions. Subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions in cash, property or shares of stock of the Corporation as may be declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(iii) Liquidation Rights. In the event of any dissolution, liquidation or winding-up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation and subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the remaining assets and funds of the Corporation, if any, shall be divided among and paid ratably to the holders of Common Stock in proportion to the number of shares held by them.

(iv) Preemptive Rights. The holders of Common Stock shall have no preemptive right to subscribe for any shares of any class or series of capital stock of the Corporation whether now or hereafter authorized.

ARTICLE FIVE

The Corporation is to have perpetual existence.

ARTICLE SIX

At the time this Amended and Restated Certificate of Incorporation becomes effective, the Board of Directors of the Corporation shall consist of nine (9) directors, but may be increased or decreased from time to time by resolution adopted by the affirmative vote of a majority of directors then in office; provided that the number of directors which shall constitute the whole Board of Directors shall be not less than three (3). The Board of Directors shall be divided into three classes, designated Class I, Class

II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors, initially with Class I directors being elected for a one-year term, Class II directors for a two-year term and Class III directors for a three-year term. At each succeeding annual meeting of stockholders, beginning in 2008, successors to the class of directors whose term expires at that annual meeting shall be elected for a three-year term. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. Unless and except to the extent that the By-Laws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

ARTICLE SEVEN

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation.

ARTICLE EIGHT

Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

ARTICLE NINE

No stockholder action may be taken except at an annual or special meeting of stockholders of the Corporation and stockholders may not take any action by written consent in lieu of a meeting.

ARTICLE TEN

Special meetings of the stockholders of the Corporation, for any purpose or purposes, may only be called at any time by a majority of the entire Board of Directors or by either the Chairman or the President of the Corporation.

ARTICLE ELEVEN

The Corporation shall be governed by Section 203 of the DGCL (or any successor provision thereto) ('Section 203"), and the provisions contained in Section 203 shall apply to fullest extent permitted thereunder.

ARTICLE TWELVE

No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL, as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such amendment, modification or repeal.

ARTICLE THIRTEEN

To the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, the Corporation shall indemnify and hold harmless, and advance expenses to any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans maintained or sponsored by the Corporation (a "Covered Person"), against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in the By-Laws (as the same may provide from time to time), the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or a part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized by the By-Laws, in any written agreement with the Corporation, or in the specific case by the Board of Directors; *provided*, *however*, that if a claim for indemnification (following the final disposition of an action, suit or proceeding) or

advancement of expenses is not paid in full within thirty (30) days after a written demand therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim, and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. Nothing contained in this ARTICLE THIRTEEN shall affect any rights to indemnification or advancement of expenses to which directors, officers, employees or agents of the Corporation otherwise may be entitled under the By-Laws, any written agreement with the Corporation or otherwise. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this ARTICLE THIRTEEN with respect to the indemnification and advancement of expenses of directors and officers of the Corporation. Any amendment, modification or repeal of this ARTICLE THIRTEEN shall not adversely affect any right or protection of a Covered Person existing at the time of, or increase the liability of any Covered Person with respect to any acts or omissions of such Covered Person occurring prior to, such amendment, modification or repeal.

ARTICLE FOURTEEN

The Corporation reserves the right to amend, alter, change, waive or repeal any provision of this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware and this Amended and Restated Certificate of Incorporation, and all rights, preferences and privileges conferred on stockholders, directors, officers, employees, agents and other persons in this Amended and Restated Certificate of Incorporation, if any, are granted subject to this reservation. Notwithstanding any other provisions of this Certificate of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that a lesser percentage or separate class vote may be specified or permitted by law, this Certificate of Incorporation or the By-Laws of the Corporation), any proposal to amend or repeal, or to adopt any provision of this Certificate of Incorporation inconsistent with ARTICLES SIX, NINE, TEN, ELEVEN and FOURTEEN shall require the affirmative vote of the holders of not less than 66 2/3% of the votes entitled to be cast by the holders of all the then outstanding shares of stock then entitled to vote generally in the election of directors, voting together as a single class.

The UNDERSIGNED, being the Secretary of the Corporation, does hereby certify that the Corporation has restated its Certificate of Incorporation as set forth above, does hereby certify that such restatement has been duly adopted in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware, and does hereby make and file this Restated Certificate of Incorporation.

Dated ___________, 2007

Name: Bruce E. Barkus
Title: Secretary

EXHIBIT A

CERTIFICATE OF DESIGNATIONS

of

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

of

ULTA SALON, COSMETICS & FRAGRANCE, INC.

(Pursuant to Section 151 of the
Delaware General Corporation Law)

Ulta Salon, Cosmetics & Fragrance, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation as required by Section 151 of the General Corporation Law at a meeting duly called and held.

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation (hereinafter called the "Board of Directors" or the "Board") in accordance with the provisions of the Amended and Restated Certificate of Incorporation of this Corporation, as amended, the Board of Directors hereby creates a series of Preferred Stock, par value $0.01 per share (the "Preferred Stock"), of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, powers and preferences, and qualifications, limitations and restrictions thereof as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" (the "Series A Preferred Stock") and the number of shares constituting the Series A Preferred Stock shall be 400,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series A Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any class or series of stock of this Corporation ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference

to the holders of Common Stock, par value $.01 per share (the "Common Stock"), of the Corporation, and of any other stock ranking junior to the Series A Preferred Stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) $1.00 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section 2 immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A

Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 (sixty) days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A

Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (both as to dividends and upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Amended and Restated Certificate of Incorporation, as amended, or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up.

(A) Upon any liquidation, dissolution or winding up of the Corporation, voluntary or otherwise, no distribution shall be made (i) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received an amount per share (the “Series A Liquidation Preference”) equal to $1,000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (ii) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to

such event under the proviso in clause (i) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that are outstanding immediately prior to such event.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other classes and series of stock of the Corporation, if any, that rank on a parity with the Series A Preferred Stock in respect thereof, then the assets available for such distribution shall be distributed ratably to the holders of the Series A Preferred Stock and the holders of such parity shares in proportion to their respective liquidation preferences.

(C) Neither the merger or consolidation of the Corporation into or with another corporation nor the merger or consolidation of any other corporation into or with the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision, combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable by the Corporation.

Section 9. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up, junior to all series of any other class of the Corporation’s Preferred Stock, except to the extent that any such other series specifically provides that it shall rank on a parity with or junior to the Series A Preferred Stock.

Section 10. Amendment. At any time any shares of Series A Preferred Stock are outstanding, the Amended and Restated Certificate of Incorporation of the Corporation, as amended, shall not be further amended in any manner which would materially alter or change the

powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting separately as a single class.

Section 11. Fractional Shares. Series A Preferred Stock may be issued in fractions of a share that shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

* * *

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by the undersigned authorized officer this___ day of __________, __________.

____

Name: Bruce E. Barkus
Title: Secretary

EXHIBIT 3.2

AMENDED AND RESTATED BY-LAWS
OF
ULTA SALON, COSMETICS & FRAGRANCE, INC.

ADOPTED ON
July 18, 2007

ARTICLE I.
OFFICES

1. Registered Office. The registered office of Ulta Salon, Cosmetics & Fragrance, Inc. (the "Corporation") in the State of Delaware shall be located at 32 Loockerman Square, Suite L-100, Dover, Delaware, County of Kent. The name of the Corporation's registered agent at such address shall be The Prentice-Hall Corporation Systems, Inc. The registered office and/or registered agent of the Corporation may be changed from time to time by action of the Board of Directors (the "Board").

2. Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board may from time to time determine or the business of the Corporation may require.

ARTICLE II.
MEETINGS OF STOCKHOLDERS

1. Annual Meetings. An annual meeting of the stockholders shall be held each year as and to the extent required under applicable law for the purpose of electing directors and conducting such other proper business as may come before the meeting. The date, time and place of the annual meeting shall be determined by the Board.

2. Special Meetings. Special meetings of stockholders may be called for any purpose or purposes and may be held at such time and place as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Such meetings may be called at any time by a majority of the entire Board, the Chairman of the Board or the President of the Corporation. The only matters that may be considered at any special meeting of the stockholders are the matters specified in the notice of the meeting.

3. Place of Meetings. The Board may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting. If no designation is made, the place of meeting shall be the principal executive office of the Corporation.

4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, time, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such

meeting not less then 10 nor more than 60 days before the date of the meeting. All such notices shall be delivered, either personally, by mail, or, except as otherwise provided by law, by a form of electronic transmission (consented to by the stockholder to whom the notice is being given), by or at the direction of the Board, the President or the Secretary. Any stockholder consent to electronic transmission shall be revocable by the stockholder by written notice to the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the Corporation. Notice given by a form of electronic transmission shall be deemed given (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice, (ii) if by electronic mail, when directed to receive notice, (iii) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice, and (iv) if by any other form of electronic transmission, when directed to the stockholder.

5. Stockholders List. The officer having charge of the stock ledger of the Corporation shall make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of the stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days before the date of the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting or, if not specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

6. Quorum. The holders of a majority of the outstanding shares of capital stock, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by statute or by the Certificate of Incorporation. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum and the votes present may continue to transact business until adjournment. If a quorum is not present, the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place. When a specified item of business requires a vote by class or series (if the Corporation shall then have outstanding shares of more than one class or series) voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum (as to such class or series) for the transaction of such item of business.

7. Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

8. Vote Required. Unless otherwise required by law, the Certificate of Incorporation, these By-Laws or the rules or regulations of any stock exchanges applicable to the

Corporation or its securities, any question brought before any meeting of stockholders shall be decided by the vote of the holders of a majority of the stock which are present in person or by proxy and entitled to vote thereat. Where a separate vote by class is required, the affirmative vote of the majority of shares of such class present in person or represented by proxy at the meeting shall be the act of such class.

9. Voting Rights. Except as otherwise provided by the General Corporation Law of the State of Delaware ("DGCL") or by the Certificate of Incorporation of the Corporation or any amendments thereto, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder. The Board may by resolution establish a method for stockholders to cast their votes by a secure electronic method.

10. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after 3 years from its date, unless the proxy provides for a longer period.

11. Business Brought Before a Meeting. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board, (ii) brought before the meeting by or at the direction of the Board, or (iii) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given "Timely Notice" (as hereinafter defined) thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder to be timely must be received not earlier than the close of business on the one hundred twentieth (120) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90) day prior to such annual meeting or the tenth (10) day following the day on which notice of the date of the meeting was mailed or public disclosure of the meeting was made, whichever first occurs (such notice within such time periods, "Timely Notice"). A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting, (ii) the name and record address of the stockholder proposing such business, (iii) the class and number of shares of capital stock of the Corporation which are beneficially owned by the stockholder, and (iv) any material interest of the stockholder in such business. Notwithstanding anything in these By-Laws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Section 11 of Article II. The presiding officer of an annual meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting and in accordance with the provisions of this Section 11 of Article II; and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

ARTICLE III.
DIRECTORS

1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board.

2. Nomination of Directors. Nominations of persons for election to the Board at the annual meeting may be made at such meeting by or at the direction of the Board, by any committee or persons appointed by the Board or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Article III, Section 2. Such nominations by any stockholder shall be made pursuant to Timely Notice in writing to the Secretary of the Corporation. Such stockholder's notice to the Secretary shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, (C) the class and number of shares of capital stock of the Corporation which are beneficially owned by the person, and (D) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to the Rules and Regulations of the Securities and Exchange Commission under Section 14 of the Securities Exchange Act of 1934, as amended; and (ii) as to the stockholder giving the notice (A) the name and record address of the stockholder and (B) the class and number of shares of capital stock of the Corporation which are beneficially owned by the stockholder. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth herein. The officer of the Corporation presiding at an annual meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

3. Number, Election and Term of Office. The number of directors which shall constitute the whole Board shall be not less than three (3). The exact number of directors shall be determined from time to time by resolution of the Board pursuant to the Certificate of Incorporation. The directors need not be stockholders. Except as otherwise provided in Section 3 of this Article III, directors shall be elected at the annual meeting of the stockholders and each director elected shall hold office until such director's successor is elected and qualified or until the earlier of such director's resignation or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation as provided in Article VIII, Section 4 of these Bylaws. When one or more directors so resigns, vacancies shall be filled as provided in Section 4 of this Article III. Unless otherwise restricted by or provided in the DGCL or the Certificate of Incorporation, any director or the entire Board may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of 66 2/3% of voting power of the shares of stock of the Corporation then entitled to vote at an election of directors.

4. Vacancies. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, vacancies on the Board by reason of death, resignation, retirement, disqualification, removal from office or otherwise, and newly created directorships resulting from any increase in the authorized number of directors, shall be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until the next annual election of directors and until such director's successor is duly elected and qualified, or until such director's earlier resignation or removal..

5. Annual Meetings. The annual meeting of each newly elected Board shall be held without other notice than this by-law after, and at the same place as, the annual meeting of stockholders.

6. Other Meetings and Notices. Regular meetings, other than the annual meeting, of the Board may be held without notice at such time, once every fiscal quarter, and at such place as shall from time to time be determined by resolution of the board. Special meetings of the Board may be called by or at the request of the Chairman of the Board, Chief Executive Officer, the President or two directors on at least 24 hours notice to each director, either personally, by telephone, by mail, by telegraph or by electronic transmission.

7. Quorum, Required Vote and Adjournment. A majority of the total number of directors shall constitute a quorum for the transaction of business. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

8. Committees. The Board may designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Notwithstanding the foregoing, the composition and duties of any committee shall comply with the rules and regulations of any stock exchange or quotation system applicable to the Corporation or any regulation or law applicable to the Corporation or its securities. The delegation of any decision to a committee of the Board, and the votes required for the making of such decision by such committee, shall have the same approval requirements as the taking of such action by the Board. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board, any committee charter or in these By-Laws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

9. Committee Rules. Each committee of the Board may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be

provided by a resolution of the Board designating such committee. In the event that a member and that member's alternate, if alternates are designated by the Board as provided in Section 8 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member.

10. Minutes of Committee Meetings. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

11. Meetings and Action of Committees. Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. In the absence of such rules, each committee shall conduct its business in the same manner as the Board conducts its business pursuant to the applicable sections of Article III of these By-Laws.

12. Communications Equipment. Members of the Board or any committee thereof may participate in and act at any meeting of such Board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute presence in person at the meeting.

13. Waiver of Notice and Presumption of Assent. Any member of the Board or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

14. Action by Written Consent. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board of committee.

ARTICLE IV.
OFFICERS

1. Number. The officers of the Corporation shall be elected by the Board and shall consist of a Chief Executive Officer, a President, a Chief Operating Officer, a Chief Financial Officer, one or more Vice-Presidents, a Secretary, a Treasurer, and such other officers and assistant officers as may be deemed necessary or desirable by the Board. Any number of offices may be held by the same person. In its discretion, the Board may choose not to fill any office for

any period as it may deem advisable, except that the offices of Chief Executive Officer, President and Secretary shall be filled as expeditiously as possible.

2. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board at its first meeting held after each annually meeting of stockholders or as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the Board. The Chairman of the Board, the Chief Executive Officer and the Chief Operating Officer, acting unanimously (and in consultation with the Compensation Committee) may make interim appointments of officers between meetings of the Board, but such appointment shall only be effective until the next Board meeting. Each officer elected by the Board shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

3. Removal. Any officer or agent elected by the Board may be removed by the Board whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term by the Board then in office.

5. Compensation. Compensation of all officers shall be fixed by the Board, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the Corporation.

6. Chairman of the Board. The Chairman of the Board shall have the powers and perform the duties as may be prescribed by the Board or provided in these By-Laws. Whenever the Chief Executive Officer or the President is unable to serve, by reason of sickness, absence or otherwise, the Chairman of the Board shall perform all the duties and functions and exercise all the powers of the respective office.

7. Chief Executive Officer. The Chief Executive Officer of the Corporation shall be in general and active charge of the entire business and all of the affairs of the Corporation, shall be its chief policy-making officer and shall be responsible for implementing all decisions of the Board. Subject to the further direction from time to time from the Board, the Chief Executive Officer shall have the authority to execute any and all documentation on behalf of the Corporation and shall have all of the powers and perform all the duties incident to the position as well as such other duties as may be prescribed by the Board or as may be prescribed in these By-Laws.

8. President. The President shall be the Chief Executive Officer if that position is not filled by another individual and shall have the powers and perform the duties incident to that particular position; if the Chief Executive Officer position has been filled by another individual, the President shall assist the Chief Executive Officer in the performance of the duties of Chief Executive Officer and shall, at the request of the Chief Executive Officer, represent such Chief Executive Officer at public or private functions and ceremonies and perform such other functions

as may be reasonably requested by the Chief Executive Officer. The President shall serve as the direct supervisor for various operating departments of the Corporation as determined from time to time by the Chairman of the Board, the Chief Executive Officer or the Board. Subject to the further direction from time to time of the Board, the President shall have the authority to execute any and all documentation on behalf of the Corporation and shall have all of the powers and perform all the duties incident to the position as well as such other duties as may be prescribed by the Board or as may be prescribed in these By-Laws.

9. Chief Operating Officer. The Chief Operating Officer of the Corporation shall also be a Vice-President of the Corporation and shall subject to specific direction by the direction of the Chairman of the Board, the Chief Executive Officer and the Board, be in general and active charge of the business operations of the Corporation. The Chief Operating Officer shall consult and coordinate regularly with the Chief Executive Officer and the President and shall serve as the direct supervisor for various operating departments of the Corporation as determined from time to time by the Chairman of the Board, the Chief Executive Officer, the President or the Board. Subject to the further direction from time to time from the Board, the Chief Operating Officer shall have the authority to execute any and all documentation on behalf of the Corporation and shall have all of the powers and perform all the duties incident to the position as well as such other duties as may be prescribed by the Board or as may be prescribed in these By-Laws.

10. Chief Financial Officer. The Chief Financial Officer of the Corporation shall responsible for the financial operations of the Corporation, including the maintenance of financial records, the preparation and reporting of financial results and related tax returns, the co-ordination of the reporting practices of the Corporation with outside auditors, the negotiation of credit arrangements with the Corporations' lenders and investors and related budgeting, tax-planning and forecasting functions. Subject to the further direction from time to time from the Board, the Chief Financial Officer shall have the authority to execute documentation on behalf of the Corporation and shall have such other powers and perform such other duties incident to the position as well as such other duties as may be prescribed by the Board or as may be prescribed in these By-Laws.

11. Vice-Presidents. The Vice-President, or if there shall be more than one, the Vice-Presidents in the order and with the responsibilities and status determined by the Board, shall, be responsible for specific departments or functions of the Corporation and in the event of the death, or disability of the senior executive officers described in Sections 6, 7, 8, 9 and 10 of this Article IV ("Senior Executive Officers") act with all of the powers and be subject to all the restrictions of such Senior Executive Officers. Vice-Presidents may be designated (in order of seniority) as Executive Vice-President, Senior Vice-President or Vice-President, with such addition or additions to the title (e.g. Vice-President – Finance) as may be deemed appropriate to indicate the area of responsibility within the Corporation. Subject to the further direction from time to time of the Board, each Vice-President shall have the authority to execute any and all documentation on behalf of the Corporation relating to the area of their responsibility and shall have all of the powers and perform all the duties incident to the position as well as such other duties as may be prescribed by the Board or as may be prescribed in these By-Laws.

12. The Secretary and Assistant Secretaries. The Secretary shall attend all meetings of the Board, all meetings of the committees thereof and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose. The Secretary: shall give, or cause to be given, all notices required to be given by these By-Laws or by law and shall have such powers and perform such duties as the Board or these By-Laws may, from time to time, prescribe; and shall have custody of the corporate seal of the Corporation. The Secretary, or an Assistant Secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature. The Assistant Secretary, or if there be more than one, the assistant secretaries in the order determined by the Board, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may, from time to time, prescribe.

13. The Treasurer and Assistant Treasurer. The Treasurer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation; shall deposit all monies and other valuable effects in the name and to the credit of the Corporation as may be ordered by the Board; shall cause the funds of the Corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the Chief Financial Officer and the Board, at its regular meeting or when the Board so requires, an account of the Corporation; shall have such powers and perform such duties as the Board or these By-Laws may, from time to time, prescribe. If required by the Board, the Treasurer shall give the Corporation a bond (which shall be rendered every 6 years) in such sums and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of the office of Treasurer and for the restoration to the Corporation, in case of death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in the possession or under the control of the Treasurer belonging to the Corporation. The assistant Treasurer, or if there shall be more than one, the assistant Treasurers in the order determined by the Board, shall in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer. The assistant Treasurers shall perform such other duties and have such other powers as the Board may, from time to time, prescribe.

14. Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these By-Laws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the Board.

15. Absence or Disability of Officers. In the case of the absence or disability of any officer of the Corporation and of any person hereby authorized to act in such officer’s place during such officer’s absence or disability, the Board may be resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

ARTICLE V.
INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

1. Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or manager of another corporation or of a partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in this Article V, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of the Corporation.

2. Prepayment of Expense. The Corporation shall, to the fullest extent not prohibited by applicable law, pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition; *provided, however*, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article V or otherwise.

3. Claims. If a claim for indemnification (following the final disposition of such action, suit or proceeding) or advancement of expenses under this Article V is not paid in full within thirty days (30) after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such suit. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification and/or advancement of expenses under applicable.

4. Nonexclusivity of Rights. The rights conferred on any Covered Person by this Article V shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any law, the Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors, or otherwise.

5. Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee, agent or manager of another corporation, partnership, limited liability company, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, limited liability company, joint venture, trust, enterprise or non-profit enterprise.

6. Amendment, Modification or Repeal. Any amendment, modification or repeal of the foregoing provisions of this Article V shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

7. Other Indemnification and Prepayment of Expenses. This Article V shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VI.
CERTIFICATES OF STOCK

1. Certificates. The shares of the stock of the Corporation shall be represented by certificates, provided that the Board may provide by resolution that some or all shares of any or all series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of shares of stock of the Corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by (i) the chairperson or vice chairperson of the Board, or the president or a vice president, and (ii) the Secretary or an Assistant Secretary, or the treasurer or an assistant treasurer of the Corporation, certifying the number of shares represented by the certificate owned by such stockholder in the Corporation.

2. Signatures on Certificates. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

3. Lost, Stolen or Destroyed Stock Certificates. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

4. Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders (a) entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, (b) to receive payment of any dividend or other distribution or allotment of any rights, (c) to exercise any rights in respect of any change, conversion or exchange of stock or (d) for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date: (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting and (ii) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (1) the record

date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held and (2) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for the adjourned meeting.

5. Registered Stockholders. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the DGCL.

ARTICLE VII.
GENERAL PROVISIONS

1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

2. Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the Corporation and all notes and other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner, as shall be determined by resolution of the Board or a duly authorized committee thereof.

3. Contracts. The Board may authorize any officer or officers, or any agent or agents, of the Corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the company, and such authority may be general or confined to specific instances.

4. Loans. No loans shall be made or contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by resolution or other specific approval of the Board. Such authority may be general or confined to specific instances.

5. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board.

6. Corporate Seal. The Board may provide a corporate seal which, if provided, shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and

the words “Corporate Seal, Delaware”. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

7. Voting Securities Owned By Corporation. Voting securities in any other corporation held by the Corporation shall be voted by the President, unless the Board specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

8. Inspection of Books and Records. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation’s stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person’s interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in the State of Delaware or at its principal place of business.

9. Section Headings. Section headings in these By-Laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

10. Inconsistent Provisions. In the event that any provision of these By-Laws is or becomes inconsistent with any provision of the Certificate of Incorporation, the DGCL or any other applicable law, the provision of these By-Laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE VIII.
AMENDMENTS

These By-Laws may be amended, altered, or repealed and new by-laws adopted at any meeting of the Board by a majority vote. Notwithstanding the foregoing or any other provisions of these By-Laws or the Certificate of Incorporation of the Corporation (and notwithstanding the fact that a lesser percentage or separate class vote may be specified or permitted by law, these By-Laws or the Certificate of Incorporation of the Corporation), any proposal to amend or repeal, or to adopt any provision of these By-Laws inconsistent with Sections 2 and 11 of Article II, Sections 2 and 3 of Article III and Article VIII of these By-Laws shall require the affirmative vote of the holders of not less than 66 2/3% of the votes entitled to be cast by the holders of all the then outstanding shares of stock then entitled to vote generally in the election of directors, voting together as a single class.

Exhibit 4.2

THIRD AMENDED AND RESTATED
REGISTRATION RIGHTS AGREEMENT

THIS THIRD AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (the "Agreement") made as of July 18, 2007 between UltaSalon, Cosmetics & Fragrance, Inc., a Delaware corporation (the "Company"), and the stockholders set forth on the signature pages hereto (collectively, the "Investors"), amends and restates that certain Second Amended and Restated Registration Agreement, made as of December 18, 2000 (the "Prior Agreement") and shall replace the Prior Agreement and become effective only in the event and upon the consummation of a Qualified Public Offering (as defined herein). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Second Amended and Restated Reclassification and Sale of Shares Agreement (the "Reclassification Agreement"), dated December 18, 2000, among the parties thereto.

WHEREAS, pursuant to Section 7(i) (*Mandatory Conversion*) of the Company's Restated Certificate of Incorporation, the Company may require the conversion of all shares of outstanding Convertible Preferred Stock into shares of Conversion Common Stock (as defined below) upon the consummation of a Qualified Public Offering (such conversion of Convertible Preferred Stock, the "Conversion");

WHEREAS, the Company intends to effect a Qualified Public Offering and, in connection therewith, the Conversion; and

WHEREAS, in connection with such intended Qualified Public Offering, the Company and the Investors desire to amend certain provisions of the Prior Agreement to become effective only in the event and upon the consummation of a Qualified Public Offering.

NOW, THEREFORE, the parties hereto agree as follows:

1 **Effective Time of Agreement**. This Agreement shall become effective only in the event and upon the consummation of a Qualified Public Offering. For the sake of clarity, prior to the consummation of a Qualified Public Offering, the Prior Agreement shall remain in effect until otherwise amended or terminated and this Agreement shall be of no force or effect whatsoever.

2 **Demand Registrations**.

(a) Requests for Registration of Conversion Registrable Securities. Subject to any lock-up requirements of the Company's underwriters and any other provision of this Agreement, at any time the holders of at least a majority with respect to a Long-Form Registration, and twenty-five percent (25%) with respect to a Short-Form Registration, of the Conversion Common Stock then unregistered may request registration under the Securities Act of all or part of their Conversion Registrable Securities on such appropriate registration form of the Securities and Exchange Commission (the "SEC") (i) as shall be selected by the Company and as shall be reasonably acceptable to the holders exercising their demand registration rights hereunder and (ii) as shall permit the disposition of such Conversion Registrable Securities in

accordance with the intended method or methods of disposition specified in the holders' request for such registration;provided, that with respect to any demands for registration on Form S-1 or any similar long-form registration (a "Long-Form Registration") the anticipated aggregate offering price of the Conversion Registrable Securities covered by such registration exceeds twenty million dollars ($20 million) net of underwriting discounts and commissions; and provided, further, that with respect to any demands for registration on Form S-3 or any similar short-form registration (a "Short-Form Registration") the anticipated aggregate offering price of the Conversion Registrable Securities covered by such registration exceeds five million dollars ($5 million) net of underwriting discounts and commissions. Notwithstanding the foregoing, if, in connection with any registration under this Paragraph 2(a) which is proposed by the Company to be a Short-Form Registration, the managing underwriter, if any, shall advise the Company in writing that in its opinion the use of another permitted form is of material importance to the success of the offering, then such registration shall be on such other permitted form.

(b) Demand Registrations. All registrations requested pursuant to Paragraph 2(a) are referred to herein as "Demand Registrations."

(c) Notice. Within ten (10) days after receipt of any Demand Registration, the Company will give written notice of such request to all other holders of Registrable Securities and will include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten (10) days after the receipt of the Company's notice.

(d) Limits on Demand Registrations. The Company shall not be obligated to take any action to effect any Long-Form Registration after the Company has effected three (3) Long-Form Registrations and shall not be obligated to take any action to effect any Short-Form Registration after the Company has effected three (3) Short-Form Registrations. A registration will not count as a Demand Registration (i) unless a registration statement with respect thereto has become effective and remained effective in compliance with the provisions of the Securities Act until the earlier of (x) such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such registration statement and (y) 120 days after the effective date of such registration statement, (ii) if after it has become effective, such registration is interfered with by any stop order, injunction or other order or requirement of the SEC or other governmental agency or court for any reason not attributable to the selling holders and has not thereafter become effective, (iii) if the conditions to closing specified in the underwriting agreement, if any, entered into in connection with such registration are not satisfied or waived, other than by reason of a failure on the part of the holders of the Registrable Securities to be registered thereunder, or (iv) if either any securities are sold by the Company pursuant to such registration or the holders of Registrable Securities are not able to register and sell at least 80% of the Registrable Securities requested to be included in such registration (unless the failure to register and sell such securities is due principally to the action or failure to take action by the holders requesting registration).

(e) Demand Registration Expenses. The Registration Expenses of the holders of Registrable Securities will be paid by the Company in all Demand Registrations.

(f) Priority on Demand Registrations. The Company will not include in any Demand Registration any securities which are not Registrable Securities without the written consent of the holders of a majority of the Registrable Securities included in such registration. If the managing underwriters advise the Company in writing that in their opinion the number of Registrable Securities and other securities requested to be included exceeds the number of Registrable Securities and other securities which can be sold in such offering in an orderly manner in such offering within a price range acceptable to the holders of a majority of the Registrable Securities included in such registration (a "Cut-back Request"), the Company will include in such registration prior to the inclusion of any securities which are not Registrable Securities, (i) first, the number of Conversion Registrable Securities requested to be included which in the opinion of such underwriters can be sold, pro rata among the respective holders on the basis of the amount of Registrable Securities owned, and (ii) second, the number, if any, of Executive Registrable Securities requested to be included which in the opinion of such underwriters can be sold in addition to all Conversion Registrable Securities requested to be included, pro rata among the respective holders on the basis of the amount of Executive Registrable Securities owned. Notwithstanding the foregoing, in the event of a Demand Registration which is initiated by the holders of the Conversion Registrable Securities relating to converted Series I Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock or Series V-1 Preferred Stock (the "Series I/IV/V/V-1 Registrable Securities"), the Company will, in the event of a Cut-back Request, include in such offering (i) first, the number of Series I/IV/V/V-1 Registrable Securities which in the opinion of such underwriters can be sold, pro rata among the respective holders on the basis of the amount of Registrable Securities owned, (ii) second, the number of Conversion Registrable Securities relating to converted Series II Preferred Stock which in the opinion of such underwriters can be sold, pro rata among the respective holders on the basis of the amount of Registrable Securities owned, and (iii) third, the Executive Registrable Securities requested to be included that can be sold, pro rata among the respective holders on the basis of the amount of Registrable Securities owned.

(g) Selection of Underwriters. The Company will have the right to select the investment banker(s) and manager(s) to administer the offering, subject to the approval of the holders of a majority in interest of the Registrable Securities included in such Demand Registration, which approval will not be unreasonably withheld.

(h) Other Registration Rights. Except as provided in this Agreement, the Company will not grant to any Persons the right to request the Company to register any equity securities of the Company, or any securities convertible or exchangeable into or exercisable for such securities, without the written consent of the holders of a majority of the Conversion Registrable Securities; provided, that the Company may grant rights to employees of the Company and its subsidiaries to participate in Piggyback Registrations and Demand Registrations so long as such rights are subordinate to the rights of the holders of Registrable Securities with respect to such Piggyback Registrations and Demand Registrations.

3 **Piggyback Registrations**.

(a) Right to Piggyback. Whenever the Company proposes to register any of its Common Stock or other securities convertible or exchangeable into or exercisable for

Common Stock under the Securities Act and the registration form to be used may be used for the registration of Registrable Securities (a "Piggyback Registration"), the Company will give prompt written notice (in any event within ten (10) business days after its receipt of a Demand Registration) to all holders of Registrable Securities of its intention to effect such a registration and, subject to Paragraphs 3(c) and 3(d) below, will include in such registration all Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten (10) days after the receipt of the Company's notice.

(b) Piggyback Expenses. The Registration Expenses of the holders of Registrable Securities will be paid by the Company in all Piggyback Registrations.

(c) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the Company, the Company will include in such registration (i) first, the securities the Company proposes to sell, (ii) second, the Conversion Registrable Securities requested to be included in such registration, pro rata among the holders of such Conversion Registrable Securities on the basis of the number of shares owned by such holders, (iii) third, the Executive Registrable Securities requested to be included in such registration, pro rata among the holders of such Executive Registrable Securities on the basis of the number of shares owned by such holders, and (iv) fourth, other securities requested to be included in such registration.

(d) Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of holders of the Company's securities, and a Cut-back Request is made, the Company will include Registrable Securities in such registration in the manner contemplated by Paragraph 2(f) above, or if Paragraph 2(f) is not applicable, the Company will include in such registration (i) first, the securities requested to be included therein by the holders requesting such registration pursuant to Paragraph 2, (ii) second, the Conversion Registrable Securities requested to be included in such registration pursuant to Paragraph 3, pro rata among the holders of such securities on the basis of the number of securities so requested to be included therein owned by each such holder, (iii) third, the Executive Registrable Securities requested to be included in such registration, pro rata among the holders of Executive Registrable Securities based on the number of shares owned by such holder, and (iv) fourth, other securities requested to be included in such registration.

(e) Selection of Underwriters. If any Piggyback Registration is a primary underwritten offering, the Company will have the right to select the investment banker(s) and manager(s) for the offering subject to the approval by the holders of a majority in interest of the Registrable Securities included in such Piggyback Registration if the number of such Registrable Securities is greater than the number of primary shares of Common Stock being registered by the Company. Such approval will not be unreasonably withheld.

(f) Other Registrations. If the Company has previously filed a registration statement with respect to Registrable Securities pursuant to Paragraph 2 or pursuant

to this Paragraph 3, and if such previous registration has not been withdrawn or abandoned, the Company will not file or cause to be effected any other registration of any of its equity securities or securities convertible or exchangeable into or exercisable for its equity securities under the Securities Act (except on Form S-4 or Form S-8 or any successor forms), whether on its own behalf or at the request of any holder or holders of such securities, until a period of at least one hundred eighty (180) days has elapsed from the effective date of such previous registration.

4 **Holdback Agreements**.

(a) Each holder of Registrable Securities agrees not to effect any public sale or distribution of equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such securities, during the seven (7) days prior to and the one hundred eighty (180) day period beginning on the effective date of any underwritten Demand Registration or any underwritten Piggyback Registration in which Registrable Securities are included (except as part of such underwritten registration), unless the underwriters managing the registered public offering otherwise agree.

(b) The Company agrees (i) not to effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities, during the seven (7) days prior to and during the one hundred eighty (180) day period beginning on the effective date of any underwritten Demand Registration or any underwritten Piggyback Registration (except as part of such underwritten registration or pursuant to registrations on Form S-4 or S-8 or any successor forms), unless the underwriters managing the registered public offering otherwise agree, and (ii) to cause each current holder of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities, and any purchaser of such securities from the Company at any time after the date of this Agreement (other than in the registered public offering) to agree not to effect any public sale or distribution of any such securities during such period (except as part of such underwritten registration, if otherwise permitted), unless the underwriters managing the registered public offering otherwise agree.

5 **Registration Procedures**. Whenever the holders of Registrable Securities have requested that any Registrable Securities be registered pursuant to this Agreement, the Company will use its best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company will as expeditiously as possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its best efforts to cause such registration statement to become effective (provided that before filing a registration statement or prospectus or any amendments or supplements thereto, the Company will furnish to the counsel selected by the holders of a majority of the Registrable Securities covered by such registration statement copies of all such documents proposed to be filed, which documents will be subject to the review of such counsel);

(b) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period of not less than six (6) months or until such time as all of the securities covered by such registration statement have been sold and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such registration statement;

(c) furnish to each seller of Registrable Securities such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller;

(d) use its best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller (provided that the Company will not be required to (i) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (ii) subject itself to taxation in any such jurisdiction or (iii) consent to general service of process in any such jurisdiction);

(e) notify each seller of such Registrable Securities, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event as a result of which the prospectus included in such registration statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, at the request of any such seller, the Company will prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain any untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading;

(f) cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed and, if not so listed, to be listed on the NASDAQ Stock Market.

(g) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(h) enter into such customary agreements (including underwriting agreements in customary form) and take all such other actions as the holders of a majority of the Registrable Securities being sold or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including, without limitation, effecting a stock split or a combination of shares);

(i) make available for inspection by any seller of Registrable Securities, any underwriter participating in any disposition pursuant to such registration statement, and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors, employees and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(j) otherwise use its best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company's first full calendar quarter after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder; and

(k) obtain a comfort letter from the Company's independent public accountants in customary form and covering such matters of the type customarily covered by comfort letters as the holders of a majority of the Registrable Securities being sold reasonably request (provided that such Registrable Securities constitute at least ten percent (10%) of the securities covered by such registration statement).

6 **Registration Expenses**.

(a) All expenses incident to the Company's performance of or compliance with this Agreement, including without limitation all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, printing expenses, messenger and delivery expenses, and fees and disbursements of counsel for the Company and all independent certified public accountants, underwriters (excluding discounts and commissions) and other Persons retained by the Company (all such expenses being herein called "Registration Expenses"), will be borne as provided in this Agreement, except that the Company will, in any event, pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit or quarterly review, the expense of any liability insurance and the expenses and fees for listing the securities to be registered on each securities exchange on which similar securities issued by the Company are then listed on an exchange or on the NASDAQ Stock Market.

(b) In connection with each Demand Registration and each Piggyback Registration, the Company will reimburse the holders of Registrable Securities covered by such registrations for the reasonable fees and disbursements of one counsel chosen by the holders of a majority of the Registrable Securities included in such registration.

(c) To the extent Registration Expenses are not required to be paid by the Company, each holder of securities included in any registration hereunder will pay those Registration Expenses allocable to the registration of such holder's securities so included on the basis of the number of securities of such holder included in such registration as compared to the total number of securities included in the registration.

7 **Indemnification**.

(a) The Company agrees to indemnify, to the extent permitted by law, each holder of Registrable Securities, its officers and directors and each Person who controls such holder (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and expenses caused by any untrue or alleged untrue statement of material fact contained in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are caused by or contained in any information furnished in writing to the Company by such holder expressly for use therein or by such holder's failure to deliver a copy of the registration statement or prospectus or any amendments or supplements thereto after the Company has furnished such holder with a sufficient number of copies of the same. In connection with an underwritten offering, the Company will indemnify such underwriters, their officers, directors and agents and each Person who controls such underwriters (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the holders of Registrable Securities.

(b) In connection with any registration statement in which a holder of Registrable Securities is participating, each such holder will furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such registration statement or prospectus and, to the extent permitted by law, will indemnify the Company, its directors, officers and agents and each Person who controls the Company (within the meaning of the Securities Act) against any losses, claims, damages, liabilities and expenses resulting from any untrue or alleged untrue statement of material fact contained in the registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in any information or affidavit so furnished in writing by such holder; provided that the obligation to indemnify will be several, not joint and several, among such holders of Registrable Securities and the liability of each such holder of Registrable Securities will be in proportion to and limited to the net amount received by such holder from the sale of Registrable Securities pursuant to such registration statement.

(c) Any Person entitled to indemnification hereunder will (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party will not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of

interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim.

(d) The indemnification provided for under this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and will survive the transfer of securities. The Company also agrees to make such provisions, as are reasonably requested by any indemnified party, for contribution to such party in the event the Company's indemnification is unavailable for any reason.

8 **Participation in Underwritten Registrations**. No Person may participate in any registration hereunder which is underwritten unless such Person (a) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements and (b) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents required under the terms of such underwriting arrangements, provided, however, that any such agreements will only contain indemnification obligations which are consistent with Paragraph 7 above.

9 **Definitions**.

"Conversion Common Stock" mean (i) the Common Stock received upon the conversion of all shares of outstanding Convertible Preferred Stock, and (ii) any securities issued or issuable with respect to the Common Stock received upon the conversion of all shares of outstanding Convertible Preferred Stock by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization.

"Conversion Registrable Securities" means (i) the Conversion Common Stock, and (ii) any other shares of Common Stock held by Persons holding Conversion Common Stock.

"Convertible Preferred Stock" means any outstanding Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock and Series V-1 Preferred Stock.

"Executive Registrable Securities" means (i) any shares of Common Stock held by Richard E. George and Terry J. Hanson as of the date hereof or acquired hereafter and (ii) any securities issued or issuable with respect to the Common Stock referred to in clause (i) by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization.

"Public Offering" means any offering by the Company of its equity securities to the public, in a firm commitment underwriting, pursuant to an effective registration statement under the Securities Act; provided, that a Public Offering will not include an offering made in connection with a business acquisition or an employee benefit plan.

"Qualified Public Offering" means a Public Offering in which (i) the aggregate cash proceeds received by the Company for the shares sold in such offering is at least fifteen million dollars ($15 million); (ii) the price per share paid by the public for the shares sold in such offering implies a total equity valuation of the Company of at least on hundred million dollars ($100 million); and (iii) the shares sold in such offering are listed on the American Stock Exchange or the New York Stock Exchange or are quoted on the NASDAQ Stock Market.

"Registrable Securities" means the Executive Registrable Securities and the Conversion Registrable Securities. As to any particular Registrable Securities, such securities will cease to be Registrable Securities when (i) they have been distributed to the public through a broker, dealer or market purchaser in compliance with Rule 144 under the Securities Act (or any similar rule then in force) or (ii) such securities become transferable without any restrictions in accordance with Rule 144(k) under the Securities Act (or any similar rule then in force). For purposes of this Agreement, a Person will be deemed to be a holder of Registrable Securities whenever such Person has the right to acquire such Registrable Securities (by conversion or otherwise, but disregarding any legal restrictions upon the exercise of such right), whether or not such acquisition has actually been effected.

Unless otherwise stated, other capitalized terms contained herein have the meanings set forth in the Reclassification Agreement.

10 **Miscellaneous**.

(a) No Inconsistent Agreements. The Company will not hereafter enter into any agreement with respect to its securities which is inconsistent with the rights granted to the holders of Registrable Securities in this Agreement.

(b) Adjustments Affecting Registrable Securities. The Company will not take any action, or permit any change to occur, with respect to its securities which would materially and adversely affect the ability of the holders of Registrable Securities to include such Registrable Securities in a registration undertaken pursuant to this Agreement or which would materially and adversely affect the marketability of such Registrable Securities in any such registration (including, without limitation, effecting a stock split or a combination of shares).

(c) Remedies. Any Person having rights under any provision of this Agreement will be entitled to enforce such rights specifically, to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. The parties hereto agree and acknowledge that money damages may not be adequate remedy for any breach of the provisions of this Agreement and that any party may in its sole discretion apply to any court of law or equity of competent jurisdiction (without posting any bond or other security) for specific performance and for other injunctive relief in order to enforce or prevent violation of the provisions of this Agreement.

(d) Amendments and Waivers. Except as otherwise provided herein, the provisions of this Agreement may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of holders of a majority of the Registrable Securities.

(e) Successors and Assigns. All covenants and agreements in this Agreement by or on behalf of any of the parties hereto will bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not. In addition, whether or not any express assignment has been made, the provisions of this Agreement which are for the benefit of purchasers or holders of Registrable Securities are also for the benefit of, and enforceable by, any subsequent holder of Registrable Securities.

(f) Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

(g) Counterparts. This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same Agreement.

(h) Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

(i) Governing Law. The corporate law of Delaware will govern all issues concerning the relative rights of the Company and its stockholders. All other questions concerning the construction, validity and interpretation of this Agreement and the exhibits and schedules hereto will be governed by the internal law, and not the law of conflicts, of Illinois.

(j) Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered personally to the recipient, sent to the recipient by reputable express courier service (charges prepaid) or mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications will be sent to each stockholder at the address indicated on the records of the Company and to the Company at the address indicated below:

Ulta Salon, Cosmetics & Fragrance, Inc.
Windham Lakes Business Park
1135 Arbor Drive
Romeoville, Illinois 60446
Attn: Gregg Bodnar

or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

(k) Entire Agreement. This Agreement constitutes the complete and final agreement of the parties concerning the matters referred to herein, and supersedes all prior agreements and understandings, including, without limitation, the Prior Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

ULTA SALON, COSMETICS & FRAGRANCE, INC.

By: ____________________
Its: ____________________

Common:	947,583.00
Series I:	149,853.00
Series II:	10,709.00
Series IV:	119,174.00
Series V:	10.00
Series V-1:	—
Total:	1,227,329.00

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Terry J. Hanson

Common:	123,894.00
Series I:	5,784,138.00
Series II:	1,769,369.00
Series IV:	4,829,853.00
Series V:	4,024,442.00
Series V-1:	920,000.00
Total:	17,451,696.00

DOUBLEMOUSSE B.V.

By: ____________________
Charles Heilbronn,
its Authorized Agent

Common:	125,296.00
Series I:	154,322.00
Series II:	2,487.00
Series IV:	170.00
Series V:	670.00
Series V-1:	—
Total:	282,945.00

____
Yves Sisteron

Common:	161,676.00
Series I:	181,386.00
Series II:	284,706.00
Series IV:	4,719,547.00
Series V:	4,323,908.00
Series V-1:	—
Total:	9,671,223.00

OAK INVESTMENT PARTNERS VII

By: ____________________________________

Gerald R. Gallagher, General Partner Managing Member of Oak Associates VII, LLC, The General Partner of Oak Investment Partners VII, Limited Partnership

Common:	4,060.00
Series I:	4,555.00
Series II:	7,150.00
Series IV:	118,531.00
Series V:	108,594.00
Series V-1:	—
Total:	242,890.00

OAK VII AFFILIATES FUND, LIMITED PARTNERSHIP

By: ____________________________________

Gerald R. Gallagher, General Partner Managing Member of Oak VII Affiliates, LLC, The General Partner of Oak VII Affiliates Fund Limited Partnership

Common:	13,150.00
Series I:	—
Series II:	—
Series IV:	4,274,311.00
Series V:	354,292.00
Series V-1:	—
Total::	4,641,753.00

GLOBAL RETAIL PARTNERS, L.P.

By: GLOBAL RETAIL PARTNERS, INC., General Partner

By: ____________________________________

Steven E. Lebow

Its: ____________________________________

Common:	3,918.00
Series I:	—
Series II:	—
Series IV:	1,273,657.00
Series V:	105,571.00
Series V-1:	—
Total:	1,383,146.00

DLJ DIVERSIFIED PARTNERS, L.P.

By: DLJ DIVERSIFIED PARTNERS, INC., General Partner

By: ____________________________________

Steven E. Lebow

Its: ____________________________________

Common:	1,455.00
Series I:	—
Series II:	—
Series IV:	472,998.00
Series V:	39,093.00
Series V-1:	—
Total:	513,546.00

DLJ DIVERSIFIED PARTNERS-A, L.P.

By: DLJ DIVERSIFIED PARTNERS, INC.
its General Partner

By: ______________________________
Steven E. Lebow
Its: ______________________________

Common:	27,485.00
Series I:	327,085.00
Series II:	59,324.00
Series IV:	10,042.00
Series V:	422,650.00
Series V-1:	—
Total:	846,586.00

GRP II INVESTORS, L.P.

By: Merchange Capital, Inc.
Its General Partner

By: ______________________________
Steven E. Lebow, its Chairman

Common:	854.00
Series I:	—
Series II:	—
Series IV:	277,863.00
Series V:	22,700.00
Series V-1:	—
Total:	301,417.00

GRP PARTNERS, L.P.

By: GLOBAL RETAIL PARTNERS, INC.,
its General Partner

By: ______________________________
Steven E. Lebow
Its: ______________________________

Common:	905.00
Series I:	—
Series II:	—
Series IV:	294,276.00
Series V:	24,392.00
Series V-1:	—
Total:	319,573.00

GLOBAL RETAIL PARTNERS FUNDING, INC.

By: ______________________________
Steven E. Lebow
Its: ______________________________

Common:	386,415.00	GRP II, L.P.
Series I:	3,651,938.00	By: GRPVC, L.P., its General Partner
Series II:	785,684.00	By: GRP Management Services Corp., its General Partner
Series IV:	140,273.00	
Series V:	5,996,914.00	By: ______________________
Series V-1:	—	Steven E. Lebow
Total:	10,961,224.00	Its: ______________________

Common:	9,938.00	GRP II PARTNERS, L.P.
Series I:	122,588.00	By: GRPVC, L.P., its General Partner
Series II:	24,474.00	By: GRP Management Services Corp., its General Partner
Series IV:	3,616.00	
Series V:	150,683.00	By: ______________________
Series V-1:	—	Steven E. Lebow
Total:	311,299.00	Its: ______________________

Common:	1,461.00	THE MATTHEW ALLAN LEBOW IRREVOCABLE TRUST
Series I:	51,804.00	
Series II:	2,343.00	By: ______________________
Series IV:	26,863.00	Steven E. Lebow, Trustee
Series V:	47,744.00	
Series V-1:	—	By: ______________________
Total:	130,215.00	Susan Morse Lebow, Trustee

Common:	1,461.00	THE MICHAEL HARVEY LEBOW IRREVOCABLE TRUST
Series I:	51,804.00	
Series II:	2,343.00	By: ______________________
Series IV:	26,863.00	Steven E. Lebow, Trustee
Series V:	47,744.00	
Series V-1:	—	By: ______________________
Total:	130,215.00	Susan Morse Lebow, Trustee

Common:	13,124.00		
Series I:	688,353.00		
Series II:	18,435.00	STEVEN AND SUSAN LEBOW TRUST	
Series IV:	160,657.00	dated 12-16-02	
Series V:	145,254.00		
Series V-1:	—	By:	
Total:	1,025,823.00	Its:	

Common:	942,992.00	
Series I:	—	
Series II:	—	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	924,992.00	Robert DiRomualdo

Common:	928,598.00	
Series I:	—	
Series II:	—	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	928,598.00	Dennis Eck

Common:	125,000.00	
Series I:	—	
Series II:	—	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	125,000.00	Charles Heilbronn

Common:	125,000.00	
Series I:	—	
Series II:	—	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	125,000.00	Steven Lebow

Common:	400,000.00		
Series I:	—		
Series II:	—	HANSON FAMILY INVESTMENTS, L.P.	
Series IV:	—		
Series V:	—	By:	______________________
Series V-1:	—		Terry J. Hanson,
Total:	400,000.00		Managing General Partner

Common:	4,000,000.00	
Series I:	—	
Series II:	—	
Series IV:	—	
Series V:	—	
Series V-1:	—	______________________
Total:	4,000,000.00	Lyn Kirby

Common:	—		
Series I:	1,786.00		
Series II:	—	DONALD L. SCHWARTZ LIVING TRUST	
Series IV:	—	dtd March 1, 1990 as amended	
Series V:	98,095.00		
Series V-1:	—	By:	______________________
Total:	99,881.00		Donald L. Schwartz, Trustee

Common:	481.00		
Series I:	561.00		
Series II:	773.00		
Series IV:	202.00		
Series V:	40,872.00	LATHAM & WATKINS LLP	
Series V-1:	—		
Total:	42,889.00	By:	______________________ , a Member

Common:	380,100.00	
Series I:	29,940.00	
Series II:	—	
Series IV:	44,761.00	
Series V:	33,333.00	
Series V-1:	—	______________________
Total:	488,134.00	Greg Smolarek

Common:	—	
Series I:	89,712.00	
Series II:	32,081.00	
Series IV:	—	THE ABELSON FAMILY PARTNERSHIP
Series V:	—	
Series V-1:	—	By: ______________________
Total:	121,793.00	Its: ______________________

Common:	965.00	
Series I:	234.00	
Series II:	26,750.00	
Series IV:	12,398.00	
Series V:	74,949.67	
Series V-1:	—	______________________
Total:	115,296.67	Jeffrey H. Brotman

Common:	3,612.00	
Series I:	52,392.00	
Series II:	15,220.00	
Series IV:	30,157.00	THE 1991 BROTMAN CHILDREN'S TRUST
Series V:	95,228.67	
Series V-1:	—	By: ______________________
Total:	196,609.67	Its: ______________________

Common:	—	
Series I:	938,887.00	
Series II:	394,448.00	
Series IV:	—	DRAKE & CO. FOR CITIVENTURE III
Series V:	195,604	
Series V-1:	—	By: ______________________
Total:	1,528,939.00	It: ______________________

Common:	—	
Series I:	122,859.00	MUNICIPAL EMPLOYEES ANNUITY AND BENEFIT FUND OF CHICAGO (f/k/a Booth & Co. (Mun. Empl. Fund))
Series II:	51,731.00	
Series IV:	—	
Series V:	25,569.00	
Series V-1:	—	By: ______________________
Total:	200,159	Its: ______________________

Common:	—	BOOTH & CO. (a/k/a Municipal Employees Annuity & Benefit Fund of Chicago (Policeman's Fund))	
Series I:	76,684.00		
Series II:	32,332.00		
Series IV:	—		
Series V:	15,980.00		
Series V-1:	—	By:	
Total:	124,996.00	Its:	

CHANCELLOR VENTURE CAPITAL I L.P.
(f/k/a MAC & Co.)

By: Chancellor LGT Venture Partners, L.P., its general partner

By: Chancellor Venture LGT Partners, Inc., its general partner

By: ____________________________
Their: ____________________________

Common:	—
Series I:	385,338.00
Series II:	161,659.00
Series IV:	—
Series V:	79,903.00
Series V-1:	—
Total:	626,900.00

Common:	—	FOCUS & CO. FOR BAXTER INTERNATIONAL CORP.	
Series I:	15,392.00		
Series II:	6,467.00		
Series IV:	—		
Series V:	3,196.00		
Series V-1:	—	By:	
Total:	25,055.00	Its:	

Common:	—	MARCH FOUNDATION	
Series I:	263,040.00		
Series II:	99,875.00		
Series IV:	—		
Series V:	—		
Series V-1:	—	By:	
Total:	362,915.00	Its:	

Common:	—
Series I:	158,024.00
Series II:	59,925.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	217,949.00

Marie-Pierre Fournier

Common:	256.00
Series I:	160,465.00
Series II:	61,768.00
Series IV:	95.00
Series V:	7.00
Series V-1:	—
Total:	222,591.00

Jacques Fournier

Common:	—
Series I:	263,040.00
Series II:	99,875.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	362,915.00

Daniel Bernard

Common:	—
Series I:	131,020.00
Series II:	49,938.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	180,958.00

APPOMATTOX FOUNDATION

By: ____________________

Its: ____________________

Common:	10.00
Series I:	4.00
Series II:	2,515.00
Series IV:	9.00
Series V:	57.00
Series V-1:	—
Total:	2,595.00

WALLINGTON INVESTMENT HOLDINGS LTD. (f/k/a Bamse NV)

By: ____________________

Its: ____________________

Common:	—		
Series I:	35,014.00	KME VENTURE II	
Series II:	31,027.00		
Series IV:	—	By:	SAFAT Ltd., its Investment Manager
Series V:	—		
Series V-1:	—	By:	______________________
Total:	66,041.00	Its:	______________________

Common:	—		
Series I:	35,014.00	KME VENTURE III, L.P.	
Series II:	31,027.00		
Series IV:	30,663.00	By:	SAFAT Ltd., its General Partner
Series V:	—		
Series V-1:	—	By:	______________________
Total:	96,704.00	Its:	______________________

Common:	—	
Series I:	6,854.00	
Series II:	6,250.00	
Series IV:	—	
Series V:	—	
Series V-1:	—	______________________
Total:	13,104.00	Steven Ritt

Common:	2,086.00	
Series I:	6,082.00	
Series II:	5,930.00	
Series IV:	327.00	
Series V:	3,864.00	
Series V-1:	—	______________________
Total:	18,289.00	Henry J. Nasella

Common:	367.00		
Series I:	151.00		
Series II:	323.00	SMITH BARNEY IRA f/b/o Henry Nasella	
Series IV:	6,180.00		
Series V:	574.00	By:	______________________
Series V-1:	—		Henry J. Nasella
Total:	7,595.00	Its:	______________________

Common:	—
Series I:	1,141.00
Series II:	1,041.00
Series IV:	19,047.00
Series V:	3,226.00
Series V-1:	—
Total:	24,455.00

Susan C. Schnabel

Common:	1,688.00
Series I:	1,237.00
Series II:	5,077.00
Series IV:	48,561.00
Series V:	13,458.00
Series V-1:	—
Total:	70,021.00

Steven Dietz

Common:	4.00
Series I:	1,141.00
Series II:	1,041.00
Series IV:	1,013.00
Series V:	310.00
Series V-1:	—
Total:	3,509.00

Vince DeGiaimo

Common:	24.00
Series I:	35.00
Series II:	2,548.00
Series IV:	13.00
Series V:	57.00
Series V-1:	—
Total:	2,677.00

Douglas Hayes, JT Ten with Connie Hayes

Connie Hayes, JT Ten with Douglas Hayes

Common:	—
Series I:	5,708.00
Series II:	5,206.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	10,914

Kenneth D. Moelis, JT Ten with Julie Moelis

Julie Moelis, JT Ten with Kenneth D. Moelis

Common:	738.00	PICTET & CIE f/b/o Denis Defforey
Series I:	—	
Series II:	—	By: ______________________
Series IV:	—	Its: ______________________
Series V:	1,598,074.00	
Series V-1:	—	
Total:	1,598,812.00	

Common:	—	FEIGIN TRADING CO.
Series I:	6,004.00	
Series II:	5,000.00	By: ______________________
Series IV:	—	Its: ______________________
Series V:	—	
Series V-1:	—	
Total:	11,004.00	

Common:	—	THE JOHN D. & CATHERINE T. MACARTHUR FOUNDATION
Series I:	773,017.00	
Series II:	613,000.00	By: ______________________
Series IV:	190,476.00	Its: ______________________
Series V:	—	
Series V-1:	—	
Total:	1,576,493.00	

Common:	6,849.00	ARABELLA, S.A.
Series I:	128,357.00	
Series II:	114,147.00	By: ______________________
Series IV:	109,824.00	Its: ______________________
Series V:	31,415.00	
Series V-1:	—	
Total:	390,592.00	

Common:	1,453.00	JAMES G. SHENNAN, JR. (Shennan Family Partnership)
Series I:	3,456.00	
Series II:	4,338.00	By: ______________________
Series IV:	191,274.00	James G. Shennan, Jr.
Series V:	4,394.00	
Series V-1:	—	Its: ______________________
Total:	204,915.00	

Common:	405.00
Series I:	400.00
Series II:	552.00
Series IV:	23,953.00
Series V:	5,404.00
Series V-1:	—
Total:	30,714.00

C. DONALD DORSEY AND LYDIA DORSEY REV. LIVING TRUST dtd 8/5/93

By: ____________________
Its: ____________________

Common:	352.00
Series I:	1,600.00
Series II:	1,208.00
Series IV:	142,919.00
Series V:	5.00
Series V-1:	—
Total:	146,084.00

STRATEGIC GLOBAL PARTNERS, LLC

By: ____________________
Its: ____________________

Common:	1,360.00
Series I:	348.00
Series II:	1,692.00
Series IV:	143,611.00
Series V:	24,868.00
Series V-1:	—
Total:	171,879.00

ROBERT G. MARKEY, HEWITT B. SHAW, JR., AND R. STEVEN KESTNER, current Co-Trustees or their successors in trust under the Robert G. Markey Trust Agreement dated July 2, 1985, as heretofore and hereafter amended

By: ____________________
Its: ____________________

Common:	—
Series I:	49,900.00
Series II:	—
Series IV:	46,165.00
Series V:	3,410.00
Series V-1:	—
Total:	99,475.00

GREENHOUSE CAPITAL PARTNERS

By: ____________________
Its: ____________________

Common:	640.00
Series I:	401,667.00
Series II:	154,424.00
Series IV:	237.00
Series V:	18.00
Series V-1:	—
Total:	556,986.00

SG COWEN

By: ____________________
Its: ____________________

Common:	640.00	
Series I:	401,668.00	
Series II:	154,425.00	
Series IV:	237.00	FIDAS BUSINESS S.A.
Series V:	18.00	
Series V-1:	—	By: ______________________
Total:	556,988.00	Its: ______________________

Common:	615.00	
Series I:	35,059.00	
Series II:	626.00	CAROL F. THOR REVOCABLE TRUST
Series IV:	26,020.00	u/a/d 6/8/90
Series V:	1,396.00	
Series V-1:	—	By: ______________________
Total:	63,716.00	Its: ______________________

Common:	26.00	
Series I:	22,707.00	SEP for the benefit of Yves Sisteron, Donaldson Lufkin Jenrette
Series II:	190.00	Securities Corporation as custodian
Series IV:	10.00	
Series V:	1.00	By: ______________________
Series V-1:	—	Its: ______________________
Total:	22,934.00	

Common:	696.00	
Series I:	670.00	
Series II:	749.00	MORSE FAMILY LIMITED PARTNERSHIP L.L.P.
Series IV:	201.00	
Series V:	51,153.00	By: ______________________
Series V-1:	—	Its: ______________________
Total:	53,469.00	

Common:	943.00	
Series I:	2,231.00	
Series II:	2,497.00	ADELE MORSE PLATT, Trustee
Series IV:	667.00	u/w Harvey S. Morse
Series V:	170,508.00	
Series V-1:	—	By: ______________________
Total:	176,846.00	Adele Morse Platt, Trustee

Common:	296.00
Series I:	110.00
Series II:	688.00
Series IV:	237.00
Series V:	68,201.00
Series V-1:	—
Total:	69,532.00

LAZARUS FAMILY INVESTORS LLC

By: ____________________

Its: ____________________

Common:	1,913.00
Series I:	6,440.00
Series II:	12,493.00
Series IV:	1,439.00
Series V:	348,834.00
Series V-1:	—
Total:	371,119.00

CMS PEP XIV CO-INVESTMENT SUBPARTNERSHIP

By: ____________________

Its: ____________________

Common:	854.00
Series I:	39,821.00
Series II:	38,815.00
Series IV:	8,140.00
Series V:	36,302.00
Series V-1:	—
Total:	123,932.00

SANFORD AND SHIRLEY LEBOW FAMILY TRUST dated 10-02-90

By: ____________________

Its: ____________________

Common:	231.00
Series I:	18,617.00
Series II:	16,286.00
Series IV:	97,636.00
Series V:	12,033.00
Series V-1:	—
Total:	144,803.00

ADELE MORSE PLATT REVOCABLE TRUST dated 03-03-86

By: ____________________

Its: ____________________

Common:	110.00
Series I:	4,479.00
Series II:	3,914.00
Series IV:	22,850.00
Series V:	2,807.00
Series V-1:	—
Total:	34,160.00

MARJORIE RICHARDS TRUST

By: ____________________

Its: ____________________

Common:	8.00
Series I:	618.00
Series II:	541.00
Series IV:	3,233.00
Series V:	402.00
Series V-1:	—
Total:	4,802.00

Dr. Noreen Roth Henig

Common:	6.00
Series I:	618.00
Series II:	541.00
Series IV:	3,233.00
Series V:	402.00
Series V-1:	—
Total:	4,800.00

Stephanie Goodman

Common:	8.00
Series I:	618.00
Series II:	537.00
Series IV:	3,233.00
Series V:	402.00
Series V-1:	—
Total:	4798.00

Roger Roth

Common:	28.00
Series I:	3,115.00
Series II:	2,715.00
Series IV:	16,272.00
Series V:	2,007.00
Series V-1:	—
Total:	24,137.00

Lois Reinis, JT Ten with Richard Reinis

Richard Reinis, JT Ten with Lois Reinis

Common:	669.00
Series I:	9,293.00
Series II:	7,963.00
Series IV:	47,734.00
Series V:	6,014.00
Series V-1:	—
Total:	71,673.00

NINER HOLDINGS, L.L.L.P.

By: ____________________

Its: ____________________

Common:	—
Series I:	2,850.00
Series II:	2,515.00
Series IV:	16,262.00
Series V:	2,006.00
Series V-1:	—
Total:	23,633.00

ALAN L. BELINKOFF as trustee Alan and Sigrid Belinkoff Family Trust

By: ______________________________
Alan L. Belinkoff, Trustee

Common:	—
Series I:	33,494.00
Series II:	14,822.00
Series IV:	27,195.00
Series V:	—
Series V-1:	—
Total:	75,511.00

THOMAS R. KULLY REVOCABLE TRUST
u/a/d 10/16/01 as Amended 1/22/02

By: ______________________________
Its: ______________________________

Common:	—
Series I:	6,340.00
Series II:	9,274.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	15,614.00

BELL ATLANTIC MASTER TRUST

By: ______________________________
Its: ______________________________

Common:	—
Series I:	39,627.00
Series II:	57,966.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	97,593.00

HONEYWELL INTERNATIONAL INC. MASTER RETIREMENT TRUST

By: ______________________________
Its: ______________________________

Common:	—
Series I:	12,680.00
Series II:	18,548.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	31,228.00

BELL ATLANTIC PENSION TRUST

By: ______________________________
Its: ______________________________

Common:	—
Series I:	8,481.00
Series II:	12,405.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	20,886.00

GM HOURLY RATE EMPLOYEES PENSION TRUST

By: ____________________

Its: ____________________

Common:	—
Series I:	7,371.00
Series II:	10,782.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	18,153.00

GM SALARIED NON-CONTRIBUTORY RETIREMENT TRUST

By: ____________________

Its: ____________________

Common:	—
Series I:	12,694.00
Series II:	18,569.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	31,263.00

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Donald Remey

Common:	—
Series I:	5,792.00
Series II:	8,472.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	14,264.00

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Hoyt Goodrich

Common:	—
Series I:	2,436.00
Series II:	3,564.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	6,000.00

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Hoyt Goodrich, Jr.

Common:	—	
Series I:	2,436.00	
Series II:	3,564.00	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	6,000.00	Lisa G. Swift

Common:	—	
Series I:	4,060.00	
Series II:	5,940.00	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	10,000.00	Timothy W. Goodrich, III

Common:	—	
Series I:	12,171.00	
Series II:	17,804.00	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	29,975.00	J. Barton Goodwin

Common:	—	
Series I:	7,890.00	
Series II:	11,541.00	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	19,431.00	Theodore T. Horton, Jr.

Common:	—	
Series I:	5,123.00	
Series II:	7,494.00	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	12,617.00	Stephen J. Eley

Common:	4,542.00	
Series I:	151,098.00	
Series II:	6,833.00	SAMUEL J. AND SANDRA PARKER FAMILY TRUST dtd September 10, 1982
Series IV:	117,652.00	
Series V:	99,841.00	
Series V-1:	—	By:
Total:	379,966.00	Its:

Common:	95,205.00	
Series I:	252,494.00	
Series II:	3,192.00	
Series IV:	363.00	
Series V:	8.00	
Series V-1:	—	
Total:	351,262.00	Samuel J. Parker

Common:	—	
Series I:	19,190.00	
Series II:	10,000.00	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	29,190.00	John Meisenbach

Common:	—	
Series I:	2,742.00	
Series II:	2,500.00	
Series IV:	9,523.00	
Series V:	—	
Series V-1:	—	
Total:	14,765.00	Richard A. Galanti

Common:	—	
Series I:	3,002.00	
Series II:	2,500.00	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	5,502.00	Peter Dyvig

Common:	—	
Series I:	24,954.00	
Series II:	2,500.00	
Series IV:	—	
Series V:	1,860.00	
Series V-1:	—	
Total:	29,314.00	Glynn Bloomquist

Common:	—	
Series I:	9,980.00	
Series II:	—	
Series IV:	—	
Series V:	—	
Series V-1:	—	
Total:	9,980.00	Karen Ferguson

Common:	172,497.00	
Series I:	19,960.00	
Series II:	—	
Series IV:	76,190.00	
Series V:	—	
Series V-1:	—	
Total:	268,647.00	Bob Vonderhaar

Common:	—	
Series I:	249,539.00	
Series II:	—	
Series IV:	238,095.00	WEBER 1997 DYNASTY TRUST
Series V:	17,360.00	
Series V-1:	—	By:
Total:	504,994.00	Its:

Common:	—	
Series I:	—	
Series II:	47,028.00	
Series IV:	—	
Series V:	—	BANKAMERICA CAPITAL
Series V-1:	—	
Total:	47,028.00	By:
		Its:

Common:	—
Series I:	—
Series II:	397,335.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	397,335.00

BANKAMERICA VENTURES

By: ____________________
Its: ____________________

Common:	—
Series I:	—
Series II:	331,096.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	331,096.00

KCB BV, L.P.

By: KCB BV, Inc., its General Partner

By: ____________________
Its: ____________________

Common:	—
Series I:	—
Series II:	30,794.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	30,794.00

THE JEWISH COMMUNAL FUND

By: ____________________
Its: ____________________

Common:	—
Series I:	—
Series II:	5,000.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	5,000.00

CALCOM PENSION PLAN

By: ____________________
Its: ____________________

Common:	—
Series I:	—
Series II:	1,041.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	1,041.00

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James Sington

Common:	21.00	KENNETH D. AND JULIE MOELIS Trustees under the Moelis Family Trust
Series I:	—	
Series II:	—	By: ______________________ Kenneth D. Moelis, Trustee
Series IV:	7,923.00	
Series V:	2,556.00	
Series V-1:	—	By: ______________________ Julie Moelis, Trustee
Total:	10,500.00	

Common:	—	WARREN C. WOO AND CAROLYN M. SUDA as Trustees for the Woo Family Trustee for the Woo Family Trust dated November 20, 1998
Series I:	—	
Series II:	2,000.00	By: ______________________ Warren C. Woo, Trustee
Series IV:	—	
Series V:	—	
Series V-1:	—	By: ______________________ Carolyn M. Suda, Trustee
Total:	2,000.00	

Common:	—	
Series I:	—	
Series II:	2,000.00	
Series IV:	—	
Series V:	—	
Series V-1:	—	______________________
Total:	2,000.00	Erich L. Spangenbergh

Common:	—	
Series I:	—	
Series II:	915,022.00	GRP MANAGEMENT SERVICES CORP., as Escrow Agent for GRP II, L.P.
Series IV:	—	
Series V:	—	
Series V-1:	—	By: ______________________
Total:	915,022.00	Its: ______________________

Common:	—	
Series I:	—	
Series II:	30,844.00	GRP MANAGEMENT SERVICES CORP., as Escrow Agent for GRP II Partners, L.P.
Series IV:	—	
Series V:	—	
Series V-1:	—	By: ______________________
Total:	30,844.00	Its: ______________________

Common:	—
Series I:	—
Series II:	82,249.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	82,249.00

GRP MANAGEMENT SERVICES CORP., as Escrow Agent for GRP II Investors, L.P.

By: ____________________

Its: ____________________

Common:	1,191.00
Series I:	—
Series II:	2,184.00
Series IV:	502.00
Series V:	—
Series V-1:	—
Total:	3,877.00

DONALD L. SCHWARTZ CHILDREN'S TRUST dated 12/28/95 — Ronald W. Hanson — Trustee 04/24/07

By: ____________________

Its: ____________________

Common:	—
Series I:	—
Series II:	6,250.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	6,250.00

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Howard Schultz

Common:	—
Series I:	—
Series II:	5,000.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	5,000.00

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Orin C. Smith

Common:	—
Series I:	—
Series II:	3,500.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	3,500.00

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Peter Nolan

Common:	—
Series I:	—
Series II:	2,000.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	2,000.00

John Danhakl

Common:	—
Series I:	—
Series II:	5,000.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	5,000.00

James R. Miller

Common:	—
Series I:	—
Series II:	5,000.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	5,000.00

Virginia Jontes

Common:	200,795.00
Series I:	—
Series II:	16,583.00
Series IV:	—
Series V:	—
Series V-1:	—
Total:	217,378.00

Richard E. George

Common:	3,000.00
Series I:	—
Series II:	—
Series IV:	56,549.00
Series V:	—
Series V-1:	—
Total:	59,549.00

Hirschel B. Abelson

Common:	—	
Series I:	—	
Series II:	—	
Series IV:	476,190.00	INTERNET TECHNOLOGY VENTURES, LLC
Series V:	—	
Series V-1:	—	By: ______________________
Total:	476,190.00	Its: Managing Member

Common:	—	
Series I:	—	
Series II:	—	
Series IV:	23,809.00	
Series V:	775.00	
Series V-1:	—	______________________
Total:	24,584.00	Juanita F. Francis

		DLJ ESC II, L.P.
Common:	228.00	
Series I:	—	By: DLJ LBO PLANS MANAGEMENT CORPORATION
Series II:	—	General Partner
Series IV:	73,561.00	
Series V:	6,541.00	By: ______________________
Series V-1:	—	Its: ______________________
Total:	80,330.00	

		ANNAPOLIS VENTURES LLC
Common:	—	
Series I:	—	By: Annapolis Operations, LLC
Series II:	—	its Managing Member
Series IV:	—	
Series V:	2,333,333.00	By: ______________________
Series V-1:	—	Its: ______________________
Total:	2,333,333.00	

Common:	331.00	
Series I:	—	
Series II:	—	RAMSEY BEIRNE PARTNERS, LLC
Series IV:	—	
Series V:	116,667.00	By: ______________________
Series V-1:	—	Its: ______________________
Total:	116,998.00	

Common:	93.00		
Series I:	12,084.00		
Series II:	10,227.00		
Series IV:	23.00	BANQUE CANTONALE DE GENEVE	
Series V:	—		
Series V-1:	—	By:	
Total:	22,427.00	Its:	

Common Stockholders	
Total Common Voting Shares:	11,743,817.00
Total Common Shares Voted:	___________
Series I Preferred Stockholders	
Total Preferred Voting Shares:	16,768,882.00
Total Preferred Shares Voted:	___________
Series II Preferred Stockholders	
Total Preferred Voting Shares:	7,420,130.00
Total Preferred Shares Voted:	___________
Series IV Preferred Stockholders	
Total Preferred Voting Shares:	19,145,558.00
Total Preferred Shares Voted:	___________
Series V Preferred Stockholders	
Total Preferred Voting Shares:	21,447,959.34
Total Preferred Shares Voted:	___________
Series V-I Preferred Stockholders	
Total Preferred Voting Shares:	920,000.00
Total Preferred Shares Voted:	___________
Total Voting Shares:	**77,446,346.34**
Total Shares Voted:	___________

EXHIBIT 4.3

SECOND AMENDED AND RESTATED
RECLASSIFICATION AND SALE OF SHARES AGREEMENT

THIS SECOND AMENDED AND RESTATED RECLASSIFICATION AND SALE OF SHARES AGREEMENT (the "Agreement") is made as of December 18, 2000, among Ulta Salon, Cosmetics & Fragrance, Inc., a Delaware corporation (the "Company"), the shareholders and warrant holders of the Company set forth on the Schedule of Shareholders attached hereto and made a part hereof (the shareholders and warrant holders on the Schedule of Shareholders are collectively referred to herein as the "Current Shareholders" and individually as a "Current Shareholder") and the parties set identified on Schedules A and B (the "Purchasers") and together with the Current Shareholders, the "Shareholders" and individually a "Shareholder". Except as otherwise indicated herein, capitalized terms used herein are defined in Section 10 hereof.

R E C I T A L S

A. Prior to the date of this Agreement, the Company has issued the following:

i. Series I Convertible Preferred Stock of the Company, par value $.01 per share (the "Series I Preferred Stock"), pursuant to that certain Reclassification and Sale of Shares Agreement among the Company and the parties thereto dated as of March 24, 1997 (the "Initial Reclassification Agreement");

ii. Series II Convertible Preferred Stock of the Company, par value $.01 per share (the "Series II Preferred Stock"), pursuant to the Initial Reclassification Agreement;

iii. Series III Non-Convertible Preferred Stock of the Company, par value $.01 per share (the "Series III Preferred Stock"), pursuant to the Initial Reclassification Agreement;

iv. Series IV Convertible Preferred Stock of the Company, par value $.01 per share (the "Series IV Preferred Stock"), pursuant to that certain Amended and Restated Reclassification and Sale of Shares Agreement among the Company and parties thereto dated as of April 29, 1998 (the "Amended Reclassification Agreement")

v. Class C Warrants (the "Class C Warrants") pursuant to the Class C Preferred Stock and Warrants Purchase Agreement dated January 31, 1992, as amended (the "Class C Purchase Agreement"); Class D Warrants (the "Class D Warrants") pursuant to the Class D Preferred Stock and Warrants Purchase Agreement dated as of June 26, 1992, as amended (the "Class D Purchase Agreement"), Class E Warrants (the "Class E Warrants") pursuant to the Class E Preferred Stock and Warrants Purchase Agreement dated May 18, 1993, as amended (the "Class E Purchase Agreement"), Class G Warrants (the "Class G Warrants") pursuant to the Class G Preferred Stock and Warrants Purchase Agreement dated March 24, 1995, as amended (the "Class G Purchase Agreement"), Class H Warrants (the "Class H Warrants") pursuant to the Class H Preferred Stock and Warrants Purchase Agreement dated July 11, 1995, as amended (the "Class H Purchase Agreement"), each as subsequently adjusted and modified pursuant to the Initial Reclassification Agreement;

vi. Series II Warrants (the "Series II Warrants") pursuant to the Initial Reclassification Agreement;

vii. Warrants to Donaldson, Lufkin & Jenrette Securities, or one or more of its designees (collectively, "DLJ") to acquire Common Stock of the Company (the "DLJ Warrants") pursuant to the Initial Reclassification Agreement;

viii. $7,731,200 worth of Convertible Bridge Notes (the "Bridge Notes") purchased by certain shareholders of the Company and other certain investors in the current fiscal year (the "Bridge Note Holders"); and

ix. Warrants to the Bridge Note Holders to acquire Series V Preferred Stock or Common Stock ("Bridge Warrants") issued pursuant to the Bridge Notes.

The Series I Preferred Stock, the Series II Preferred Stock, the Series III Preferred Stock and the Series IV Preferred Stock are sometimes collectively referred to herein as the "Existing Preferred Stock" and all holders of the Existing Preferred Stock shall be collectively referred to herein as the "Existing Preferred Shareholders." The Class C Warrants, Class D Warrants, Class E Warrants, Class G Warrants and Class H Warrants are sometimes collectively referred to herein as the "Old Warrants" and the holders of the Old Warrants shall be collectively referred to herein as the "Old Warrant Holders." The Series II Warrants, the DLJ Warrants, and the Bridge Warrants are sometimes collectively referred to herein as the "New Warrants" and the holders of the Existing Warrants shall be collectively referred to herein as the "New Warrant Holders." The Old Warrants and the New Warrants are sometimes collectively referred to herein as the "Existing Warrants" and the holders of the Existing Warrants shall be collectively referred to herein as the "Existing Warrant Holders."

B. The Company also (i) has issued shares of Common Stock, par value $.01 per share, of the Company (the "Common Stock") to certain individuals pursuant to that certain Senior Management Agreement dated January 19, 1990 between Richard E. George and the Company, as amended, and that certain Senior Management Agreement between Terry J. Hanson and the Company, as amended; and (ii) authorized and reserved for issuance additional shares of Common Stock pursuant to the Plan and the Stock Option Plans (all issued Common Stock of the Company and all shares of Common Stock reserved for issuance upon the exercise of options granted pursuant to the Plan and the Stock Option Plans shall be collectively referred to herein as the "Issued and Reserved Common Stock" and all holders of Issued and Reserved Common Stock shall be collectively referred to herein as "Existing Common Shareholders").

C. Pursuant to the terms hereof, the Shareholders and the Company desire for the Company to sell to (i) those persons listed on the Schedule of the Initial Purchasers attached hereto as Schedule A (such Initial Purchasers are collectively referred to herein as the "Initial Purchasers" and individually as an "Initial Purchaser") shares of Series V Convertible Preferred Stock of the Company, par value $.01 per share (the "Series V Preferred Stock") and shares of Series V-1 Convertible Preferred Stock of the Company, par value $.01 per share (the "Series V- 1 Preferred Stock") and (ii) to those persons listed on the Schedule of Subsequent Purchasers attached hereto as Schedule B and such additional purchasers as shall choose to purchase any

portion of the balance of the authorized number of shares of Series V Preferred Stock and Series V-1 Preferred Stock not sold at the Initial Closing to any Initial Purchasers (such Subsequent Purchasers are collectively referred to herein as the "Subsequent Purchasers" and individually as the "Subsequent Purchaser"). Initial Purchasers and Subsequent Purchasers shall be collectively referred to herein as the "Purchasers" and individually as a "Purchaser".

D. Pursuant to the terms hereof, the Shareholders and the Company desire for the Company to amend and restate the provisions of the Amended Reclassification Agreement to contemplate the issuance of the Series V Preferred Stock and the Series V-1 Preferred Stock.

NOW THEREFORE, the parties hereto agree that the Reclassification Agreement is amended and restated in its entirety as follows:

1. Recitals. The recitals to this Agreement are hereby incorporated into and made a part of this Agreement.

2. Amendment and Restatement of Initial Restated Certificate of Incorporation. In preparation for the sale of the Series V Preferred Stock and the Series V-1 Preferred Stock, the Company and the Current Shareholders hereby authorize and approve the execution and filing of the Restated Certificate of Incorporation in the form attached hereto as Exhibit A with the Secretary of State of the State of Delaware (the "Restated Certificate").

3. Sale and Issuance of the Series IV Preferred Stock .

A. The Company hereby agrees to issue and sell to the Purchasers up to 16,330,980 shares of Series V Preferred Stock at a price of $1.50 per share and up to 4,570,319 shares of Series V-1 Preferred Stock at a price of $1.50 per share (except with respect to the shares of Series V Preferred Stock and Series V-1 Preferred Stock issued to the holders of Bridge Warrants which shall be issued and sold at a price of $0.01 per share as required by the terms of the Bridge Warrants) for an aggregate purchase price of up to $30,200,000.00 (subject to increase based upon accumulation of interest on the convertible Bridge Notes), having the rights, preferences and benefits set forth in the Restated Certificate. The Series V Preferred Stock and the Series V-1 Preferred Stock is convertible into shares of the Company's Common Stock.

4 Closing.

A. Purchase and Sale of the Series V Preferred Stock. Subject to the terms and conditions of this Agreement, each Initial Purchaser agrees, severally and not jointly, to purchase at the Initial Closing and the Company agrees to sell and issue to each Initial Purchaser at the Initial Closing, that number of shares of the Company's Series V Preferred Stock or Series V-1 Preferred Stock set forth opposite each Initial Purchaser's name on Schedule A hereto for the purchase price set forth thereon. The sale of Series V Preferred Stock and Series V-1 Preferred Stock to each Purchaser at the Closing will constitute a separate sale hereunder.

B. Initial Closing. Upon the terms and subject to the conditions set forth herein, each Initial Purchaser agrees to purchase at the Closing the number of shares of Series V Preferred Stock and Series V-1 Preferred Stock set forth next to such Initial Purchaser's name on

the Schedule of Initial Purchasers at a price per share of $1.50 per share of Series V Preferred Stock and Series V-1 Preferred Stock as set forth on Schedule A hereto. The initial sale of the Series V Preferred Stock and Series V-1 Preferred Stock shall occur on December 18, 2000 (the "Initial Closing") at the offices of Latham & Watkins, 233 S. Wacker Drive, Suite 5800, Chicago, Illinois at 10:00 a.m. on the Initial Closing date, or at such other place or on such other date as may be mutually agreeable to the Company and a majority in interest of the Initial Purchasers. At the Initial Closing, subject to the Initial Purchasers' deliveries hereunder, the Company shall deliver to each Initial Purchaser a stock certificate representing the Series V Preferred Stock that such Initial Purchaser is purchasing at the Initial Closing with each registered in such Initial Purchaser's name, upon payment of the purchaser price hereof by check, wire transfer, cancellation of indebtedness, or any combination thereof. In consideration for the issuance of the shares of Series V Preferred Stock and Series V-1 Preferred Stock, each of the Bridge Note Holders shall release the Company from any and all liabilities, duties or obligations of the Company due and owning under the Bridge Notes including, without limitation, payment and performance thereunder.

C. Subsequent Closings. Subsequent sales of Series V Preferred Stock and Series V-1 Preferred Stock may occur on or around February 2, 2001 or at the sole discretion of the Company at a later date which shall be no later than June 1, 2001 (the "Subsequent Closing," and together with the Initial Closing, the "Closing"). The Company may sell up to the balance of the authorized number of shares of Series V Preferred Stock and Series V-1 Preferred Stock not sold at the Initial Closing to those Subsequent Purchasers who shall be set forth on Schedule B, at a price not less than $1.50 per share (except with respect to the shares of Series V Preferred Stock and Series V-1 Preferred Stock issued to the holders of Bridge Warrants which shall be issued and sold at a price of $0.01 per share as required by the terms of the Bridge Warrants, to the extent such holders of Bridge Warrants exercise their rights thereunder prior to the Subsequent Closing in accordance with the procedures set forth by Company's Board of Directors). Upon the terms set forth herein, each Subsequent Purchaser listed on the Schedule of Subsequent Purchasers as of the Initial Closing Date, hereby agrees to purchase at the Subsequent Closing the number of shares of Series V Preferred Stock and Series V-1 Preferred Stock set forth next to such Purchaser's name on the Schedule of Subsequent Purchasers at a price per share of $1.50 per share of Series V Preferred Stock and Series V-1 Preferred Stock as set forth on Schedule B hereto. At the Subsequent Closing, subject to the Subsequent Purchasers' deliveries hereunder, the Company will deliver to each Subsequent Purchaser the stock certificates representing the Series V Preferred Stock and Series V-1 Preferred Stock purchased at the Subsequent Closing with each registered in such Subsequent Purchaser's name, upon payment of the purchase price thereof by a cashier's or certified check, or by wire transfer of immediately available funds to an account designated by the Company in writing, in the amount set forth opposite such Subsequent Purchaser's name on Schedule B hereto. Any such Subsequent Purchaser shall become a party to this Agreement, that certain Registration Agreement (as defined below) and Voting Agreement (as defined below).

5. Conditions of Each Purchaser's and the Company's Obligations at the Closing.

A. The obligations of each Purchaser to consummate the transactions described herein at the Closing is subject to the satisfaction as of the Closing of the following conditions:

i. Amendment of Certificate of Incorporation. The Company will have filed the Restated Certificate with the Secretary of State of the State of Delaware.

ii. Corporate Approvals. The Company shall have received resolutions or actions by written consent of the Board of Directors and, if required, the stockholders of the Company duly authorizing:

(1) the Restated Certificate;

(2) the amendment and restatement of the Amended Reclassification Agreement to conform to the terms of this Agreement;

(3) the amendment and restatement of that certain Amended and Restated Registration Agreement among the Company and the parties thereto dated as of April 29, 1998 (the "Old Registration Agreement") to conform to the terms of the Registration Agreement;

(4) the amendment and restatement of that certain Amended and Restated Voting Agreement among the Company and the parties thereto dated as of April 29, 2000 (the "Old Voting Agreement") to conform to the terms of the Voting Agreement;

(5) the sale and issuance of the Series V Preferred Stock and Series V-1 Preferred Stock

(6) the reservation for issuance upon conversion of the Series V Preferred Stock, an aggregate of not less than 21,000,000 shares of Common Stock and the reservation for issuance upon conversion of the Series V-1 Preferred Stock, an aggregate of not less than 4,600,000 shares of Common Stock; and

(7) the Company to execute this Agreement, the Registration Agreement, the Voting Agreement and all certificates, documents and amendments referred to herein.

iii. Representations and Warranties. The representations and warranties contained in Section 9 hereof will be true and correct in all material respects at as of the Closing as though then made, except to the extent changes caused by the transactions expressly contemplated herein.

iv. Blue Sky Clearancesv. . The Company will have timely made all filings under applicable state securities laws, and will have taken all other action, necessary to

consummate the issuance of the Series V Preferred Stock and Series V-1 Preferred Stock pursuant to this Agreement in compliance with such laws.

vi. No Material Change. Except as set forth onSchedule 5A(vi) or specifically disclosed herein, since the date of the Company's most recently completed fiscal year, no change shall have occurred or have been threatened in the business, operations, prospects, properties or condition (financial or other) of the Company or its Subsidiaries which, in the reasonable judgment of a majority in interest of the Purchasers, is or may be materially adverse to the Company and its Subsidiaries, taken as a whole.

vii. Litigation viii. There shall be no litigation, proceeding or other action seeking an injunction or other restraining order, damages or other relief from a court or administrative agency of competent jurisdiction pending, or threatened which, in the reasonable judgment of a majority in interest of the Purchasers or the Company, would materially adversely affect the consummation of, or challenge the validity of, the transactions contemplated in this Agreement and there shall be no litigation, proceeding or other action pending or threatened against the Company which is reasonably likely to have a material adverse effect on the business, operations, prospects, properties, earnings, assets, liabilities or condition (financial or other) of the Company and its Subsidiaries, taken as a whole (a "Material Adverse Effect").

ix. Trading of Securities. (A) During the seven (7) calendar day period ending on the date of the Closing, (i) trading in securities generally on the New York Stock Exchange or the American Stock Exchange or the over-the-counter market shall not have been suspended and minimum prices shall not have been established on either of such exchanges or such market by such exchange or by the Securities and Exchange Commission, (ii) a general banking moratorium shall not have been declared by Federal, New York or California authorities, and (iii) no changes (or any condition, event or development involving a prospective change) shall have occurred or be threatened that, in the reasonable judgment of a majority of the Purchasers, has had or is reasonably likely to have a material adverse effect upon the prices or trading of securities generally traded on financial markets in the United States; and (B) the Dow Jones Industrial Average (the "Dow") on the business day immediately preceding the date of the Closing shall not be more than twenty percent (20%) lower than the Dow at the date of this Agreement (the "Opening Dow") and the Dow on any business day between the date of this Agreement and the date of the Closing shall not have been more than twenty percent (20%) lower than the Opening Dow.

x. Approvals. All governmental and regulatory approvals and clearances and all third party consents necessary for the consummation of the transactions contemplated under this Agreement shall have been obtained and shall be in full force and effect, and a majority in interest of the Purchasers and the Company shall be reasonably satisfied that the consummation of such transactions does not and will not contravene any applicable provision of the law, statute, regulation, order, writ, injunction or decree of any court or governmental instrumentality, except to the extent any contravention or contraventions, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

xi. Closing Documents. The Company will have delivered to each Purchaser all of the following documents:

(1) an Officer's Certificate, dated the date of the Closing, stating that the conditions specified in Sections 5A (i) – (x), have been fully satisfied;

(2) copies of the resolutions referred to in Section A(ii) duly adopted by the Company's Board of Directors and Shareholders;

(3) copies of the Company's Restated Certificate of Incorporation as filed with the Secretary of State of the State of Delaware on April 1, 1997, as amended by Certificates of Amendment filed with the Secretary of State of the State of Delaware on April 30, 1998 and July 29, 1999 (the "Initial Restated Certificate of Incorporation"), the Company's Restated Certificate, certified by the Delaware Secretary of State, and the Company's bylaws, each as in effect at the Closing; and

(4) such other documents relating to the transactions contemplated by this Agreement as any Purchaser may reasonably request at the Closing.

xii. Proceedings. All corporate and other proceedings taken or required to be taken in connection with the transactions contemplated hereby to be consummated at or prior to the Closing and all documents incident thereto will be satisfactory in form and substance to each Purchaser at the Closing and its special counsel.

xiii. Opinion of Company's Counsel. Each Purchaser at the Closing will have received from Latham & Watkins, counsel for the Company, the opinion addressed to each such Purchaser, dated the date of the Closing and in form and substance similar to Exhibit D attached hereto.

xiv. Registration Agreement. The Company and the Shareholders will have entered into a Second Amended and Restated Registration Agreement in the form and substance substantially similar to Exhibit B attached hereto (the "Registration Agreement"), and the Registration Agreement will be in full force and effect as of the Closing.

xv. Voting Agreement. The Company and the Shareholders will have entered into a Second Amended and Restated Voting Agreement in form and substance substantially similar to Exhibit C attached hereto (the "Voting Agreement"), and the Voting Agreement will be in full force and effect as of the Closing.

B. The obligations of the Company to consummate the transactions described herein at the Closing is subject to the satisfaction as of the Closing of the following conditions:

i. Registration Agreement. The Purchasers will have entered into a Second Amended and Restated Registration Agreement in the form and substance substantially similar to Exhibit B attached hereto (the "Registration Agreement"), and the Registration Agreement will be in full force and effect as of the Closing.

ii. Voting Agreement. The Purchasers will have entered into a Second Amended and Restated Voting Agreement in form and substance substantially similar to Exhibit C attached hereto (the "Voting Agreement"), and the Voting Agreement will be in full force and effect as of the Closing.

iii. Approvals. All governmental and regulatory approvals and clearances and all third party consents (including, without limitation, Current Shareholder consents and approvals) necessary for the consummation of the transactions contemplated under this Agreement shall have been obtained and shall be in full force and effect, and a majority in interest of the Purchasers and the Company shall be reasonably satisfied that the consummation of such transactions does not and will not contravene any applicable provision of the law, statute, regulation, order, writ, injunction or decree of any court or governmental instrumentality, except to the extent any contravention or contraventions, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

iv. Funding. The Company shall have received confirmation that at least $15,000,000 of Series V Preferred Stock and Series V-1 Preferred Stock will be issued at the Initial Closing, including the shares issued upon conversion of the Bridge Notes.

v. Representations and Warranties. The representations and warranties contained in Section 11C hereof will be true and correct in all material respects at as of the Closing as though then made, except to the extent changes caused by the transactions expressly contemplated herein.

vi. Reclassification Agreement. The Purchasers will have entered into this Agreement and this Agreement will be in full force and effect as of the Closing.

C. Waiver of Conditions. Any condition specified in this Section 5 may be waived if consented to by each Purchaser at the Closing; provided that no such waiver will be effective against any Purchaser at the Closing unless it is set forth in a writing executed by such Purchaser.

6 Waivers and Consents by the Shareholders. As a condition to the Company consummating the transactions contemplated herein, each of the Current Shareholders agrees as follows:

i. Each Current Shareholder hereby consents to all of the transactions contemplated in this Agreement.

ii. Except as specifically provided in this Agreement for persons who are Purchasers, each Current Shareholder waives any and all rights to purchase shares of Series V Preferred Stock and Series V-1 Preferred Stock, including any and all rights

relating to the allocation thereof, arising from Section 7H of the Amended Reclassification Agreement in connection with the issuance of the Series V Preferred Stock and Series V-1 Preferred Stock, including, without limitation, any such rights resulting from the issuance of Series V Preferred Stock and Series V-1 Stock in a Subsequent Closing.

iii. Each Current Shareholder hereby approves (a) this Agreement, (b) the Registration Agreement, (c) the Voting Agreement and (d) the Restated Certificate.

7 Covenants.

A. Financial Statements and Other Information. The Company will deliver to each Shareholder who has invested $1,000,000 in equity securities of the Company and after a Qualified Public Offering, to each Holder of at least 10% of the Underlying Common Stock:

i. as soon as available but in any event within 30 days after the end of each monthly accounting period in each fiscal year, unaudited consolidating and consolidated statements of income and cash flows of the Company and its Subsidiaries for such monthly period, and consolidating and consolidated balance sheets of the Company and its Subsidiaries as of the end of such monthly period, and all such statements will be prepared in accordance with generally accepted accounting principles, consistently applied, subject to the exclusion of footnote disclosure and normal year-end audit adjustments;

ii. within 90 days after the end of each fiscal year, consolidating and consolidated statements of income and cash flows of the Company and its Subsidiaries for such fiscal year, and consolidating and consolidated balance sheets of the Company and its Subsidiaries as of the end of such fiscal year, all prepared in accordance with generally accepted accounting principles, consistently applied, and accompanied by (a) with respect to the consolidated portions of such statements, an opinion containing no exceptions or qualifications (except for qualifications regarding specified contingent liabilities) of an independent accounting firm of recognized national standing acceptable to the holders of a majority of the Underlying Common Stock, (b) a certificate from such accounting firm, addressed to the Company's board of directors, stating that in the course of its examination nothing came to its attention that caused it to believe that there was an Event of Noncompliance in existence or that there was any other default by the Company or any Subsidiary in the fulfillment of or compliance with any of the terms, covenants, provisions or conditions of any other material agreement to which the Company or any Subsidiary is a party or, if such accountants have reason to believe any Event of Noncompliance or other default by the Company or any Subsidiary exists, a certificate specifying the nature and period of existence thereof, and (c) a copy of such firm's annual management letter to the board of directors;

iii. the later of (i) ninety (90) days after the beginning of each fiscal year and (ii) when the Board of Directors approves the annual budget, an annual budget

prepared on a monthly basis for the Company and its Subsidiaries for such fiscal year (displaying anticipated statements of income and cash flows and balance sheets);

iv. promptly (but in any event within ten Business Days) after the discovery or receipt of notice of any Event of Noncompliance, any default under any material agreement to which it or any of its Subsidiaries is a party or any other material adverse event or circumstance affecting the Company or any Subsidiary (including the filing of any material litigation against the Company or any Subsidiary or the existence of any dispute with any Person or governmental entity which involves a reasonable likelihood of such litigation being commenced), an Officer's Certificate specifying the nature and period of existence thereof and what actions the Company and its Subsidiaries have taken and propose to take with respect thereto;

v. within ten days after transmission thereof, copies of all financial statements, proxy statements, reports and any other general written communications which the Company sends to its stockholders and copies of all registration statements and all regular, special or periodic reports which it files, or any of its officers or directors file with respect to the Company, with the Securities and Exchange Commission or with any securities exchange on which any of its securities are then listed, and copies of all press releases and other statements made available generally by the Company to the public concerning material developments in the Company's businesses; and

vi. with reasonable promptness, such other information and financial data concerning the Company and its Subsidiaries as any Person entitled to receive information under this Section 7A may reasonably request.

To the best of the Company's knowledge after due inquiry, each of the financial statements referred to inSection 7A will be true and correct in all material respects as of the dates and for the periods stated therein, subject in the case of the unaudited financial statements to changes resulting from normal year-end audit adjustments (none of which would, alone or in the aggregate, be materially adverse to the financial condition, operating results, assets, operations or business prospects of the Company and its Subsidiaries taken as a whole).

Notwithstanding the foregoing, the provisions of Sections 7A(i), 7A(ii) and 7A(iii) will cease to be effective so long as the Company (a) is subject to the periodic reporting requirements of the Securities Exchange Act and continues to comply with such requirements and (b) promptly provides to each Person otherwise entitled to receive information pursuant to this Section 7A all reports and other materials filed by the Company with the Securities and Exchange Commission pursuant to the periodic reporting requirements of the Securities Exchange Act; provided that from the date of this Agreement and for so long as any Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock or Series V-1 Preferred Stock remains outstanding, the Company will deliver to each Shareholder (so long as such Shareholder holds any Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock or Series V-1 Preferred Stock) and to each Holder of at least 5% of outstanding Underlying Common Stock, the information specified in Subsections 7A(ii), 7A(iii)(b) and 7A(v).

Except as otherwise required by law or judicial order or decree or by any governmental agency or authority, each Person entitled to receive information regarding the Company and its Subsidiaries under Section 7A(i), 7A(ii) and 7A(iii) is subject to the confidentiality provisions contained in Section 11E.

For purposes of this Agreement and the Registration Agreement, the holdings of Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock, Existing Warrants and Underlying Common Stock by Persons who are Affiliates of each other will be aggregated for purposes of meeting any threshold tests under this Agreement. "Affiliate" means for the purposes of the preceding sentence, any Person which controls, is controlled by or is under common control with another Person and Persons which have received distributions of securities from a partnership holding such securities.

B. Inspection of Property. Subject to the obligations of the Shareholders contained in Section 11E, the Company will permit any representatives designated by any Shareholder (so long as such Shareholder holds or is deemed to hold any Underlying Common Stock) upon reasonable notice and during normal business hours and such other times as any such holder may reasonably request, to (i) visit and inspect any of the properties of the Company and its Subsidiaries, (ii) examine the corporate and financial records of the Company and its Subsidiaries and make copies thereof or extracts therefrom and (iii) discuss the affairs, finances and accounts of any such corporations with the directors, officers, key employees and independent accountants of the Company and its Subsidiaries. The presentation of an executed copy of this Agreement by any Shareholder to the Company's independent accountants will constitute the Company's permission to its independent accountants to participate in discussions with such Persons.

C. Restrictions. So long as any Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock and Series V-1 Preferred Stock remain outstanding, without the consent of (i) the holders of a majority of the outstanding shares of Series I Preferred Stock voting together as a single class; (ii) the holders of a majority of the outstanding shares of Series IV Preferred Stock voting together as a single class and, if applicable, the Series IV Supplemental Consent Holder; (iii) the holders of a majority of the outstanding shares of Series V Preferred Stock and Series V-1 Preferred Stock voting together as single class and (iv) the holders of a majority in voting power of the outstanding shares of all series of Preferred Stock entitled to vote voting together as a single class, the Company will not:

i. and will not permit any Subsidiary to, directly or indirectly declare or pay any dividends or make any distributions upon any of its equity securities pursuant to the terms of the Company's Initial Restated Certificate of Incorporation as amended by the Restated Certificate (the "New Restated Certificate of Incorporation"), except for dividends payable in shares of Common Stock issued upon the outstanding shares of Common Stock, dividends or other distributions paid or declared by a wholly-owned Subsidiary of the Company to the Company or to another wholly-owned Subsidiary of the Company and dividends paid on shares of Series I Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock or Series V-1 Preferred Stock as permitted by the New Restated Certificate of Incorporation;

ii. directly or indirectly redeem, purchase or otherwise acquire, or permit any Subsidiary to redeem, purchase or otherwise acquire, any of the Company's or a Subsidiary's equity securities (including, without limitation, warrants, options and other rights to acquire equity securities) other than (a) redemptions, purchases or acquisitions by a Subsidiary of the Company of equity securities held by the Company or a wholly-owned Subsidiary of the Company, (b) redemptions, purchases or other acquisitions of the Series I Preferred Stock, Series II Preferred Stock, Series III Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Common Stock or Existing Warrants pursuant to the terms of Section 8B of this Agreement, and (c) repurchases of Common Stock or other capital stock of the Company from employees of the Company and its Subsidiaries upon termination of employment pursuant to the Plan, the Stock Option Plans and any other stock option, stock purchase or similar equity incentive plan adopted by the Board of Directors;

iii. and will not permit any Subsidiary to, except as expressly contemplated by this Agreement, authorize, issue or enter into any agreement providing for the issuance (contingent or otherwise) of, (a) any notes or debt securities containing equity features (including, without limitation, any notes or debt securities convertible into or exchangeable for equity securities, issued in connection with the issuance of equity securities or containing profit participation features), or (b) any equity securities (or any securities convertible into or exchangeable for any equity securities) other than equity securities issued to employees of the Company pursuant to the Plan, the Stock Option Plans and any other stock option, stock purchase or similar equity incentive plan adopted by the Board of Directors, shares of Series I Preferred Stock issued with the consent of the holders of a majority of the outstanding shares of Series I Preferred Stock, shares of Series II Preferred Stock issued with the consent of the holders of a majority of the outstanding shares of Series II Preferred Stock, shares of Series IV Preferred Stock issued with the consent of the holders of a majority of the outstanding shares of Series IV Preferred Stock, shares of Series V Preferred Stock issued with the consent of the holders of a majority of the outstanding shares of Series V Preferred Stock and shares of Series V-1 Preferred Stock issued with the consent of the holders of a majority of the outstanding shares of Series V-1 Preferred Stock;

iv. make, or permit any Subsidiary to make, any loans or advances to, guarantees for the benefit of, or Investments in, any Person (other than a wholly-owned Subsidiary established under the laws of a jurisdiction of the United States or any of its territorial possessions) which is not approved by a majority of the Board of Directors, except for (a) reasonable advances to employees in the ordinary course of business, and (b) Investments having a stated maturity no greater than one year from the date the Company makes such Investment in (1) obligations of the United States government or any agency thereof or obligations guaranteed by the United States government, (2) certificates of deposit of commercial banks having combined capital and surplus of at least $50 million if such Investment is 100% federally insured or (3) commercial paper with a rating of at least "Prime-1" by Moody's Investors Service, Inc., provided that no more than $1,000,000 shall be invested in any one such issue of commercial paper;

v. create, incur, assume or permit to exist, or permit any Subsidiary to create, incur assume or suffer to exist, Indebtedness exceeding in the aggregate $50 million outstanding at any time on a consolidated basis without prior approval by its Board of Directors;

vi. subject to applicable law, merge or consolidate with or into any Person or permit any Subsidiary to merge or consolidate with or into any Person (other than a wholly-owned Subsidiary);

vii. transfer, sell, lease or otherwise dispose of, or permit any Subsidiary to sell, lease or otherwise dispose of, a material portion of the assets of the Company and its Subsidiaries in any transaction or series of related transactions (other than sales in the ordinary course of business) or transfer, sell or permanently dispose of a material portion of its or any Subsidiary's Proprietary Rights, in each case, without prior approval by its Board of Directors;

viii. liquidate, dissolve or effect a recapitalization or reorganization in any form of transaction (including, without limitation, any reorganization into partnership form) other than the transactions contemplated by this Agreement;

ix. acquire, or permit any Subsidiary to acquire, any interest in any business (whether by a purchase of assets, purchase of stock, merger or otherwise), or enter into any joint venture without prior approval by its Board of Directors;

x. enter into, or permit any Subsidiary to enter into, the ownership, active management or operation of any business other than as currently conducted by the Company without prior approval by its Board of Directors;

xi. become subject to, or permit any of its Subsidiaries to become subject to, any agreement or instrument which by its terms would (under any circumstances) restrict the Company's ability to perform the provisions of this Agreement, the Registration Agreement, the Voting Agreement, the Initial Restated Certificate of Incorporation or the Company's By-laws, as each are amended as contemplated herein;

xii. notwithstanding anything to the contrary set forth above, without the consent of the holders of two-thirds (2/3's) of the outstanding shares of any series of Preferred Stock, make any amendment to the Certificate of Incorporation or the Company's bylaws, or file any resolution of the Board of Directors with the Secretary of State of Delaware that would alter or change the powers, preferences or special rights of the shares of such series so as to affect them adversely in a manner different from any other series of Preferred Stock;

xiii. enter into, or permit any Subsidiary to enter into, any transaction with any of its or any Subsidiary's officers, directors, employees or Affiliates, except for normal employment arrangements and benefit programs on reasonable terms and except

as otherwise expressly contemplated by this Agreement or as approved by a majority of the disinterested members of the Board of Directors;

xiv. establish or acquire (a) any Subsidiaries other than wholly-owned Subsidiaries or (b) any Subsidiaries organized outside of the United States and its territorial possessions without prior approval by the Company's Board of Directors;

xv. make or agree to make any capital expenditures (including, without limitation, payments with respect to leases, as determined in accordance with generally accepted accounting principles consistently applied) exceeding $250,000 without prior approval by its Board of Directors if such expenditures are substantially inconsistent with the annual budget approved by the Board of Directors;

xvi. increase or decrease the authorized size of its Board of Directors from 6 members, or create or permit the existence of a committee of the board of directors having the power of the Board of Directors in any respect, except for those increases, decreases and committees approved by a majority of the Board of Directors;

xvii. amend or modify the Plan or the Stock Option Plans as in existence as of the Closing without the consent of the Board of Directors;

xviii. issue or sell any shares of the capital stock, or rights to acquire shares of the capital stock, of any Subsidiary to any Person other than the Company or another Subsidiary without the consent of its Board of Directors;

xix. change its fiscal year.

D. Affirmative Covenants. So long as any Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock or Existing Warrants remains outstanding, the Company will, and will cause each Subsidiary to:

i. at all times cause to be done all things necessary to maintain, preserve and renew its corporate existence and all material licenses, authorizations and permits necessary to the conduct of its businesses;

ii. maintain and keep its properties in good repair, working order and condition, and from time to time make all necessary or desirable repairs, renewals and replacements, so that its businesses may be properly and advantageously conducted at all times;

iii. pay and discharge when payable all taxes, assessments and governmental charges imposed upon its properties or upon the income or profits therefrom (in each case before the same becomes delinquent and before penalties accrue thereon) and all claims for labor, materials or supplies which if unpaid would by law become a lien upon any of its property unless and to the extent that the same are being contested in good faith and by appropriate proceedings and adequate reserves (as

determined in accordance with generally accepted accounting principles, consistently applied) have been established on its books with respect thereto;

iv. comply with all other material obligations which it incurs pursuant to any contract or agreement, whether oral or written, express or implied, as such obligations become due, unless and to the extent that the same are being contested in good faith and by appropriate proceedings and adequate reserves (as determined in accordance with generally accepted accounting principles, consistently applied) have been established on its books with respect thereto;

v. comply with all applicable laws, rules and regulations of all governmental authorities, the violation of which would reasonably be expected to have a material adverse effect upon the financial condition, operating results, assets, operations or business prospects of the Company and its Subsidiaries taken as a whole;

vi. apply for and continue in force with good and responsible insurance companies adequate insurance covering risks of such types and in such amounts as are customary for corporations engaged in similar lines of business;

vii. maintain proper books of record and account which fairly present its financial condition and results of operations and make provisions on its financial statements for all such proper reserves as in each case are required in accordance with generally accepted accounting principles, consistently applied;

viii. reimburse its directors for reasonable expenses incurred in connection with the performance of their duties, including, without limitation, attendance of meetings;

ix. the Company agrees to continue to use investment proceeds received from each Shareholder (whether existing or new) that is a licensed Small Business Investment Company for working capital and general corporate purposes. Such Shareholder and the Small Business Administration shall have reasonable access to the Company's books and records for the purpose of confirming such use of the proceeds. So long as such Shareholder holds any securities of the Company, the Company will comply at all times with the non-discrimination requirements of 13 C.F.R. Parts 112, 113 and 117. Within 45 days after the end of each fiscal year, and at any other time reasonably requested by such Shareholder, the Company shall deliver to such Shareholder a written assessment, in form and substance satisfactory to such Shareholder, of the economic impact of such Shareholder's investment in the Company, specifying (a) the full-time equivalent jobs created or retained in connection with the investment, and (b) the impact of the investment on the Company's business, in terms of revenue and profits, and on taxes paid by the Company and its employee. Upon request, the Company promptly (and in any event within 20 days of such request) shall furnish to such Shareholder all information (a) reasonably requested by such Shareholder in order for such Shareholder to comply with the requirements of 13 C.F.R. Section 107.620 or to prepare and file SBA Form 468, and (b) reasonably requested or required by

governmental agency asserting jurisdiction over such Shareholder. Any submission of financial information pursuant to this Subsection shall be under cover of a certificate executed by the Company's president, chief executive officer, chief financial officer or treasurer certifying that such information (i) relates to the Company, (ii) to the best of the Company's knowledge is accurate and (iii) if applicable, has been audited by the Company's independent auditors.

E. Current Public Information. At all times after the Company has filed a registration statement with the Securities and Exchange Commission pursuant to the requirements of either the Securities Act or the Securities Exchange Act, the Company will file all reports required to be filed by it under the Securities Act and the Securities Exchange Act and the rules and regulations adopted by the Securities and Exchange Commission thereunder and will take such further action as any holder or holders of Restricted Securities may reasonably request, all to the extent required to enable such holders to sell Restricted Securities pursuant to (i) Rule 144 adopted by the Securities and Exchange Commission under the Securities Act (as such rule may be amended from time to time) or any similar rule or regulation hereafter adopted by the Securities and Exchange Commission, (ii) Regulation S under the Securities Act, as it may be amended from time to time, or (iii) a registration statement on Form S-2 or S-3 or any similar registration form hereafter adopted by the Securities and Exchange Commission. Upon request, the Company will deliver to any holder of Restricted Securities a written statement as to whether it has complied with such requirements.

F. Reservation of Common Stock. The Company will at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of issuance upon the conversion of the Series I Preferred Stock, the Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock and the exercise of the Existing Warrants, such number of shares of Common Stock issuable upon the conversion of all outstanding Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock and the exercise of the Existing Warrants. All shares of Common Stock which are so issuable will, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges. The Company will take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which will be immediately transmitted by the Company upon issuance).

G. Proprietary Rights. The Company will, and will cause each Subsidiary to, possess and maintain all material Proprietary Rights necessary to the conduct of their respective businesses and own all right, title and interest in and to, or have a valid license for, all material Proprietary Rights used by the Company and each Subsidiary in the conduct of their respective businesses. Neither the Company nor any Subsidiary will take any action, or fail to take any action, which would result in the invalidity, abuse, misuse or unenforceability of such Proprietary Rights or which would infringe upon any rights of other Persons.

H. Preemptive Rights.

i. Except for the issuances, exercises and conversions of Series I Preferred Stock, Series II Preferred Stock, Series III Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock and the Existing Warrants, or pursuant to the Plan or the Stock Option Plans or any new stock option, stock purchase or similar equity incentive plan adopted by the Board of Directors, or pursuant to a Qualified Public Offering registered under the Securities Act, if the Company authorizes the issuance or sale of any shares of Common Stock or any securities containing options or rights to acquire any shares of Common Stock (other than as a dividend on the outstanding Common Stock) for cash, the Company will first offer to sell to each of the holders of Underlying Common Stock a portion of such stock or securities equal to the quotient determined by dividing (1) the number of shares of Underlying Common Stock held by such holder by (2) the total number of shares of Underlying Common Stock. Each holder of Underlying Common Stock will be entitled to purchase such stock or securities at the most favorable price and on the most favorable terms as such stock or securities are to be offered to any other Persons. The purchase price for all stock and securities offered to the holders of the Underlying Common Stock shall be payable in cash.

ii. In order to exercise its purchase rights hereunder, a holder of Underlying Common Stock must, within fifteen (15) days after receipt of written notice from the Company describing in reasonable detail the stock or securities being offered, the purchase price thereof, the payment terms and such holder's percentage allotment, deliver a written notice to the Company describing its election hereunder. If all of the stock and securities offered to the holders of Underlying Common Stock is not fully subscribed by such holders, the remaining stock and securities will be reoffered by the Company to the Shareholders hereunder upon the terms set forth in this Section, except that such holders must exercise their purchase rights within five days after receipt of such reoffer.

iii. Upon the expiration of the offering periods described above, the Company will be entitled to sell such stock or securities which the holders of Underlying Common Stock have not elected to purchase during the 90 days following such expiration on terms and conditions no more favorable to the Shareholders thereof than those offered to such holders. Any stock or securities offered or sold by the Company after such 90-day period must be reoffered to the holders of Underlying Common Stock pursuant to the terms of this Section.

iv. The rights of any holder of Underlying Common Stock to purchase Common Stock or securities convertible into Common Stock offered to such holder pursuant to this Subsection 7H may be assigned by such holder to any of its Affiliates or, in the case of the Sponsoring Investors, between or among themselves or to any of their respective Affiliates.

v. The rights under this Section 7H will terminate upon the effectiveness of a registration statement filed by the Company with the Securities and Exchange Commission under the Securities Act with respect to a Qualified Public

Offering; provided that if the registration statement is withdrawn or abandoned before any shares of Common Stock are sold thereunder, the provisions of this Section will remain in effect.

I. Regulatory Compliance Cooperation.

i. In the event that BankAmerica Ventures ('BAV") or BankAmerica Capital Corporation ("BACC") determines that it has a Regulatory Problem (as defined below), the Company agrees to take all such actions as are reasonably requested by BAV/BACC in order (a) to effectuate and facilitate any transfer by BAV/BACC of any securities of the Company then held by BAV/BACC (or its Affiliates) to any Person designated by them, (b) to permit BAV/BACC (or any of its Affiliates) to exchange all or any portion of the Series II Preferred Stock then held by them on a share-for-share basis for shares of a class of nonvoting preferred stock of the Company, which nonvoting preferred stock will be identical in all respects to such Series II Preferred Stock, except that such preferred stock will be nonvoting and will be convertible into Common Stock on such terms as are reasonably requested by BAV/BACC in light of regulatory considerations then prevailing, and (c) to continue and preserve the respective allocation of the voting interests with respect to the Company provided for in the Voting Agreement and with respect to BAV/BACC's ownership of the Company's Underlying Common Stock. Such actions may include, but will not necessarily be limited to:

(1) entering into such additional agreements as are requested by BAV/BACC to permit any person(s) designated by it to exercise any voting power which is relinquished by it upon any exchange of the Series II Preferred Stock for nonvoting stock of the Company; and

(2) entering into such additional agreements, adopting such amendments to the Certificate of Incorporation and bylaws of the Company and taking such additional actions as are reasonably requested by BAV/BACC in order to effectuate the intent of the foregoing.

ii. For purposes of this Agreement, a "Regulatory Problem" means any set of facts or circumstances wherein it has been asserted by any governmental regulatory agency that BAV/BACC is not entitled to hold, or exercise any significant right with respect to, the Series II Preferred Stock or the Common Stock.

8 Transfer Restrictions.

A. Subject to the restrictions contained in this Section, Restricted Securities are transferable pursuant to (i) public offerings registered under the Securities Act, (ii) Rule 144 of the Securities and Exchange Commission (or any similar rule then in force) if such rule is available and (iii) subject to the conditions specified in Subsection C below, any other legally available means of transfer.

B. Rights of First Offer.

i. Prior to a Qualified Public Offering, each party to this Agreement desiring to transfer any shares of Common Stock, Series I Preferred Stock, Series II Preferred Stock, Series III Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock or Existing Warrants, whether now owned or later acquired by such party, shall, prior to making such transfer, deliver to the Company a written notice (the "Notice of Offer"), offering (the "Offer") to the Company and all other holders of any series of Preferred Stock then outstanding (the "Offerees") all of the shares or warrants proposed to be transferred (the 'Securities") by such party (the "Offeror") at the purchase price and on the terms specified therein (which Notice of Offer shall include all relevant terms of the proposed transfer). The Company shall immediately thereafter forward the Notice of Offer to the holders of the Preferred Stock. The Offeror shall also furnish to the Company and the holders of the Preferred Stock such additional information relating to the Offer as may reasonably be requested by the Company and the holders of the Preferred Stock. The Company and the holders of the Preferred Stock shall have the right and option, for a period of thirty (30) days after delivery of the Notice of Offer by the Offeror to the Company, to accept all or any portion of the Securities so offered at the purchase price and on the terms stated in the Notice of Offer. The Company shall have the first right to purchase the offered shares and, if the Company does not elect to purchase all of the offered shares, it shall immediately notify the holders of the Preferred Stock of such decision. Each Offeree shall have the right and option during such thirty (30) day period (x) to accept all or any of its Proportionate Percentage of the Securities so offered (and which the Company has elected not to purchase pursuant to the terms hereof) at the purchase price and on the terms stated in the Notice of Offer and (y) to offer, in any written notice of acceptance, to purchase any Securities not accepted by the other Offerees, in which case the Securities not accepted by the other Offerees shall be deemed to have been offered to and accepted by the Offerees which exercised their option under this clause (y) pro rata in accordance with their respective Proportionate Percentages (computed without including the Offerees who have not exercised their option to purchase Securities under this clause (y)), on the above-described terms and conditions, and if all of the offered Securities have not been fully subscribed by such Offerees, the remaining offered Securities will be reoffered to the Offerees who agreed to purchase their entire entitlement of offered Securities under clause (x) upon the terms set forth in the Notice of Offer until all such Securities are fully subscribed or until all such Offerees have subscribed for all such offered Securities which they desire to purchase, except that such Offerees must exercise their purchase rights within five (5) business days after receipt of all such reoffers. If any portion of the purchase price offered to be paid by a third party for the Securities is comprised of noncash consideration, then Offerees electing to purchase Securities as provided above may, at their option, pay either the same form of noncash consideration or the fair market value of such noncash consideration in their purchase of such Securities.

ii. The rights of any Offeree to purchase Securities pursuant to the preceding paragraph may be assigned by such Offeree to any of its Affiliates or, in the case of the Sponsoring Investors, between or among themselves or to any of their respective Affiliates.

iii. Transfers of Securities under the terms of this Section 8B shall be made at the offices of the Company on a mutually satisfactory business day within fifteen (15) days after the expiration of the applicable time periods. Delivery of certificates or other instruments evidencing such Securities, duly endorsed for transfer and free and clear of all liens and encumbrances, shall be made on such date against payment of the purchase price therefor.

iv. If the Company and the Offerees shall not have accepted to purchase all the Securities offered for sale pursuant to the Notice of Offer, then the Offeror may transfer to a third party that number of the Securities not accepted by the Company and the Offerees at the price and on substantially equivalent terms stated in the original Notice of Offer, at any time within ninety (90) days after the expiration of the Offer. In the event the Securities are not transferred by the Offeror on such terms during such 90-day period, the restrictions of this Section 8B shall again become applicable to any transfer of Securities by the Offeror unless within such 90-day period the Offeror shall deliver to the Company a Notice of Offer with respect to an Offer of the same Securities at a purchase price which is less than the purchase price set forth in the previous Offer, in which case the Offer Period shall be reduced to fifteen (15) days and a new 90-day period shall begin. Nothing in this Section 8B shall preclude any party to this Agreement from engaging in discussions with any investment banker, potential transferee of Securities or other person with respect to a possible purchase of Securities from it, so long as the provisions of this Section 8B are complied with prior to the consummation of any transfer to which thisSection 8B applies. Notwithstanding the foregoing, any party to this Agreement may transfer any Securities to any Affiliate, limited partner, or family member of such party or any trust established for the benefit of the Shareholder or his/her family members without regard to this Section 8B, provided that such Affiliate, limited partner or family member agrees in writing to be bound by the obligations of such Shareholder in this Agreement.

C. In connection with the transfer of any Restricted Securities (other than a transfer described inSection 8A(i) and 8A(ii) above), the holder thereof will deliver written notice to the Company describing in reasonable detail the transfer or proposed transfer, together with an opinion of counsel which (to the Company’s reasonable satisfaction) is knowledgeable in securities law matters to the effect that such transfer of Restricted Securities may be effected without registration of such Restricted Securities under the Securities Act. In addition, following a Qualified Public Offering, if the holder of the Restricted Securities delivers to the Company an opinion of counsel that no subsequent transfer of such Restricted Securities will require registration under the Securities Act, the Company will promptly upon such contemplated transfer deliver new certificates for such Restricted Securities which do not bear the legend set forth in Section 11C. All prospective transferees of Restricted Securities shall, prior to the completion of any transfer, confirm to the Company in writing its agreement to be bound by the obligations contained in this Agreement.

D. The Company shall place, and shall instruct any transfer agent of the Company to place, a stop-transfer order on the Company’s shareholder record books which prohibits the Company, or any transfer agent of the Company, from registering on the

Company's books (i) any transfer of the shares of Restricted Securities and (ii) the issuance of shares of Common Stock upon any conversion of the Series I Preferred Stock or Series II Preferred Stock that, in each case, were originally granted or sold to Shareholders who are not "U.S. Persons" (as defined in Rule 902 under the Securities Act) in reliance on Regulation S unless such transfer or conversion is made in accordance with the provisions of Regulation S (17 CFR §§ 230.902 — 230.904) under the Securities Act or is otherwise exempt from registration under the Securities Act.

E. Purchasers who are not U.S. Persons and to whom shares of Series V Preferred Stock are issued in reliance on Regulation S may not sell, assign, pledge or otherwise transfer any shares of Series V Preferred Stock or any securities issued in respect of the Series V Preferred Stock by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization, during the 12-month period immediately following the date of issuance of said securities (the "Restricted Period"), except that such Purchasers may transfer Restricted Securities during the Restricted Period as provided in Section 8F below.

F. Notwithstanding the foregoing, each Shareholder who is not a U.S. Person may transfer the Restricted Securities to other Shareholders who are not U.S. Persons and who are not located in the "United States" (as defined in Rule 902 (17 CFR § 230.902 under the Securities Act) if such transfers are in accordance with the provisions of 13 CFR § 230.904.

G. Notwithstanding anything to the contrary set forth above, no holder of Restricted Securities may transfer such Restricted Securities to any Person who, in the reasonable opinion of the Board of Directors of the Company, is a Competitor or who is a shareholder, director, officer or affiliate of a Competitor.

9 Representations and Warranties of the Company. As a material inducement to the Purchasers to enter into this Agreement, the Company hereby represents and warrants that as of the Closing:

A. Organization and Corporate Power. The Company is a corporation duly organized, validly existing and in good standing under the laws of Delaware and is qualified to do business in every jurisdiction in which its ownership of property or conduct of business requires it to qualify, except where the failure to so qualify could not reasonably be expected to have a material adverse effect on the financial condition, operating results, assets, operations or business prospects of the Company. The Company has all requisite corporate power and authority and all material licenses, permits and authorizations necessary to own and operate its properties, to carry on its businesses as now conducted and presently proposed to be conducted and to carry out the transactions contemplated by this Agreement.

B. Capital Stock and Related Matters.

i. As of the Initial Closing and immediately thereafter, the authorized capital stock of the Company will consist of (a) 101,500,000 shares of Preferred Stock, of which 17,207,532 shares will be designated Series I Preferred Stock, 7,634,213 shares

will be designated Series II Preferred Stock, 4,792,310 shares will be designated Series III Preferred Stock, 19,183,653 shares will be designated Series IV Preferred Stock, 21,000,000 shares will be designated Series V Preferred Stock, 4,600,000 shares will be designated Series V-1 Preferred Stock, of which 16,769,101 shares of Series I Preferred Stock will be issued and outstanding, 438,392 shares of Series I Preferred Stock have been reserved for issuance under stock option agreements adopted by the Board of Directors, 7,634,207 shares of Series II Preferred Stock will be issued and outstanding, and 4,792,300 shares of Series III Preferred Stock will be issued and outstanding, 19,183,653 shares of Series IV Preferred Stock will be issued and outstanding, 9,130,554 shares of Series V Preferred Stock will be issued and outstanding, 3,331,699 shares of Series V-1 Preferred Stock will be issued and outstanding, and (b) 106,500,000 shares of Common Stock, of which 2,510,442 shares will be issued and outstanding, 8,980,743 shares will be reserved for issuance under the Plan, the Stock Option Plans and any new stock option, stock purchase or similar equity incentive plan adopted by the Board of Directors, 17,207,532 shares will be reserved for issuance upon conversion of the Series I Preferred Stock, 7,634,213 shares will be reserved for issuance upon conversion of the Series II Preferred Stock, 19,183,653 shares will be reserved for issuance upon conversion of the Series IV Preferred Stock, 21,000,000 shares will be reserved for issuance upon conversion of the Series V Preferred Stock, 4,600,000 shares will be reserved for issuance upon conversion of the Series V-1 Preferred Stock and 2,034,124 shares will be reserved for issuance upon exercise of the Existing Warrants. As of the Closing, the Company will not have outstanding any stock or securities convertible or exchangeable for any shares of its capital stock or containing any profit participation features, except for the Series I Preferred Stock, the Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock and the Existing Warrants, nor will it have outstanding any rights or options to subscribe for or to purchase its capital stock or any stock or securities convertible into or exchangeable for its capital stock, except as contemplated in this Agreement or pursuant to the Stock Option Plans. As of the Closing, the Company will not be subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital stock or any warrants, options or other rights to acquire its capital stock, except as contemplated in this Agreement, the Plan, the Stock Option Plans and the Initial Restated Certificate of Incorporation, the Bridge Notes and the Bridge Warrants. As of the Closing, all of the outstanding shares of the Company’s capital stock will be validly issued, fully paid and nonassessable.

ii. There are no statutory or, to the best of the Company’s knowledge, contractual stockholders preemptive rights or rights of refusal with respect to the issuance of the Series V Preferred Stock and Series V-1 Preferred Stock or the issuance of the Common Stock upon conversion of the Series V Preferred Stock and the Series V-1 Preferred Stock which have not been effectively waived. The Company has not violated any applicable federal or state securities laws in connection with the offer, sale or issuance of any of its capital stock, and based upon information provided by and representations made by the Shareholders, the issuance of the Series V Preferred Stock does not require registration under the Securities Act or any applicable state securities

laws. To the best of the Company's knowledge, there are no agreements between the Company's stockholders with respect to the voting or transfer of the Company's capital stock or with respect to any other aspect of the Company's affairs, except for the Voting Agreement.

C. Subsidiaries. The Company does not own or hold any rights to acquire any shares of stock or any other security or interest in any other Person, except for the Company's 100% ownership interest in ULTA Internet Holdings, Inc., a Delaware corporation, which is a member of ULTA Holdings LLC, a Delaware limited liability company, which is, in turn, a member of ULTA.com, LLC, a Delaware limited liability company.

D. Authorization; No Breach. The execution, delivery and performance of this Agreement, the Registration Agreement, the Voting Agreement and all other agreements contemplated hereby to which the Company is a party, and the filing of the Restated Certificate have been duly authorized by the Company. This Agreement, the Registration Agreement, the Voting Agreement and all other agreements contemplated hereby each constitutes a valid and binding obligation of the Company, enforceable in accordance with its terms. The execution and delivery by the Company of this Agreement and all other agreements contemplated hereby to which the Company is a party, the offering and issuance of the Series V Preferred Stock and Series V-1 Preferred Stock, the issuance of the Common Stock upon conversion of the Series V Preferred Stock and Series V-1 Preferred Stock, the filing of the Restated Certificate, and the fulfillment of and compliance with the respective terms hereof and thereof by the Company, do not and will not (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation of any lien, security interest, charge or encumbrance upon the Company's capital stock or assets pursuant to, (iv) give any third party the right to accelerate any obligation under, (v) result in a violation of, or (vi) require any authorization, consent, approval, exemption or other action by or notice to any court or administrative or governmental body pursuant to, the charter or By-laws of the Company, or any law, statute, rule or regulation to which the Company is subject, or any agreement, instrument, order, judgment or decree to which the Company is subject.

E. Litigation, etc. There are no actions, suits, proceedings, orders, investigations or claims pending or, to the best of the Company's knowledge, threatened against or affecting the Company (or to the best of the Company's knowledge, pending or threatened against or affecting any of the officers, directors or employees of the Company with respect to its proposed business activities) at law or in equity, or before or by any governmental department, commission, board, bureau, agency or instrumentality which would have a material adverse affect on the Company in the opinion of the Company's Board of Directors (including, without limitations, any actions, suit, proceedings or investigations with respect to the transactions contemplated by this Agreement); the Company is not subject to any arbitration proceedings under collective bargaining agreements or otherwise or, to the best of the Company's knowledge, any governmental investigations or inquiries (including inquiries as to the qualification to hold or receive any license or permit); and, to the best of the Company's knowledge, there is no basis for any of the foregoing. The Company is not subject to any judgment, order or decree of any court or other governmental agency. The Company has not received any opinion or memorandum or legal advice from legal counsel to the effect that it is

exposed, from a legal standpoint, to any liability or disadvantage which may be material to its business.

F. Brokerage. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement binding upon the Company. The Company will pay, and hold each Shareholder harmless against, any liability, loss or expense (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses) arising in connection with any such claim.

G. Governmental Consent, etc. No permit, consent, approval or authorization of, or declaration to or filing with, any governmental authority, including any Hart-Scott-Rodino Anti-trust Improvements Act of 1976 filing, is required in connection with the execution, delivery and performance by the Company of this Agreement or the other agreements contemplated hereby, or the consummation by the Company of any other transactions contemplated hereby or thereby, except as expressly contemplated herein or in the exhibits hereto.

H. Employees. The Company is not aware that any executive or key employee of the Company or any significant group of employees of the Company has any plans to terminate employment with the Company. The Company has complied in all material respects with all laws relating to the employment of labor, including provisions thereof relating to wages, hours, equal opportunity, collective bargaining and the payment of social security and other taxes, and the Company is not aware that it has any material labor relations problems (including any union organization activities, threatened or actual strikes or work stoppages or material grievances).

I. Affiliate Transactions. Except for employment contracts, stock options or other arrangements contemplated by this Agreement, no officer, director or shareholder of the Company or any person related by blood or marriage to any such person or any entity in which any such person owns any beneficial interest, is a party to any material agreement, contract, commitment or transaction with the Company or has any material interest in any material property used by the Company.

J. Real Property Holding Corporation Status. Since its date of incorporation the Company has not been a "United States real property holding corporation", as defined in Section 897(c)(2) of the Internal Revenue Code of 1986, as amended, and in Section 1.897-2(b) of the U. S. Treasury Regulations issued thereunder.

K. Disclosure. Neither this Agreement nor any of the schedules, attachments, written statements, documents, certificates or other items prepared or supplied to any Shareholder by or on behalf of the Company with respect to the transactions contemplated hereby contain any untrue statement of a material fact or omit a material fact necessary to make each statement contained herein or therein not misleading; provided that with respect to the financial projections furnished to the Purchasers by the Company, the Company represents only that such projections were based upon assumptions reasonably believed by the Company to be

reasonable and fair as of the date the projections were prepared in the context of current and reasonably foreseeable business conditions. There is no fact which the Company has not disclosed to the Purchasers in writing and of which any of its officers, directors or executive employees is aware and which has had or would reasonably be anticipated to have a material adverse effect upon the existing or expected financial condition, operating results, assets, customer or supplier relations, employee relations or business prospects of the Company.

L. Closing Date. The representations and warranties of the Company contained in this Section 9 and elsewhere in this Agreement and all information contained in any exhibit, schedule or attachment hereto or in any writing except the financial projections, delivered by, or on behalf of, the Company to any Shareholder will be true and correct in all material respects on the date of each Closing as though then made, except as affected by the transactions expressly contemplated by this Agreement.

M. Certificate of Incorporation and Bylaws. The copies of the Initial Restated Certificate of Incorporation, as previously amended and the bylaws of the Company which have been delivered to counsel for the Initial Purchasers prior to the execution of this Agreement are true and complete and have not been amended or repealed, except for the filing of the Restated Certificate. The Company is not in violation or breach of any of the provisions of its Initial Restated Certificate of Incorporation, as previously amended or its By-laws.

N. Restrictions Upon Issuance. The issuance of the Series V Preferred Stock and Series V-1 Preferred Stock has been duly authorized and, upon delivery to the Shareholders of certificates therefor against, and if applicable, payment in accordance with the terms of this Agreement, such stock will have been validly issued and fully paid and will be non-assessable, have the rights, preferences, and privileges specified in the Restated Certificate and will be free of preemptive rights, and will be free and clear of all liens and restrictions, other than the liens that might have been created by Shareholders and restrictions on transfer imposed by this Agreement and the Securities Act. The issuance of the Common Stock upon the conversion of the Series V Preferred Stock and Series V-1 Preferred Stock has been duly authorized and have been reserved for issuance upon conversion of the Series V Preferred Stock and Series V-1 Preferred Stock and, when issued upon conversion of the Series V Preferred Stock and the Series V-1 Preferred Stock, the Common Stock will have been validly issued and fully paid and will be non-assessable and will be free of preemptive rights, and will be free and clear of all liens and restrictions, other than liens that might have been created by Shareholders and restrictions imposed by this Agreement and the Securities Act.

O. Compliance with Laws and Other Instruments. The business and operations of the Company have been and are being conducted in accordance with all applicable foreign, federal, state and local laws, rules and regulations and all applicable orders, injunctions, decrees, writs, judgments, determinations and awards of all courts and governmental agencies and instrumentalities. Except as set forth in Schedule 5(A)(vi), the Company is not, nor is it alleged to be, in violation of, or (with or without notice or lapse of time or both) in default under, or in breach of, any term or provision of its certificate of incorporation or bylaws or of any indenture, loan or credit agreement, note, deed of trust, mortgage, security agreement or other agreement, lease, license or other instrument, commitment, obligation or arrangement to which

the Company is a party or by which any of the Company's properties, assets or rights is bound or affected. No other party to any material contract, agreement, lease, license, commitment, instrument or other obligation to which the Company is a party is (with or without notice or lapse of time or both) in default thereunder or in breach of any term thereof.

The Company is not subject to any obligation or restriction of any kind or character, nor is there any event or circumstance relating to the Company which materially and adversely affects in any way its business, properties, assets or prospects or which prohibits the Company from entering into this Agreement or would prevent or make burdensome its performance of or compliance with all or any Section of this Agreement or the Documents or the Restated Certificate or the consummation of the transactions contemplated hereby or thereby.

P. Financial Statements. The Company's audited balance sheet (the "Balance Sheet") for the fiscal year ending January 29, 2000 (the "Balance Sheet Date") and the statement of income and cash flows for the fiscal year then ended, together with notes and schedules to such financial statements and the report of Ernst & Young LLP with respect thereto (i) are in accordance with the books and records of the Company, (ii) present fairly the financial condition of the Company at the Balance Sheet Date and other dates therein specified and the results of operations for the period then ended, and (iii) have been prepared in accordance with the generally accepted accounting principles. Specifically, but not by way of limitation, the Balance Sheet discloses all of the debts, liabilities and obligations of any nature (whether accrued, absolute, contingent, liquidated or otherwise, whether due or to become due) of the Company at the Balance Sheet Date which must be disclosed on a balance sheet in accordance with generally accepted accounting principles.

The Company maintains its books, records and accounts in accordance with good business practice and in sufficient detail to reflect accurately and fairly the transactions and dispositions of its assets, liabilities and equities.

Q. Absence of Undisclosed Liabilities. Except for the Bridge Notes and Bridge Warrants, the Company has no debt, obligation or liability (whether accrued, absolute, contingent, liquidated or otherwise, whether due or to become due, whether or not known to the Company) arising out of any transaction entered into at or prior to the Closing, or any act or omission at or prior to the Closing, or any state of facts existing at or prior to the Closing, including taxes with respect to or based upon the transactions or events occurring at or prior to the Closing, and including, without limitation, unfunded past service liabilities under any pension, profit sharing or similar plan, except (a) to the extent set forth on or reserved against in the Balance Sheet, and (b) current liabilities incurred and obligations under the Loan Agreement or under agreements entered into in the usual and ordinary course of business since the Balance Sheet Date, none of which (individually or in the aggregate) materially affects the business, properties, finances or prospects of the Company.

R. Changes. Except as set forth in Schedule 5(A)(vi), the Company has not since the Balance Sheet Date:

i. incurred any debts, obligations or liabilities, absolute, accrued, contingent or otherwise, whether due or to become due, except the obligations under the Bridge Notes and the Bridge Warrants and current liabilities incurred under the Loan Agreement or in the usual and ordinary course of business, none of which current liabilities (individually or in the aggregate) materially affects the business, finances, properties or prospects of the Company, other than the Employment and Consulting Agreement,

ii. discharged or satisfied any Liens other than those securing, or paid any obligation or liability other than, current liabilities shown on the Balance Sheet and current liabilities incurred since the Balance Sheet Date, in each case in the usual and ordinary course of business,

iii. mortgaged, pledged or subjected to Lien any of its assets, tangible or intangible,

iv. sold, transferred or leased any of its assets (including, without limitation, any patent, trade secret, trademark, service mark, trade name, copyright, or any applications with respect thereto) except in the usual and ordinary course of business,

v. cancelled or compromised any debt or claim, or waived or released any right, of material value,

vi. suffered any physical damage, destruction or loss (whether or not covered by insurance) adversely affecting the properties, business or prospects of the Company,

vii. entered into any material transaction other than in the usual and ordinary course of business except for this Agreement and the transaction contemplated by this Agreement, the Bridge Warrants, Bridge Notes, the company's indirect investment of approximately $5 million in Ulta Holdings, LLC and the Employment and Consulting Agreement,

viii. encountered any labor difficulties or labor union organizing activities,

ix. made or granted any wage or salary increase or entered into any employment agreement (other than in the ordinary course of business),

x. declared, paid or set aside any dividends on or made any other distributions with respect to, or purchased or redeemed, any of its outstanding capital stock, except for repurchases of shares from former employees of the Company as permitted by the Loan Agreement,

xi. suffered or experienced any change in, or affecting, its condition (financial or otherwise), properties, assets, liabilities, business, operations, results of operations or prospects other then changes, events or conditions in the usual and ordinary

course of its business, none of which (either by itself or in conjunction with all such other changes, events and conditions) has been materially adverse,

xii. made any change in the accounting principles, methods or practices followed by it or depreciation or amortization policies or rates theretofore adopted,

xiii. made any loans to its employees, officers or directors other than travel advances made in the ordinary course of business or other loans or advances permitted by the Loan Agreement,

xiv. disclosed to any person any material trade secrets except for disclosures made to persons subject to valid and enforceable confidentiality agreements,

xv. suffered or experienced any change in the relationship or course of dealings between it and any of its suppliers or customers which supply goods or services to the Company or purchases goods or services from the Company in excess of $500,000 in the preceding twelve (12) months, which has had or is likely to have an adverse effect on the results of operations, conditions (financial or other), assets, liabilities, business or prospects of the Company, or

xvi. entered into any agreement, or otherwise obligated itself, to do any of the foregoing.

S. Tax Returns and Audits. All required foreign, federal, state, local and other tax returns, notices and reports (including, without limitation, income, property, sales, use, franchise, capital stock, excise, added value, employees' income withholding, social security and unemployment tax returns) of the Company have been accurately prepared and duly and timely filed, and all foreign, federal, state, local and other taxes required to be paid with respect to the periods covered by such returns have been paid. The Company is not and has not been delinquent in the payment of any tax, assessment or governmental charge. The Company has never had any material tax deficiency proposed or assessed against it and has not executed any waiver of any statute of limitations on the assessment or collection of any tax or governmental charge. No tax audit, action, suit, proceeding, investigation or claim is now pending nor, to the best of the Company's knowledge after reasonable inquiry, threatened against the Company, and no issue or question has been raised (and is currently pending) by any taxing authority in connection with any of the Company's tax returns or reports.

The reserves for taxes, assessments and governmental charges reflected on the Balance Sheet will be substantially sufficient for the payment of all unpaid taxes and governmental charges payable by the Company with respect to the period ended on the Balance Sheet Date. Since the Balance Sheet Date, the Company has made adequate provisions on its books of account for all taxes, assessments and governmental charges with respect to its business, properties and operations for such period.

The Company has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositaries.

T. Employment Benefit Plans — ERISA.

i. Except for the Plan, the Stock Option Plans and the Company's existing bonus plan and 401(k) plan, the Company does not currently maintain or contribute to and has not maintained or contributed to (i) any incentive, bonus, commission or deferred compensation or severance or termination pay plan, agreement or arrangement, whether formal or informal and whether legally binding or not, (ii) any pension, profit sharing, stock purchase, stock option, disability, retirement or any other employee benefit plan, agreement or arrangement, whether formal or informal and whether legally binding or not, (iii) any fringe benefit plan, agreement or arrangement, whether formal or informal and whether legally binding or not or (iv) any other "employee pension benefit plan" as such term is defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

ii. The Company has not engaged in a transaction in connection with which it could be subject either to a civil penalty assessed pursuant to Section 502(i) of ERISA or a tax imposed by Section 4975 of the Code.

iii. The Company has not maintained or contributed to or been required to contribute to a "multi-employer plan," as such term is defined in Section 4001(a)(3) of ERISA.

U. Title to Property and Encumbrances. The Company has good and marketable title to all of its properties and assets, including without limitation the properties and assets reflected in the Balance Sheet and the properties and assets used in the conduct of its business (except for properties disposed of in the ordinary course of business since the Balance Sheet Date and except for properties held under valid and subsisting leases which are in full force and effect and which are not in default), subject to no Lien, except those which are shown and described on the Balance Sheet or the notes thereto and except for Permitted Liens. The consummation of the transactions contemplated by this Agreement will not have any adverse effect on the title to any of the Company's assets.

V. Condition of Properties. All facilities, machinery, equipment, fixtures, vehicles and other properties owned, leased or used by the Company are in good operating condition and repair, are reasonably fit and usable for the purposes for which they are being used, are adequate and sufficient for the Company's business and conform in all material respects with all applicable ordinances, regulations and laws.

W. Insurance Coverage. There is in full force and effect one or more policies of insurance issued by insurers of recognized responsibility, insuring the Company and its

properties, business and directors and officers against such losses and risks, and in such amounts, as are customary in the case of corporations of established reputation engaged in the same or similar business and similarly situated. The Company has not been refused any insurance coverage sought or applied for, and the Company has no reason to believe that it will be unable to renew its existing insurance coverage as and when the same shall expire upon terms at least as favorable as those presently in effect, other than possible increases in premiums that do not result from any act or omission of the Company. The Company is not in default with respect to any provision contained in any insurance policy, and the Company has not failed to give any notice or present any presently existing claims under any insurance policy in due and timely fashion.

X. Licenses. The Company possesses from the appropriate agency, commission, board and governmental body and authority, whether state, local, federal or foreign, all licenses, permits, authorizations, approvals, franchises and rights which are necessary for the Company to engage in the business currently conducted, including without limitation the development, manufacture, use, sale and marketing of its existing products and services; and all such certificates, licenses, permits, authorizations and rights have been lawfully and validly issued, are in full force and effect, and the Company has no reason to believe any of such certificates, licenses, permits, authorizations or rights will be revoked, cancelled, withdrawn, terminated or suspended.

Y. Illegal or Unauthorized Payments; Political Contributions. Neither the Company, nor any of its officers, directors, employees, agents or other representatives of the Company or any other business entity or enterprise with which the Company is or has been affiliated or associated, has, directly or indirectly, made or authorized any payment, contribution or gift of money, property, or services, whether or not in contravention of applicable law, (a) as a kickback or bribe to any person or (b) to any political organization, or the holder of or any aspirant to any elective or appointive public office except for the personal political contributions not involving the direct or indirect use of funds of the Company.

10 Definitions. For the purpose of this Agreement, the following terms have the meanings set forth below:

"Affiliate" of any particular person or entity means any other person or entity controlling, controlled by or under common control with such particular person or entity.

"Business Day" means any day other than a Saturday, Sunday, legal holiday or other day on which commercial banks in the State of Illinois are authorized by law or executive order to close.

"Common Stock" shall mean the common stock, par value $.01 per share, of the Company.

"Competitor" means any business, firm or enterprise engaged in a business substantially similar to the business engaged in by the Company as of the date of this Agreement, including the Company's proposed Level III and Level IV stores (each similar to the Arlington Heights, Illinois store), except any cosmetic or beauty retailer in the United States which is

publicly traded if the investment of such Person in such retailer does not exceed 5% of the outstanding equity securities of such company. A business shall be deemed substantially similar to the Company if it has a similar business strategy and similar product mix to the Company, provided, however, concepts similar to Garden Botanika, Elizabeth Arden's Red Door Salon, Sally's Beauty Supply, Walgreens and Drug Emporium in the format each of these are operated as of the date of this Agreement shall not be deemed to be substantially similar.

"Employment and Consulting Agreement" means the Employment and Consulting Agreement dated as of August 2000 among the Company, ULTA.com, LLC and Terry J. Hanson.

"Event of Noncompliance" has the meaning set forth in the Restated Certificate.

"Existing Common Shareholders" means the holders of Issued and Reserved Common Stock.

"Existing Preferred Shareholders" means all holders of the Existing Preferred Stock.

"Existing Preferred Stock" has the meaning set forth in the recitals.

"Existing Warrant Holders" has the meaning set forth in the recitals

"Existing Warrants" has the meaning set forth in the recitals.

"Holder" of at least a certain percentage or number of Series I Preferred Stock, Series II Preferred Stock, Series III Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock, Existing Warrants, Common Stock or other securities shall mean any single holder beneficially owning at least such designated percentage or number of such securities, or each member of a Group (hereinafter defined) if the Group has beneficial ownership of, in the aggregate, at least such percentage or number of such securities. For purposes of this definition "Group" means a group of Persons each member of which is an Affiliate of each other member of such group.

"Indebtedness" shall mean at a particular time, without duplication, (i) indebtedness for borrowed money or for the deferred purchase price of property or services in respect of which any Person is liable, contingently or otherwise, as obligor or otherwise (other than trade payables and other current liabilities incurred in the ordinary course of business) or any commitment by which any Person assures a creditor against loss, including contingent reimbursement obligations with respect to letters of credit, (ii) indebtedness guaranteed in any manner by any Person, including guarantees in the form of an agreement to repurchase or reimburse, (iii) obligations under capitalized leases required to be so capitalized under generally accepted accounting principles in respect of which obligations any Person is liable, contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations any Person assures a creditor against loss and (iv) any unsatisfied obligation of any Person for "withdrawal liability" to a "multiemployer plan" as such terms are defined under ERISA.

“Investment” as applied to any Person means (i) any direct or indirect purchase or other acquisition by such Person of any notes, obligations, instruments, stock, securities or ownership interest (including partnership interests and joint venture interests) of any other Person and (ii) any capital contribution by such Person to any other Person.

“Issued and Reserved Common Stock” means all issued Common Stock of the Company and all shares of Common Stock reserved upon the exercise of options granted pursuant to the Stock Option Plans.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind, including, without limitation, any conditional sale or other title retention agreement, any lease in the nature thereof and the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction and including any lien or charge arising by statute or other law.

“Loan Agreement” means the existing Loan and Security Agreement, dated May 29, 1997, between the Company and Congress Financial Corporation (Central), as further amended.

“New Warrants” means the Series II Warrants, the DLJ Warrants and the Bridge Warrants, to the extent still existing.

“Officer’s Certificate” means a certificate signed by the Company’s chief executive officer, its chief financial officer, its chief operating officer or its chairman of the board, stating that (i) the officer signing such certificate has made or has caused to be made such investigations as are necessary in order to permit him to verify the accuracy of the information set forth in such certificate and (ii) to the best of such officer’s knowledge, such certificate does not misstate any material fact and does not omit to state any material fact necessary to make the certificate not misleading.

“Old Warrants” means the Class C Warrants, the Class D Warrants, the Class E Warrants, the Class G Warrants, and the Class H Warrants.

“Permitted Liens” shall mean (a) Liens for taxes and assessments or governmental charges or levies not at the time due or in respect of which the validity thereof shall currently be contested in good faith by appropriate proceedings conducted with due diligence and for the payment of which the Company has furnished adequate security; (b) Liens in respect of pledges or deposits under worker’s compensation laws or similar legislation, carriers’, warehousemen’s, mechanics’, laborers’ and materialmen’s and similar Liens, if the obligations secured by such Liens are not then delinquent or are being contested in good faith by appropriate proceedings conducted with due diligence and for the payment of which the Company has furnished adequate security; (c) statutory Liens incidental to the conduct of the business of the Company or any Subsidiary which were not incurred in connection with the borrowing of money or the obtaining of advances or credits and which do not in the aggregate materially detract from the value of its property or materially impair the use thereof in the operation of its business and (d) Liens

permitted under the Loan Agreement and arising in connection the purchase of the assets which are subject to such Lien.

"Person" means any individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Plan" means the Ulta Salon Amended and Restated Restricted Stock Plan dated December 1, 1998, as further amended and restated.

"Preferred Stock" means the Series I Preferred Stock, the Series II Preferred Stock, the Series III Preferred Stock, the Series IV Preferred Stock, the Series V Preferred Stock and the Series V-1 Preferred Stock.

"Proportionate Percentage" means, with respect to any holder of shares of Preferred Stock, a fraction (expressed as a percentage), the numerator of which is the number of shares of Common Stock into which the shares of Preferred Stock owned by such holders are convertible and the denominator of which is the total number of shares of Common Stock into which the shares of Preferred Stock owned by all holders of Preferred Stock are convertible.

"Proprietary Rights" means all (i) patents, patent applications, patent disclosures and improvements thereto, (ii) trademarks, service marks, trade dress, logos, trade names and corporate names and registrations and applications for registration thereof, (iii) copyrights and registrations and applications for registration thereof, (iv) computer software, data and documentation, (v) trade secrets and confidential business information (including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, design, plans, proposals, technical data, copyrightable works, financial, marketing plans and customer and supplier lists and information), (vi) other proprietary rights, and (vii) copies and tangible embodiments thereof (in whatever form or medium).

"Public Offering" means any offering by the Company of its equity securities to the public, in a firm commitment underwriting, pursuant to an effective registration statement under the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force.

"Purchase Agreements" means the Class A Purchase Agreement, the Class B Purchase Agreement, the Class C Purchase Agreement, the Class D Purchase Agreement, the Class E Purchase Agreement, the Class F Purchase Agreement, the Class G Purchase Agreement and the Class H Purchase Agreement.

"Qualified Public Offering" means a Public Offering in which (i) the aggregate cash proceeds received by the Corporation for the shares sold in such offering is at least $15 million; (ii) the price per share paid by the public for the shares sold in such offering implies a total equity valuation of the Company of at least $100 million; (iii) the shares sold in such

offering are listed on the American Stock Exchange or the New York Stock Exchange or are quoted on the Nasdaq National Market, (iv) with respect to (and for the benefit of) the Series IV Preferred Stock only, the implied value of the Underlying Common Stock attributable to such Series IV Preferred Stock shall be at least $3.15 per share (as such amount may be adjusted to reflect stock splits, stock dividends and similar occurrences) or such lesser valuation as may be approved by the holders of seventy-six percent (76%) of the outstanding shares of Series IV Preferred Stock and (v) with respect to (and for the benefit of) the Series V Preferred Stock and Series V-1 Preferred Stock only, the implied value of the Underlying Common Stock attributable to such Series V Preferred Stock and Series V-1 Preferred Stock shall be at least $3.15 per share (as such amount may be adjusted to reflect stock splits, stock dividends and similar occurrences) or such lesser valuation as may be approved by the holders of seventy-six percent (76%) of the outstanding shares of Series V Preferred Stock and Series V-1 Preferred Stock voting together as a single class.

"Remaining Arrearages" shall mean, as of the date of conversion of the Series I Preferred Stock, the Series II Preferred Stock, the Series IV Preferred Stock, the Series V Preferred Stock or the Series V-1 Preferred Stock in question, all dividends accrued on such Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock and Series V-1 Preferred Stock, as the case may be, through the date of such conversion less all dividends declared thereon to the extent such dividends have record dates on or prior to the date of conversion.

"Restricted Securities" means (i) the Series I Preferred Stock, (ii) the Series II Preferred Stock, (iii) the Series III Preferred Stock, (iv) the Series IV Preferred Stock, (v) the Series V Preferred Stock, (v) the Series V-1 Preferred Stock, (vi) the Common Stock issued upon conversion of the Series I Preferred Stock, the Series II Preferred Stock, the Series IV Preferred Stock, the Series V Preferred Stock and the Series V-1 Preferred Stock and (vii) any securities issued with respect to the securities referred to in clauses (i) through (vii) above by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization. As to any particular Restricted Securities, such securities will cease to be Restricted Securities when they have (a) been effectively registered under the Securities Act and disposed of in accordance with the registration statement covering them, or (b) disposed of in a public distribution pursuant to Rule 144 (or any similar provision then in force) under the Securities Act. Whenever any particular securities cease to be Restricted Securities under (a) or (b) above, the holder thereof will be entitled to receive from the Company, without expense, new securities of like tenor not bearing a Securities Act legend of the character set forth in Section 11C.

"Schedule of Initial Purchasers" means those Persons listed on the Schedule of Initial Purchasers attached hereto as Schedule A.

"Schedule of Subsequent Purchasers" means those Persons listed on the Schedule of Subsequent Purchasers attached hereto as Schedule B.

"Schedule of Shareholders" means those Persons listed on the Schedule of Shareholders attached hereto as Schedule C.

“Securities Act” means the Securities Act of 1933, as amended, or any similar federal law then in force.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended, or any similar federal law then in force.

“Securities and Exchange Commission” means the Securities and Exchange Commission and any governmental body or agency succeeding to the functions thereof.

“Series I Preferred Stock” shall have the meaning set forth in the recitals.

“Series II Preferred Stock” shall have the meaning set forth in the recitals.

“Series III Preferred Stock” shall have the meaning set forth in the recitals.

“Series IV Preferred Stock” shall have the meaning set forth in the recitals.

“Series V Preferred Stock” shall have the meaning set forth in the recitals.

“Series IV Supplemental Consent Holder” means Oak Investment Partners whose approval shall be required for the actions described in Sections 7.C.(iii), (vi), (vii) or (viii) hereof; provided, however, that such approval shall only be required if (a) the shares of Series IV Preferred Stock held by Global Retail Partners, L.P. or its affiliates, are not being voted at the direction of either Yves Sisteron or Steve Lebow or such other person as Oak Investment Partners shall have previously approved; (b) the shares of Series IV Preferred Stock held by Eloise Investment B.V. are not being voted at the direction of Charles Heilbronn or such other person as Oak Investment Partners shall have previously approved; and (c) Oak Investment Partners and its affiliates beneficially owns at least seventy-five percent (75%) of the shares of the Series V Preferred Stock originally issued to it under this Agreement.

“Sponsoring Investors” means all Persons other than the Company that are parties to that certain letter agreement entitled “Commitment to Purchase Preferred Stock”, dated March 4, 1997, by and among the Company and certain Shareholders.

“Stock Option Plans” means the Ulta Salon, Cosmetics & Fragrance, Inc. Second Amended and Restated Restricted Stock Option Plan dated December 1, 1998, as further amended and restated and the Ulta Salon, Cosmetics & Fragrance, Inc. Restricted Stock Option Plan – Consultants, dated July 27, 1999, as further amended and restated.

“Subsidiary” means, with respect to any Person, any corporation, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof.

For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a partnership, association or other business entity if such Person or Persons shall be allocated a majority of partnership, association or other business entity gains or losses or shall be or control the managing director or general partner of such partnership, association or other business entity.

"Underlying Common Stock" means the Common Stock issued or issuable upon conversion of the Series I Preferred Stock, the Series II Preferred Stock, the Series IV Preferred Stock, the Series V Preferred Stock, the Series V-1 Preferred Stock and any Common Stock issued or issuable with respect to the securities referred to above by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization. Any Person who holds Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock or Series V-1 Preferred Stock will be deemed to be the holder of the Common Stock obtainable upon the conversion of the Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, the Series V Preferred Stock, the Series V-1 Preferred Stock in connection with the transfer thereof or otherwise regardless of any restriction or limitation on the conversion of the Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock or Series V-1 Preferred Stock. As to any particular shares of Underlying Common Stock, such shares will cease to be Underlying Common Stock when they have been (a) effectively registered under the Securities Act and disposed of in accordance with the registration statement covering them or (b) distributed to the public through a broker, dealer or market maker pursuant to Rule 144 under the Securities Act (or any similar provision then in force).

11 Miscellaneous.

A. Expenses. The Company agrees to pay, and hold each Purchaser harmless against liability for the payment of, (i) the reasonable fees and expenses of their special counsel arising in connection with the negotiation and execution of this Agreement and the consummation of the transactions contemplated by this Agreement which shall be payable at the Closing, and (ii) stamp and other taxes which may be payable in respect of the execution and delivery of this Agreement or the issuance, delivery or acquisition of any shares of Series V Preferred Stock and Series V-1 Preferred Stock or any shares of Common Stock issuable upon conversion of the Series V Preferred Stock and Series V-1 Preferred Stock, and, (iii) reasonable fees and expenses incurred with respect to the enforcement of the rights granted under this Agreement and the agreements contemplated hereby, and (iv) the reasonable fees and expenses incurred by any such Person in connection with any transaction, claim or event related to this Agreement which such Person reasonably believes affects its investment in the Company and as to which such Person seeks advice of counsel.

B. Remedies. Each holder will have all rights and remedies set forth in this Agreement, the New Restated Certificate of Incorporation and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement will be entitled to enforce such rights specifically (without posting a

bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

C. Purchaser's Investment Representations. Each of the Purchasers hereby severally represents to the Company the following:

either:

(a)

i. the Purchaser is not a "U.S. Person" (as defined in Rule 902 (17 CFR § 230.902) under the Securities Act) and is not acquiring the Restricted Securities purchased hereunder or acquired pursuant hereto for the account or benefit of any U.S. Person; and

ii. the offer to purchase Restricted Securities was made outside the United States; and

iii. the purchase of the Restricted Securities by the Purchaser will be made outside the United States; and

iv. the Purchaser acknowledges that each certificate for Restricted Securities purchased hereunder will be imprinted with a legend in substantially the following form:

The securities represented by this certificate were originally issued to a Shareholder who, at the time of purchase, was not a "U.S. Person" (as defined in Rule 902 (17 CFR § 230.902) under the United States Securities Act of 1933, as amended (the "Securities Act")), in a transaction outside the United States of America, its territories and possessions, any state of the United States, and the District of Columbia (collectively, the "United States") and have not been registered under the Securities Act of 1933 as amended. The transfer of the securities represented by this certificate is subject to the conditions specified in the Second Amended and Restated Reclassification and Sale of Shares Agreement dated as of December 18, 2000 between the issuer (the "Company") and certain investors, and the Company reserves the right to refuse the transfer of such securities until such conditions have been fulfilled with respect to such transfer. A copy of such conditions will be furnished by the Company to the holder hereof upon written request and without charge. In addition, the securities represented by this certificate may not be offered, sold, or delivered in the

United States or to any U.S. Person except in accordance with the provisions of Regulation S (17 CFR §§ 230.901 — 230.904) under the Securities Act of 1933, as amended, or pursuant to another exemption from registration under the provisions of the Securities Act.

or:

(b)

i. the Purchaser is acquiring the Restricted Securities purchased hereunder or acquired pursuant hereto for its own account with the present intention of holding such securities for purposes of investment, and that it has no intention of selling such securities in a public distribution in violation of the federal securities laws or any applicable state securities laws; provided that nothing contained herein will prevent any Purchaser and subsequent holders of Restricted Securities from transferring such securities in compliance with the provisions hereof. Each certificate for Restricted Securities purchased hereunder will be imprinted with a legend in substantially the following form:

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended. The transfer of the securities represented by this certificate is subject to the conditions specified in the Amended and Second Restated Reclassification and Sale of Shares Agreement, dated as of December 18, 2000 between the issuer (the "Company") and certain investors, and the Company reserves the right to refuse the transfer of such securities until such conditions have been fulfilled with respect to such transfer. A copy of such conditions will be furnished by the Company to the holder hereof upon written request and without charge.

The Purchaser has the financial ability to bear the economic risk of an investment in the Restricted Securities, has adequate means of providing for his, her or its current needs and personal contingencies, has no need for liquidity in such investment and could afford a complete loss of such investment.

ii. The Purchaser is either (i) an "accredited investor" as defined in Rule 501(a) of Regulation D of the Securities Act or (ii) has relied upon a "Shareholder representative" or a "professional advisor" to assist the Purchaser in evaluating an investment in the Restricted Securities.

iii. The Purchaser's overall commitment to investments which are not readily marketable is not disproportionate to his, her or its net worth and his, her or its investment in the Company will not cause such overall commitment to become excessive.

iv. The Purchaser, either individually or in conjunction with the Shareholder's investment advisor, has such knowledge and experience in financial and business matters that he, she or it is capable of evaluating the merits and risks of his, her or its investment in the Restricted Securities.

and:

(c)

i. The Purchaser expressly acknowledges receipt of the financial information distributed in connection with this offering. The Purchaser acknowledges and agrees that the Purchaser has read and understood the terms and conditions set forth in the financial information.

ii. The Purchaser has been given full opportunity to ask questions of and to receive answers from representatives of the Company concerning the terms and conditions of the investment and the business of the Company and such other information as he, she or it desires in order to evaluate an investment in the Restricted Securities, and all such questions have been answered to the full satisfaction of the Purchaser.

iii. In making his, her or its decision to acquire the Restricted Securities, the Purchaser has relied solely upon independent investigations made by him, her or it. In addition, the Purchaser initially learned of the investment through a direct communication, and was never presented or solicited by (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio, (ii) any seminar or meeting whose attendees, including the Purchaser, had been invited as a result of, subsequent to or pursuant to any of the foregoing, or (iii) any other form of general solicitation.

iv. The Purchaser understands that the shares of the Restricted Securities have not been registered under the Securities Act, the securities laws of any state, and are being issued in reliance upon specific exemptions from registration thereunder, and the Purchaser agrees that the shares of the Restricted Securities may not be sold, offered for sale, transferred, pledged, hypothecated or otherwise disposed of except pursuant to (i) a registration statement with respect to such securities which is effective under the Securities Act or under the securities act of any state, (ii) Rule 144 under the Securities Act or (iii) any other exemption from registration under the Securities Act or under the

securities act of any state relating to the disposition of securities, provided an opinion of counsel is furnished, reasonably satisfactory in form and substance to the Company, that an exemption from the registration requirements of the Securities Act of such state act is available. The Purchaser understands the legal consequences of the foregoing to mean that he, she or it may be required to bear the economic risk of his, her or its investment in the shares of the Restricted Securities for an indefinite period or time. The Purchaser understands that any instruments initially representing the shares of the Restricted Securities shall bear legends restricting the transfer thereof. The Purchaser agrees not to resell or otherwise dispose of all or any shares of Restricted Securities acquired by the Purchaser, except as permitted by law, including, without limitation, any and all applicable provisions of this Section, the Agreement and any regulations under the Securities Act and any state law or regulations.

v. The Purchaser understands that no federal or state agency has made any finding or determination as to the fairness of an investment in, or any recommendation or endorsement of, the shares of the Restricted Securities.

D. Additional Covenants of the Purchasers. Each Purchaser agrees that it will provide the Company with such information about itself and its Affiliates as is necessary to allow the Company to complete and file, if necessary, in a timely manner after the Closing, a Form BE-13 with the Bureau of Economic Analysis of the U.S. Department of Commerce. In addition, each Purchaser other than Doublemousse B.V. hereby represents and warrants to the Company that it is not an Affiliate of nor does it control (as that term is defined in Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, as amended) Doublemousse B.V.

E. Confidentiality and Noncompetition.

i. Each Shareholder hereby agrees to at all times hold in strictest confidence and to not directly or indirectly use or disclose (except as required by law) any Confidential Information (as hereinafter defined) of the Company that may have come or may come into such Shareholder's possession or within such Shareholder's knowledge as a result of such Shareholder being a shareholder, director, officer, employee or agent of the Company; provided that each such Shareholder may disclose Confidential Information in connection with the sale or transfer of any shares of Series I Preferred Stock, Series II Preferred Stock, Series III Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock, Underlying Common Stock, Existing Warrants or shares of Common Stock issuable upon conversion of Existing Warrants, if such Shareholder's proposed transferee agrees in writing to be bound by the provisions of this sentence and such agreement is reasonably satisfactory to the Company. For purposes of this Section, "Confidential Information" shall mean information, not generally known, and proprietary to the Company, including without limitation, information embodying or pertaining to standards, procedures, customers, suppliers, vendors, contractors, pricing, pricing policies, research, purchasing, products,

accounting, marketing , merchandising, finance (including any information furnished to such Shareholder pursuant to Section 7A hereof), business systems and techniques, store operations, store format and new store locations. In addition, each Shareholder agrees not to disclose, directly or indirectly, to any person or entity that any Shareholder is in any way connected, associated or affiliated with Chanel, Inc., or its subsidiaries, successors or assigns.

ii. Furthermore, until such time as a Qualified Public Offering occurs, each Shareholder hereby agrees that from the date hereof and continuing for a period of one year after such Shareholder no longer owns any shares of Series I Preferred Stock, Series II Preferred Stock, Series III Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock, Underlying Common Stock, Existing Warrants or shares of Common Stock issuable upon conversion of Existing Warrants, such Shareholder will not, and will cause its Affiliates not to, purchase equity securities of any corporation, become a director, officer, agent or employee of a corporation or a member of a partnership, engage as a sole proprietor in any business, act as a consultant to or provide any form of financial assistance to, or otherwise engage directly or indirectly in any enterprise which, in the reasonable opinion of the Company, is a Competitor who competes with the Company within the United States, Canada or Mexico; provided that the restrictions in this sentence shall not apply to the acquisition of equity securities of a Competitor if such equity securities are received as consideration in a merger or sale of substantially all of the assets of a corporation in which such Shareholder owns equity securities, and which was not a Competitor at the time of such Shareholder's initial investment in such corporation, with or to a corporation that is or subsequently becomes a Competitor, but only to the extent that any such merger or sale of assets is entered into in good faith and not for the purpose of avoiding the restrictions hereof. It is understood that the restrictions contained in the preceding sentence shall not apply to (x) Affiliates of the Shareholders (i) to the extent that such Affiliates have established a "Chinese Wall" or similar appropriate procedure to ensure that the Person or Persons principally responsible for monitoring such Shareholder's investment in the Company are not involved in, or responsible for, any investment in, or other restricted activities involving, any Competitor or (ii) in case of any Shareholder that is a professionally managed investment fund and identified on Schedule 11E hereto, to the extent that any future investments made by such Shareholder or its Affiliates are made at the direction of a Person or Persons other than the Person or Persons principally responsible for monitoring such Shareholder's investment in the Company or (y) the Shareholders which are managed accounts or other Persons that are specifically identified on Schedule 11E hereto;

iii. If, at the time of enforcement of any of the provisions of this Section 11E, a court holds that the restrictions stated herein are unreasonable under the circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area.

F. Treatment of the Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock and Series V-1 Preferred Stock The Company covenants and agrees that so long as federal income tax laws prohibit a deduction for distributions made by the Company with respect to preferred stock (i) it will treat all distributions paid by it on the Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock and Series V-1 Preferred Stock as non-deductible dividends on all of its tax returns and (ii) it will treat the Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock and Series V-1 Preferred Stock as preferred stock in all of its financial statements and other reports and will treat all distributions paid by it on the Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock and Series V-1 Preferred Stock as dividends on preferred stock in such statements and reports.

G. Consent to Amendments/Waivers. Except as otherwise expressly provided herein, the provisions of this Agreement may be amended or waived and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, if and only if the Company has obtained the written consent of the holders of a majority in voting power of the outstanding shares of Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock and Series V-1 Preferred Stock, voting together as a single class, and the written consent of the holders of ninety percent (90%) of the outstanding shares of any series of Preferred Stock the rights of which would be adversely affected by such amendment, waiver, action or omission in a manner different from any other series of Preferred Stock, such series voting together as a separate class; provided that if there is no Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock or Series V-1 Preferred Stock outstanding, the provisions of this Agreement may be amended or waived and the Company may take any action herein prohibited, if and only if the Company has obtained the written consent of the holders of a majority of the outstanding shares of Underlying Common Stock. No other course of dealing between the Company and the holder of any Series I Preferred Stock, Series II Preferred Stock, Series III Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock or Series V-1 Preferred Stock, or Underlying Common Stock or any delay in exercising any rights hereunder or under the Restated Certificate will operate as a waiver of any rights of any such holders. For purposes of this Agreement, shares of Series V Preferred Stock, Series V-1 Preferred Stock or Underlying Common Stock held by the Company will not be deemed to be outstanding. If the Company pays any consideration to any holder of Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock or Underlying Common Stock for such holder's consent to any amendment, modification or waiver, the Company shall also pay each other holder granting its consent hereunder equivalent consideration computed on a pro rata basis.

H. Survival of Representations and Warranties. All representations and warranties contained herein or made in writing by any party in connection herewith will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, regardless of any investigation made by any Shareholder or on its behalf. All representations and warranties contained in the Initial Classification Agreement and the Amended Classification Agreement or made in writing by any party in connection therewith will

survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

I. Successors and Assigns. Except as otherwise expressly provided herein, all covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto will bind the respective successors and assigns of the parties hereto whether so expressed or not. In addition, and whether or not any express assignment has been made, the provisions of this Agreement which are for any Shareholder's benefit as a Shareholder or holder of Series I Preferred Stock, Series II Preferred Stock, Series III Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock, Existing Warrants, Underlying Common Stock or shares of Common Stock issuable upon conversion of the Existing Warrants are also for the benefit of, and enforceable by, any Affiliate of such Shareholder which becomes the holder of such Series I Preferred Stock, Series II Preferred Stock, Series III Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock, Series V-1 Preferred Stock, Existing Warrants, Underlying Common Stock or shares of Common Stock issuable upon conversion of Existing Warrants (whether by sale, assignment or otherwise), and, in addition, any Holder of at least 10% of the Underlying Common Stock at any time outstanding.

J. Capital and Surplus. The Company agrees that the capital of the Company (as such term is used in Section 154 of the General Corporation Law of Delaware) in respect of the Series V Preferred Stock issued pursuant to this Agreement will be equal to the aggregate par value of such shares. The Company further agrees that, except as contemplated herein or in the Restated Certificate, it will not increase the capital of the Company with respect to any shares of the Company's capital stock at any time on or after the date of this Agreement.

K. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

L. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same Agreement.

M. Descriptive Headings. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a Section of this Agreement.

N. Governing Law. The laws of the State of Delaware will govern all issues to the extent they govern the internal affairs of the Company and its stockholders. All other questions concerning the construction, validity and interpretation of this Agreement and the exhibits and schedules hereto will be governed by the internal law, and not the law of conflicts, of Illinois.

O. Notices. All notices, demands or other communications to given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given when delivered personally to the recipient, sent to the recipient by reputable express courier service (charges prepaid) or mailed to the recipient by certified or

registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications will be sent to each Shareholder at the address indicated on the Schedule of Shareholders and to the Company at the address indicated below:

Ulta Salon, Cosmetics & Fragrance, Inc.
Windham Lakes Business Park
1135 Arbor Drive
Romeoville, Illinois 60446
Attn: Charles R. Weber

or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

P. Understanding Among the Shareholders. The determination of each Shareholder to purchase the Series V Preferred Stock and Series V-1 Preferred Stock pursuant to this Agreement has been made by such Shareholder independent of any statements or opinions as to the advisability of such purchase or as to the properties, business, prospects or condition (financial or otherwise) of the Company which may have been made or given by any other Shareholder or by any agent or employee of any other Shareholder.

Q. Contract Right in Lieu of Dividend. Notwithstanding any provision contained in this Agreement, if a Shareholder converts any of its shares of Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock or Series V-1 Preferred Stock purchased hereunder with respect to which there exists any Remaining Arrearages, such Shareholder shall have a nontransferable and nonassignable right to receive payment from the Company in an amount equal to the Remaining Arrearages on the shares of Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock and Series V-1 Preferred Stock so converted, such payment or payments to be made when, as and if the Company would have paid the accrued and unpaid dividends constituting the Remaining Arrearages had the Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock or Series V-1 Preferred Stock with respect to which such Remaining Arrearages relate not been converted.

R. Waiver of Conflicts. Each party to this Agreement acknowledges that Cooley Godward LLP ('CooleyGodward") has served as special counsel to Annapolis Ventures LLC and has negotiated the terms of the Registration Agreement and the Voting Agreement (together, the "Related Agreements"), the Agreement, the Restated Certificate and the Exhibits to the Agreement and the Related Agreements solely on behalf of Annapolis Ventures LLC. Each Shareholder hereby acknowledges that (a) they have had an opportunity to obtain independent legal counsel; and (b) acknowledge that with respect to this Agreement, the Related Agreements, the Restated Certificate and the Exhibits to the Agreement and the Related Agreements, Cooley Godward has represented solely Annapolis Ventures LLC, and not any other Shareholder.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

ULTA SALON, COSMETICS & FRAGRANCE, INC.

By: ________________________
Its: ________________________

PREFERRED STOCKHOLDERS:

PHILLIPS-SMITH SPECIALTY RETAIL GROUP I, L.P.
By: Phillips-Smith Management Company, L.P., its Managing General Partner

By: ________________________
Its: General Partner

PHILLIPS-SMITH SPECIALTY RETAIL GROUP II, L.P.
By: Phillips-Smith Management Company, L.P., its Managing General Partner

By: ________________________
Its: General Partner

BANKAMERICA CAPITAL CORPORATION

By: ________________________
Its: ________________________

BANKAMERICA VENTURES F/K/A FIRST SMALL BUSINESS INVESTMENT COMPANY OF CALIFORNIA

By: ________________________
Its: ________________________

WILLIAM BLAIR CAPITAL PARTNERS III, L.P.
By: William Blair Venture Management Company, L.P., its General Partner

By: ______________________________
Ellen Carnahan, General Partner

SPROUT CAPITAL VI, L.P.
By: DLJ Capital Corporation, its Managing General Partner

By: ______________________________
Its: ______________________________

DLJ VENTURE CAPITAL FUND II, L.P.
By: DLJ Fund Associates II, its General Partner

By: ______________________________
Its: ______________________________

KCB BV, L.P.
By: KCB BV, Inc., its General Partner

By: ______________________________
Harvey Knell, President
Its: General Partner

ABELSON FAMILY PARTNERSHIP:

By: ______________________________
Hirschel B. Abelson
Its: ______________________________

THE JEWISH COMMUNAL FUND

By: ____________________
Its: ____________________

Richard E. George

Terry J. Hanson

Jeffrey H. Brotman

THE 1991 BROTMAN CHILDREN'S TRUST

By: ____________________
John Meisenbach, Trustee

John Meisenbach

Thomas Kully

DRAKE & CO FOR CITIVENTURE III

By: ____________________
Its: ____________________

BOOTH & CO. (MUNICIPAL EMPLOYEES
ANNUITY & BENEFIT FUND OF CHICAGO)

By: ____________________
Its: ____________________

BOOTH & CO. (Policeman's Fund)

By: ______________________________
Its: ______________________________

CHANCELLOR VENTURE CAPITAL I L.P. (F/K/A MAC & CO.)
By: Chancellor LGT Venture Partners, L.P., its general partner
By: Chancellor Venture LGT Partners, Inc., its general partner

By: ______________________________
Its: ______________________________

FOCUS & CO. FOR BAXTER INTERNATIONALCORP.

By: ______________________________
Its: ______________________________

DLJ CAPITAL CORPORATION

By: ______________________________
Its: ______________________________

DLJ FIRST ESC L.L.C.

By: ______________________________
Its: ______________________________

FOURCAR BV

By: ______________________________
Its: ______________________________

MARCH FOUNDATION

By: ____________________________
Its: ____________________________

LACOMBLE RETAILING SA

By: ____________________________
Its: ____________________________

____
Marie-Pierre Fournier

____
Jacques Fournier

____
Daniel Bernard

APPOTAMOX FOUNDATION

By: ____________________________
Its: ____________________________

BAMSE NV

By: ____________________________
Its: ____________________________

KME VENTURE II
By: SAFAT Ltd., its Investment Manager

By: ____________________________
Its: ____________________________

KME VENTURE III, L.P.
By: SAFAT, Ltd., it General Partners

By: ____________________
Its: ____________________

____
Howard Schultz

____
Orin C. Smith

____
Steven Ritt

CALCOM PENSION PLAN

By: ____________________
Its: ____________________

SMITH BARNEY IRA FBO HENRY J. NASELLA

By: ____________________
Its: ____________________

____
Henry J. Nasella

LEBOW FAMILY PARTNERSHIP

By: ____________________
Steven Lebow, its General Partner

Steven Lebow, JT Tenant with Susan Lebow

Susan Lebow, JT Tenant with Steven Lebow

THE MICHAEL HARVEY LEBOW
IRREVOCABLE TRUST

By: ____________________
Steven E. Lebow, Trustee

By: ____________________
Susan Morse Lebow, Trustee

THE MATTHEW ALLAN LEBOW
IRREVOCABLE TRUST

By: ____________________
Steven E. Lebow, Trustee

By: ____________________
Susan Morse Lebow, Trustee

Susan C. Schnabel

James Sington

Steven Dietz

Vince DeGiaimo

Douglas Hayes, JT Ten with Connie Hayes

Connie Hayes, JT Ten with Douglas Hayes

MOELIS FAMILY TRUST

By: ____________________
Kenneth D. Moelis, Trustee

By: ____________________
Julie Moelis, Trustee

Peter Nolan

WOO FAMILY TRUST DTD NOVEMBER 30, 1998

By: ____________________
Warren C. Woo, Trustee

By: ____________________
Carolyn M. Suda, Trustee

John Danhakl

Richard Galanti

SEP FOR THE BENEFIT OF YVES SISTERON
By: Donald Lufkin Jenrette
Securities Corporation as Custodian

By: ____________________
Its: ____________________

Yves Sisteron

Peter Dyvig

Glynn Bloomquist

PICTET & CIE

By: ____________________
Its: ____________________

FEIGIN TRADING CO.

By: ____________________
Its: ____________________

U-3 PARTNERSHIP

By: ____________________
Samuel N. Stroum, its General Partner

JOHN D. AND CATHERINE T. MACARTHUR FOUNDATION

By: ____________________
Its: ____________________

BCI GROWTH III, L.P.
By: ____________________
Teaneck Associates, L.P., Its General Partner

By: ____________________
Its: General Partner

James R. Miller

Virginia B. Jontes

DOUBLEMOUSSE B.V.

By: ____________________

Its: ____________________

ARABELLA, S.A.

By: ____________________

Its: ____________________

OAK INVESTMENT PARTNERS VII

By: ____________________

Gerald R. Gallagher, General Partner
Managing Member of Oak Associates VII, LLC, The General Partner of Oak Investment Partners VII, Limited Partnership

OAK VII AFFILIATES, LLC

By: ____________________

Gerald R. Gallagher, General Partner
Managing Member of Oak VII Affiliates, LLC, The General Partner of Oak VII Affiliates Fund Limited Partnership

SHENNAN FAMILY PARTNERSHIP

By: ____________________
Its: ____________________

C. DONALD DORSEY AND LYDIA DORSEY
REVOCABLE LIVING TRUST DTD AUGUST 5, 1993

By: ____________________
Its: ____________________

STRATEGIC GLOBAL PARTNERS, LLC

By: ____________________
Its: ____________________

INTERNET TECHNOLOGY VENTURES, LLC

By: ____________________
Its: ____________________

____
Robert Markey

____
Juanita F. Francis

GREENHOUSE CAPITAL PARTNERS

By: ____________________
Its: ____________________

GLOBAL RETAIL PARTNERS, L.P.
By: GLOBAL RETAIL PARTNERS, INC.
General Partner

By: ____________________
Its: ____________________

DLJ DIVERSIFIED PARTNERS, L.P.
By: DLJ DIVERSIFIED PARTNERS, INC.
General Partner

By: ____________________
Its: ____________________

DLJ DIVERSIFIED PARTNERS-A, L.P.
By: DLJ DIVERSIFIED PARTNERS, INC.
General Partner

By: ____________________
Its: ____________________

GRP PARTNERS, L.P.
By: GLOBAL RETAIL PARTNERS, INC.
General Partner

By: ____________________
Its: ____________________

GLOBAL RETAIL PARTNERS FUNDING, INC.

By: ____________________
Its: ____________________

DLJ ESC II L.P.
By: DLJ LBO PLANS MANAGEMENT
CORPORATION
General Partner

By: ____________________
Its: ____________________

THE SAMUEL J. AND SANDRA S. PARKER FAMILY TRUST
DTD SEPTEMBER 10, 1982

By: ____
Its: Trustee

WEBER 1997 DYNASTY TRUST

By: ____
Patricia L. Fennema, Trustee

DONALDSON, LUFKIN & JENRETTE
SECURITIES CORPORATION

By: ____
Its: ____

____
Martha Richner

SG COWEN

By: ____
Its: ____

FIDAS BUSINESS S.A.

By: ____
Its: ____

____
Erich L. Spangenberg

____
Steven E. Lebow, Individually

CAROL F. THOR REVOCABLE TRUST U/A/D 6/8/90

By: ____
Carol F. Thor, Trustee

____
Karen Ferguson

JOHN R. KROMER AS TRUSTEE UNDER THE
JOHN R. KROMER DECLARATION OF TRUST DTD JUNE 11, 1991, AND SUCCESSOR TRUSTEES

By: ____
John R. Kromer, Trustee

____
John Kromer

____
Greg Smolarek

____
Bob VonderHaar

ANNAPOLIS VENTURES LLC
By: Annapolis Operations LLC,
its Managing Member

By: ____
Doulgas O. Hickman,
Manager/Member

LATHAM & WATKINS

By: ________________________________
Its: ________________________________

____
Donald L. Schwartz

GRP II, L.P.,
By: GRPVC, L.P., its General Partner
By: GRP Management Services Corp., its General Partner

By: ________________________________
Its: ________________________________

GRP II PARTNERS, L.P.
By: GRPVC, L.P., its General Partner
By: GRP Management Services Corp., its General Partner

By: ________________________________
Its: ________________________________

____
Denis Defforey

EXHIBIT A

RESTATED CERTIFICATE

EXHIBIT B

REGISTRATION AGREEMENT

EXHIBIT C

VOTING AGREEMENT

EXHIBIT D

LATHAM & WATKINS LEGAL OPINION

SCHEDULE 5A(vi)

MATERIAL CHANGES AND DEFAULTS

The Balance Sheet reflects an investment in 1999 of approximately $5 million through ULTA Internet Holdings, Inc. in Jamin.com, private website involved in the retail perfume sales. That $5 million investment was converted as of the beginning of the current fiscal year to an investment in ULTA Holdings, LLC, whereby the Company, ULTA Internet Holdings, Inc., Online Retail Partners, LLC, ULTA Holdings, LLC and ULTA.com, LLC entered into various transactions for the development and operation of a retail website for the Company through ULTA Holdings, LLC. In light of the current market condition of the retail e-commerce segment and the fact that the retail website is not yet fully operational, the Company cannot be certain that it will not suffer a loss of the entire investment.

SCHEDULE 9Q

UNDISCLOSED LIABILITIES

None

SCHEDULE 11E

PROFESSIONALLY MANAGED INVESTMENT FUNDS

Chancellor Venture Capital, L.P. and its Affiliates
CitVenture Private Participations II Limited and its Affiliates

SHAREHOLDERS WITH MANAGED ACCOUNTS AND OTHER PERSONS

Chicago Municipal Employees Pension Fund
Chicago Police Pension Fund
Baxter Travenol Employee Pension Fund
BankAmerica Capital Corporation[1]
BankAmerica Ventures f/k/a First Small Business Investment Company of California[1]
DLJ Capital Corporation[2]
DLJ First ESC L.L.C.[2]

OTHER PERSONS

Doublemousse B.V. and any one or more of its affiliates.

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1 The provisions governing confidentiality and noncompetition between the Company and BankAmerica are set forth in a separate letter agreement.

2 The exemption for these Shareholders is conditioned upon their adoption and enforcement of the procedures contemplated in clause (x)(i) of Section 11E of the Agreement.

Schedule A

Schedule of Initial Purchasers[3]

Series V-1

Purchaser	Series V-1 Preferred Stock	Purchase Price
Doublemousse B.V.	1,080,000	$1,620,000.00

Purchaser	Series V-1 Preferred Stock	Cancellation of Indebtedness for Bridge Notes
Doublemousse B.V.	2,251,699.34	$3,377,549.01
Subtotal of Doublemousse's initial Series V-1 principal investment and conversion of Bridge Notes:	**3,331,699.34**	**$4,997,549.01**

Series V

Purchaser	Series V Preferred Stock	Purchase Price
Oak Investment Partners VII, Limited Partnership	1,755,900	$2,633,850.00
Oak VII Affiliates Fund, Limited Partnership	44,100	66,150.00
GRP II, L.P.	2,592,000	3,888,000.00
GRP II Partners, L.P.	288,000	432,000.00
Annapolis Ventures LLC	1,260,000	1,890,000.00
C. Donald Dorsey and Lydia Dorsey Rev. Living	775	1,162.50

3 Each holder of Series V Preferred Stock and Series V-1 Preferred Stock shall receive checks in the amount equal to their fractional shares.

Purchaser	Series V Preferred Stock	Cancellation of Indebtedness for Bridge Notes
Steven and Susan Lebow	20,353.07	$ 30,529.60
Henry Nasella	2,261.45	3,392.18
Steven E. Lebow	87,631.26	131,446.89
Lebow Family Partnership	46,359.76	69,539.64
The Matthew Allan Lebow Irrevocable Trust	10,176.53	15,264.80
The Michael Harvey Lebow Irrevocable Trust	10,176.53	15,264.80
Susan Schnabel	2,826.81	4,240.22
Oak Investment Partners VII	602,802.15	904,203.22
Oak VII Affiliates, LLC	15,139.57	22,709.36
Global Retail Partners, L.P.	310,373.67	465,560.50
DLJ Diversified Partners, L.P.	92,484.90	138,727.35
DLJ Diversified Partners-A, L.P.	34,247.57	51,371.35
GRP Partners, L.P.	19,886.64	29,829.96
Global Retail Partners Funding, Inc.	21,368.60	32,052.90
DLJ ESC II, L.P.	5,730.66	8,595.99
Kenneth D. & Julie Moelis, Trustees Moelis Family Trust	2,236.92	3355.38
Drake & Co. For Citiventure III	171,124.27	256,686.40
Chancellor Venture Capital I L.P. (f/k/a MAC & Co.)	69,903.70	104,855.56
Booth & Co. (f/k/a Booth & Co. (Pol.))	13,980.74	20,971.11
Municipal Employees Annuity and Benefit Fund of Chicago	22,369.19	33,553.78
Focus & Co.	2,796.15	4,194.22

Purchaser	Series V Preferred Stock	Cancellation of Indebtedness for Bridge Notes
C. Donald Dorsey and Lydia Dorsey Rev. Living Trust	2,796.15	4,194.22
Robert Markey	18,454.58	27,681.87
Jeffrey Brotman	5,033.07	7,549.60
The 1991 Brotman Children's Trust	11,184.59	16,776.89
Steven Dietz	6,990.37	10,485.56
Denis Defforey	1,398,074.07	2,097,111.11
Latham & Watkins	34,951.85	52,427.78
Donald L. Schwartz	83,884.44	125,826.67
Samuel J. and Sandra S. Parker Family Trust (Sept 20)	64,194.00	96,291
Subtotal for Bridge Note Conversion (including 14.26 fractional shares which will not be issued but will be paid by check)	**3,189,793.27**	**$ 4,784,689.90**
Subtotal for Series V Preferred Stock Issuance (including conversion of Bridge Loans and fractional shares)	**9,130,568.27**	**$13,695,852.40**
GRAND TOTAL (For both Series V and Series V-1 Preferred Stock issuance, including fractional shares)	**12,462,267.61**	**$18,693,401.41**

Schedule B

Schedule of Subsequent Purchasers

Purchaser	Series V-1 Preferred Stock	Purchase Price
Doublemousse B.V.	920,000	$1,380,000.00

Purchaser	Series V Preferred Stock	Purchase Price
Oak Investment Partners VII, Limited Partnership	1,495,766	$ 2,243,649.00
Oak VII Affiliates Fund, Limited Partnership	37,566	56,349.00
GRP II, L.P.	2,208,000	3,312,000.00
GRP II Partners, L.P.	245,333	367,999.50
Annapolis Ventures LLC	1,073,333	1,609,999.50
TOTAL		$

Schedule of Shareholders

Phillips-Smith Specialty Retail Group I, L.P.
Phillips-Smith Specialty Retail Group II, L.P.
BankAmerica Capital Corporation
BankAmerica Ventures f/k/a First Small Business Investment Company of California
William Blair Capital Partners III, L.P.
Sprout Capital VI, L.P.
DLJ Venture Capital Fund II, L.P.
KCB BV, L.P.
Abelson Family Partnership
The Jewish Communal Fund
Richard E. George
Terry J. Hanson
Jeffrey H. Brotman
1991 Brotman Children's Trust
John Meisenbach
Thomas Kully
Drake & Co for Citiventure III
Booth & Co.(Municipal Employees Annuity & Benefit Fund of Chicago)
Booth & Co (Pol. Fund)
Chancellor Venture Capital I L.P. (f/k/a MAC & Co.)
Focus & Co. for Baxter International Corp.
DLJ Capital Corporation
DLJ First ESC L.L.C
Fourcar BV
March Foundation
Lacomble Retailing SA
Marie-Pierre Fournier
Jacques Fournier
Daniel Bernard
Appotamox Foundation
Bamse NV
KME Venture II
KME Venture III, L.P.
Howard Schultz
Orin C. Smith
Steven Ritt
Calcom Pension Plan
Henry J. Nasella
Smith Barney f/b/o of IRA of Henry
Lebow Family Partnership:
Steven and Susan Lebow
The Michael Harvey Lebow Irrevocable Trust
The Matthew Allan Lebow Irrevocable Trust

Susan C. Schnabel
James Sington
Steven Dietz
Vincent DeGiaimo
Douglas and Connie Hayes:
Kenneth D. and Julie Moelis, Trustee under Moelis Family Trust
Peter Nolan
Woo Family Trust dtd 11/30/1998
John Danhakl
Richard Galanti
SEP f/b/o Yves Sisteron
Yves Sisteron
Peter Dyvig
Glynn Bloomquist
Pictet & CIE
Feigin Trading Co.
U-3 Partnership
The John D. and Catherine T. MacArthur Foundation
BCI Growth III, L.P.V
James R. Miller
Virginia B. Jontes
Doublemousse B.V.
Arabella, S.A.
Oak Investment Partners VII
Oak VII Affiliates, LLC
Shennan Family Partnership
C. Donald Dorsey and Lydia Dorsey Revocable Living Trust Dated 8/5/93:
Strategic Global Partners, LLC:
Internet Technology Ventures, LLC
Robert Markey
Juanita F. Francis
Greenhouse Capital Partners
Global Retail Partners, L.P.
DLJ Diversified Partners, L.P.
DLJ Diversified Partners-A, L.P.
GRP Partners, L.P.
Global Retail Partners Funding, Inc.
DLJ ESC II L.P.
The Samuel J. and Sandra S. Parker Family
Trust dated September 10, 1982
Weber 1997 Dynasty Trust
Donaldson, Lufkin & Jenrette Securities Corporations
Martha Richner
SG Cowen
Fidas Business S.A.
Erich L. Spangenberg

Steven Lebow (Individually)
Carol F. ThorRevocable Trust u/a/d 6/8/90
Karen Ferguson
John Kromer, Trustee under the John R. Kromer declaration of trust
dated June 11, 1991, and successor trustees
John Kromer (Individually)
Greg Smolarek
Bob VonderHaar
Annapolis Ventures LLC
Latham and Watkins
Donald Schwartz
GRP II, L.P.
GRP II Partners, L.P.
Denis Defforey

SECOND AMENDED AND RESTATED

RECLASSIFICATION AND SALE OF SHARES AGREEMENT

OF

ULTA SALON, COSMETICS & FRAGRANCE, INC.

December 18, 2000

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EXHIBIT 4.3(a)

ULTA SALON, COSMETICS & FRAGRANCE, INC.
AMENDMENT TO THE
SECOND AMENDED AND RESTATED
RECLASSIFICATION AND SALE OF SHARES AGREEMENT

This is an amendment, dated as of May 25, 2001 (the "Amendment"), to the Second Amended and Restated Reclassification and Sale of Shares Agreement, dated as of December 18, 2000 (the "Reclassification Agreement"), among Ulta Salon, Cosmetics & Fragrance, Inc., a Delaware corporation (the "Company") and the Shareholders of the Company party thereto. Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Reclassification Agreement.

RECITALS

WHEREAS, the Shareholders of the Company have previously entered into the Reclassification Agreement and consummated the Initial Closing on December 18, 2000;

WHEREAS, the parties to the Reclassification Agreement have agreed to consummate the Subsequent Closing prior to June 1, 2000;

WHEREAS, in connection with the Subsequent Closing, the parties hereto have agreed to amend the Reclassification Agreement to include additional Subsequent Purchasers to Schedule B (Schedule of Subsequent Purchasers) of the Reclassification Agreement;

WHEREAS, the parties intend to extend the outside date for the Subsequent Closing to July 15, 2001 (with such closing to occur on or about July 9, 2001) but also intend to consummate the Subsequent Closing on May 30, 2001 if this Amendment should not be approved for any reason;

WHEREAS, the undersigned Shareholders represent at least a majority in voting power of the outstanding shares of Series I Preferred Stock, Series II Preferred Stock, Series IV Preferred Stock, Series V Preferred Stock and Series V-1 Preferred Stock voting together as a single class.

NOW THEREFORE, in consideration of the foregoing premises and mutual agreements set forth in the Reclassification Agreement and this Amendment, the parties hereto agree as follows:

1. **Amendment**.

a. The first sentence of Section 4.C — "Subsequent Closings" of the Reclassification Agreement is hereby modified and amended to read in its entirety as follows:

"Subsequent sales of Series V Preferred Stock and Series V-1 Preferred Stock may occur on or around February 2, 2001 or at the sole discretion of the Company at a later date which shall be no later than July 15, 2001 (the "Subsequent Closing," and together with the Initial Closing, the "Closing")."

b. After the second sentence of Section 4.C – "Subsequent Closings" of the Reclassification Agreement the following sentence is inserted:

"Notwithstanding the restrictions of Section 11G of this Agreement, the Company, with approval of its Board of Directors, may amend Schedule B hereof, to add additional Subsequent Purchasers who may purchase up to 1,189,024 shares of Series V Preferred Stock and 318,620 shares of Series V-1 Preferred Stock and to increase the respective totals on Schedule B accordingly, provided,

however, the Company may not otherwise amend, change or alter Schedule B hereof in any other manner."

c. Schedule B – "Schedule of Subsequent Purchasers" to the Reclassification Agreement is hereby modified and amended to read in its entirety as follows:

Purchaser	Series V-1 Preferred Stock	Purchase Price
Doublemousse B.V.	920,000	$1,380,000.00

Purchaser	Series V Preferred Stock	Purchase Price
Oak Investment Partners VII, Limited Partnership	1,495,766	$ 2,243,649.00
Oak VII Affiliates Fund, Limited Partnership	37,566	56,349.00
GRP II, L.P.	2,208,000	3,312,000.00
GRP II Partners, L.P.	245,333	367,999.50
Annapolis Ventures LLC	1,073,333	1,609,999.50
Rick Weber/Weber 1997 Dynasty Trust	17,360	26,040.00
Juanita Francis	775	1,162.50
The Samuel J. and Sandra S. Parker Family Trust	18,135	27,202.50
Glynn Bloomquist	1,860	2,790.00
U-3 Partnership	2,325	3,487.50
1991 Brotman Children's Trust	66,666.67	100,000.00
Jeffrey Brotman	66,666.67	100,000.00
Greenhouse Capital Partner's	3,410	5,115.00
Vince DeGiaimo	310	465.00
C. Donald Dorsey and Lydia Dorsey Revocable Living Trust dtd August 5, 1993	775	1,162.50
Total – Series V	5,238,281.34	7,857,422.00
Total – Series V-1	920,000	1,380,000
TOTAL	6,158,281.34	$ 9,237,422.00

2. **Scope of Amendment**. Except as expressly amended hereby, the Reclassification Agreement remains in full force and effect in accordance with its terms and this Amendment to the Reclassification Agreement shall not by implication or otherwise alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Reclassification Agreement, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

3. **Governing Law**. The Reclassification Agreement, as amended by this Amendment, exists under and pursuant to the Delaware General Corporation Law and this Amendment to the Reclassification Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

4. **Counterparts.** This Amendment to the Reclassification Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to the Reclassification Agreement to be duly executed as of the day and year first above written.

ULTA SALON, COSMETICS & FRAGRANCE, INC.

By: ____________________________
Its:

PREFERRED STOCKHOLDERS:

PHILLIPS-SMITH SPECIALTY RETAIL GROUP I, L.P.
By: Phillips-Smith Management Company, L.P., its Managing General Partner

By: ____________________________
Its: General Partner

PHILLIPS-SMITH SPECIALTY RETAIL GROUP II, L.P.
By: Phillips-Smith Management Company, L.P., its Managing General Partner

By: ____________________________
Its: General Partner

BANKAMERICA CAPITAL CORPORATION

By: ____________________________
Its: ____________________________

BANKAMERICA VENTURES F/K/A FIRST SMALL BUSINESS INVESTMENT COMPANY OF CALIFORNIA

By: ____________________________
Its: ____________________________

WILLIAM BLAIR CAPITAL PARTNERS III, L.P.

By: William Blair Venture Management Company, L.P., its General Partner

By: ______________________________
Ellen Carnahan, General Partner

SPROUT CAPITAL VI, L.P.
By: DLJ Capital Corporation, its Managing General Partner
By: ______________________________
Its: ______________________________

DLJ VENTURE CAPITAL FUND II, L.P.
By: DLJ Fund Associates II, its General Partner

By: ______________________________
Its: ______________________________

KCB BV, L.P.
By: KCB BV, Inc., its General Partner

By: ______________________________
Harvey Knell, President
Its: General Partner

ABELSON FAMILY PARTNERSHIP:

By: ______________________________
Hirschel B. Abelson
Its: ______________________________

THE JEWISH COMMUNAL FUND

By: ______________________________
Its: ______________________________

____
Richard E. George

____
Terry J. Hanson

____
Jeffrey H. Brotman

THE 1991 BROTMAN CHILDREN'S TRUST

By: ______________________________
John Meisenbach, Trustee

____
John Meisenbach

____
Thomas Kully

DRAKE & CO FOR CITIVENTURE III

By: ______________________________
Its: ______________________________

BOOTH & CO. (MUNICIPAL EMPLOYEES ANNUITY & BENEFIT FUND OF CHICAGO)

By: ______________________________
Its: ______________________________

BOOTH & CO. (Policeman's Fund)

By: ______________________________
Its: ______________________________

CHANCELLOR VENTURE CAPITAL I L.P. (F/K/A MAC & CO.)
By: Chancellor LGT Venture Partners, L.P., its general partner
By: Chancellor Venture LGT Partners, Inc., its general partner

By: ________________________
Its: ________________________

FOCUS & CO. FOR BAXTER INTERNATIONALCORP.

By: ______________________________
Its: ______________________________

DLJ CAPITAL CORPORATION

By: ______________________________
Its: ______________________________

DLJ FIRST ESC L.L.C.

By: ______________________________
Its: ______________________________

FOURCAR BV

By: ______________________________
Its: ______________________________

MARCH FOUNDATION

By: ____________________

Its: ____________________

LACOMBLE RETAILING SA

By: ____________________

Its: ____________________

____

Marie-Pierre Fournier

____

Jacques Fournier

____

Daniel Bernard

APPOTAMOX FOUNDATION

By: ____________________

Its: ____________________

BAMSE NV

By: ____________________

Its: ____________________

KME VENTURE II

By: SAFAT Ltd., its Investment Manager

By: ____________________

Its: ____________________

KME VENTURE III, L.P.
By: SAFAT, Ltd., it General Partners

By: ____________________________

Its: ____________________________

____
Howard Schultz

____
Orin C. Smith

____
Steven Ritt

CALCOM PENSION PLAN

By: ______________________________
Its: ______________________________

SMITH BARNEY IRA FBO HENRY J. NASELLA

By: ________________________________
Its: ________________________________

____
Henry J. Nasella

LEBOW FAMILY PARTNERSHIP

By: ________________________________
Steven Lebow, its General Partner

____
Steven Lebow, JT Tenant with Susan Lebow

____
Susan Lebow, JT Tenant with Steven Lebow

THE MICHAEL HARVEY LEBOW IRREVOCABLE TRUST

By: ________________________________
Steven E. Lebow, Trustee

By: ________________________________
Susan Morse Lebow, Trustee

THE MATTHEW ALLAN LEBOW IRREVOCABLE TRUST

By: ______________________________
Steven E. Lebow, Trustee

By: ______________________________
Susan Morse Lebow, Trustee

Susan C. Schnabel

James Sington

Steven Dietz

Vince DeGiaimo

Douglas Hayes, JT Ten with Connie Hayes

Connie Hayes, JT Ten with Douglas Hayes

MOELIS FAMILY TRUST

By: ______________________________
Kenneth D. Moelis, Trustee

By: ______________________________
Julie Moelis, Trustee

Peter Nolan

WOO FAMILY TRUST DTD NOVEMBER 30, 1998

By: ______________________________
Warren C. Woo, Trustee

By: ______________________________
Carolyn M. Suda, Trustee

____
John Danhakl

____
Richard Galanti

SEP FOR THE BENEFIT OF YVES SISTERON

By: Donald Lufkin Jenrette
Securities Corporation as Custodian

By: ______________________________
Its: ______________________________

____
Yves Sisteron

____
Peter Dyvig

____
Glynn Bloomquist

PICTET & CIE

By: ______________________________
Its: ______________________________

FEIGIN TRADING CO.

By: ______________________________
Its: ______________________________

U-3 PARTNERSHIP

By: ______________________________
Samuel N. Stroum, its General Partner

JOHN D. AND CATHERINE T. MACARTHUR FOUNDATION

By: ______________________________
Its: ______________________________

BCI GROWTH III, L.P.
By: Teaneck Associates, L.P., Its General Partner

By: ______________________________
Its: General Partner

____
James R. Miller

____
Virginia B. Jontes

DOUBLEMOUSSE B.V.

By: ______________________________
Its: ______________________________

ARABELLA, S.A.

By: ______________________________
Its: ______________________________

OAK INVESTMENT PARTNERS VII

By: ______________________________
Gerald R. Gallagher, General Partner
Managing Member of Oak Associates VII, LLC, The General Partner of Oak Investment Partners VII, Limited Partnership

OAK VII AFFILIATES, LLC

By: ______________________________
Gerald R. Gallagher, General Partner
Managing Member of Oak VII Affiliates, LLC, The General Partner of Oak VII Affiliates Fund Limited Partnership

SHENNAN FAMILY PARTNERSHIP

By: ______________________________
Its: ______________________________

C. DONALD DORSEY AND LYDIA DORSEY REVOCABLE LIVING TRUST DTD AUGUST 5, 1993

By: ______________________________
Its: ______________________________

STRATEGIC GLOBAL PARTNERS, LLC

By: ______________________________
Its: ______________________________

INTERNET TECHNOLOGY VENTURES, LLC

By: ______________________________
Its: ______________________________

____
Robert Markey

____
Juanita F. Francis

GREENHOUSE CAPITAL PARTNERS

By: ______________________________
Its: ______________________________

GLOBAL RETAIL PARTNERS, L.P.
By: GLOBAL RETAIL PARTNERS, INC. General Partner

By: ______________________________
Its: ______________________________

DLJ DIVERSIFIED PARTNERS, L.P.
By: DLJ DIVERSIFIED PARTNERS, INC. General Partner

By: ______________________________
Its: ______________________________

DLJ DIVERSIFIED PARTNERS-A, L.P.
By: DLJ DIVERSIFIED PARTNERS, INC. General Partner

By: ____________________
Its: ____________________

GRP PARTNERS, L.P.
By: GLOBAL RETAIL PARTNERS, INC. General Partner

By: ____________________
Its: ____________________

GLOBAL RETAIL PARTNERS FUNDING, INC.

By: ____________________
Its: ____________________

DLJ ESC II L.P.
By: DLJ LBO PLANS MANAGEMENT CORPORATION General Partner

By: ____________________
Its: ____________________

THE SAMUEL J. AND SANDRA S. PARKER FAMILY TRUST DTD SEPTEMBER 10, 1982

By: ____________________
Its: Trustee

WEBER 1997 DYNASTY TRUST

By: ____________________
Patricia L. Fennema, Trustee

DONALDSON, LUFKIN & JENRETTE SECURITIES CORPORATION

By: ____________________________
Its: ____________________________

____
Martha Richner

SG COWEN

By: ____________________________
Its: ____________________________

FIDAS BUSINESS S.A.

By: ____________________________
Its: ____________________________

____
Erich L. Spangenberg

____
Steven E. Lebow, Individually

CAROL F. THOR REVOCABLE TRUST U/A/D 6/8/90

By: ____________________________
Carol F. Thor, Trustee

Karen Ferguson

JOHN R. KROMER AS TRUSTEE UNDER THE JOHN R. KROMER DECLARATION OF TRUST DTD JUNE 11, 1991, AND SUCCESSOR TRUSTEES

By: ________________________
John R. Kromer, Trustee

____
John Kromer

____
Greg Smolarek

____
Bob VonderHaar

ANNAPOLIS VENTURES LLC
By: Annapolis Operations LLC,
its Managing Member

By: ________________________
Doulgas O. Hickman,
Manager/Member

LATHAM & WATKINS

By: ________________________
Its: ________________________

____
Donald L. Schwartz

GRP II, L.P.,
By: GRPVC, L.P., its General Partner
By: GRP Management Services Corp., its General Partner

By: ______________________________
Its: ______________________________

GRP II PARTNERS, L.P.
By: GRPVC, L.P., its General Partner
By: GRP Management Services Corp., its General Partner

By: ______________________________
Its: ______________________________

GRP II INVESTORS, L.P., a Delaware limited partnership
By: Merchant Capital, Inc., its general partner

By: ______________________________
Its: ______________________________

____
Denis Defforey

EXHIBIT 4.4

Ulta Salon, Cosmetics & Fragrance, Inc.

and

[Name of Rights Agent]

as Rights Agent

Stockholder Rights Agreement

Dated as of ___, ___

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STOCKHOLDER RIGHTS AGREEMENT

Stockholder Rights Agreement, dated as of__________, ___, between Ulta Salon, Cosmetics & Fragrance, Inc., a Delaware corporation (the "*Company*"), and **[Name of Rights Agent]**, a __________ corporation, as Rights Agent (the "*Rights Agent*").

RECITALS

WHEREAS, on __________, ___, the Board of Directors of the Company adopted this Agreement, and has authorized and declared a dividend of one preferred share purchase right (a "*Right*") for each Common Share (as defined in Section 1.6) of the Company outstanding at the close of business on__________, ___(the "*Record Date*") and has authorized and directed the issuance of one Right (subject to adjustment as provided herein) with respect to each Common Share that shall become outstanding between the Record Date and the earliest of the Distribution Date and the Expiration Date (as such terms are defined in Sections 3.1 and 7.1), each Right initially representing the right to purchase one one-thousandth (subject to adjustment) of a share of Series A Junior Participating Preferred Stock (the "*Preferred Shares*") of the Company having the rights, powers and preferences set forth in Certificate of Designations of Series A Junior Participating Preferred Stock filed with the Delaware Secretary of State on __________, 2007 as Exhibit A to the Amended and Restated Certificate of Incorporation filed on the same date, upon the terms and subject to the conditions hereinafter set forth ***provided, however,*** that Rights may be issued with respect to Common Shares that shall become outstanding after the Distribution Date and prior to the Expiration Date in accordance with Section 22.

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

Section 1. Certain Definitions. For purposes of this Agreement, the following terms have the meanings indicated:

1.1. "*Acquiring Person*" shall mean any Person who or which, together with all Affiliates and Associates of such Person, shall be the Beneficial Owner of**[15]%** or more of the Common Shares of the Company then outstanding but shall not include (i) an Exempt Person or (ii) any Existing Holder, unless and until such time as such Existing Holder shall become the Beneficial Owner of (A) a percentage of the Common Shares of the Company then outstanding that is more than the aggregate percentage of the outstanding Common Shares that such Existing Holder beneficially owns as of the date hereof plus **[5]%** (such aggregate amount being the "*Exempt Ownership Percentage*") or (B) less than **[15]%** of the Common Shares of the Company then outstanding. "*Existing Holder*" shall mean any of (x) Doublemousse B.V., together with all of its Affiliates and Associates; (y) Oak Investment Partners VII, together with all of its Affiliates and Associates; and (z) GRP II, L.P., together with all of its Affiliates and Associates. Notwithstanding the foregoing, no Person shall become an "Acquiring Person" as the result of an acquisition of Common Shares by the Company which, by reducing the number of Common Shares outstanding, increases the proportionate number of Common Shares beneficially owned by such Person to **[15]%** (or, in the case of an Existing Holder, the Exempt Ownership Percentage) or more of the Common

Shares of the Company then outstanding; *provided, however*, that if a Person shall become the Beneficial Owner of **[15]%** (or, in the case of an Existing Holder, the Exempt Ownership Percentage) or more of the Common Shares of the Company then outstanding solely by reason of share purchases by the Company and shall, after such share purchases by the Company, become the Beneficial Owner of one or more additional Common Shares of the Company (other than pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Shares in Common Shares or pursuant to a split or subdivision of the outstanding Common Shares), then such Person shall be deemed to be an "Acquiring Person" unless upon becoming the Beneficial Owner of such additional Common Shares such Person does not beneficially own **[15]%** (or, in the case of an Existing Holder, the Exempt Ownership Percentage) or more of the Common Shares then outstanding. Notwithstanding the foregoing, if the Board of Directors of the Company determines in good faith that a Person who would otherwise be an "Acquiring Person," as defined pursuant to the foregoing provisions of this Section 1.1, has become such inadvertently (including, without limitation, because (A) such Person was unaware that it beneficially owned a percentage of Common Shares that would otherwise cause such Person to be an "Acquiring Person" or (B) such Person was aware of the extent of its Beneficial Ownership of Common Shares but had no actual knowledge of the consequences of such Beneficial Ownership under this Agreement), and without any intention of changing or influencing control of the Company, and such Person divests as promptly as practicable a sufficient number of Common Shares so that such Person would no longer be an Acquiring Person, as defined pursuant to the foregoing provisions of this Section 1.1, then such Person shall not be deemed to be or have become an "Acquiring Person" at any time for any purposes of this Agreement. For all purposes of this Agreement, any calculation of the number of Common Shares outstanding at any particular time for purposes of determining the particular percentage of such outstanding Common Shares of which any Person is the Beneficial Owner shall include the number of Common Shares not outstanding at the time of such calculation that such Person has the Right to Acquire (i) within 60 days thereafter, or (ii) at any time thereafter if such Person acquired such Right to Acquire with the purpose or effect of changing or influencing the control of the Company. The number of Common Shares not outstanding which are subject to such Right to Acquire shall be deemed to be outstanding for the purpose of computing the percentage of outstanding Common Shares owned by such Person but shall not be deemed to be outstanding for the purpose of computing the percentage of outstanding Common Shares by any other Person.

1.2. "*Affiliate*" and "*Associate*" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations, under the Exchange Act, as in effect on the date of this Agreement.

1.3. A Person shall be deemed the "*Beneficial Owner*" of and shall be deemed to "*beneficially own*" or have *"Beneficial Ownership"* of any securities:

1.3.1. which such Person or any of such Person's Affiliates or Associates, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (A) voting power which includes the power to vote, or to direct the voting of, such security, and/or (B) investment power which includes the power to dispose, or to direct the disposition of such security;

1.3.2. which such Person or any of such Person's Affiliates or Associates, directly or indirectly, has (A) the Right to Acquire; ***provided, however***, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, (w) securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange, (x) securities which such Person has a Right to Acquire upon the exercise of Rights at any time prior to the time that any Person becomes an Acquiring Person, (y) securities issuable upon the exercise of Rights from and after the time that any Person becomes an Acquiring Person if such Rights were acquired by such Person or any of such Person's Affiliates or Associates prior to the Distribution Date or pursuant to Section 3.1 or Section 22 ("*Original Rights*") or pursuant to Section 11.9 or Section 11.15 with respect to an adjustment to Original Rights or (z) securities which such Person or any of such Person's Affiliates or Associates may acquire, does or do acquire or may be deemed to acquire or may be deemed to have the Right to Acquire, pursuant to any merger or other acquisition agreement between the Company and such Person (or one or more of such Person's Affiliates or Associates) if, prior to such Person becoming an Acquiring Person, the Board of Directors of the Company has approved such agreement and determined that such Person shall not be or be deemed to be the Beneficial Owner of such securities within the meaning of this Section 1.3; or (B) the right to vote pursuant to any agreement, arrangement or understanding (whether or not in writing), ***provided, however***, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security under this clause (B) if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations of the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or

1.3.3. which are beneficially owned, directly or indirectly, by any other Person (or any Affiliate or Associate thereof) and with respect to which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), whether or not in writing, for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to Section 1.3(ii)(B)) or disposing of any securities of the Company.

No Person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such Person's status or authority as such, to be the "Beneficial Owner" of, to have "Beneficial Ownership" of or to "beneficially own" any securities that are "beneficially owned" (as defined in this Section 1.3), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person.

1.4. "*Business Day*" shall mean any day other than a Saturday, Sunday, or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

1.5. "*close of business*" on any given date shall mean 5:00 p.m., New York time, on such date; ***provided, however,*** that if such date is not a Business Day it shall mean 5:00 p.m., New York time, on the next succeeding Business Day.

1.6. "*Common Shares*" when used with reference to the Company shall mean the shares of common stock, par value $.01 per share, of the Company. "Common Shares" when used with reference to any Person other than the Company shall mean the capital stock with the greatest voting power, or the equity securities or other equity interest having power to control or direct the management, of such other Person or, if such Person is a Subsidiary of another Person, the Person or Persons which ultimately control such first-mentioned Person, and which has issued and outstanding such capital stock, equity securities or equity interest.

1.7. "*Exchange Act*" shall mean the Securities Exchange Act of 1934, as amended, as in effect on the date of this Agreement.

1.8. "*Exempt Person*" shall mean the Company, any Subsidiary of the Company, in each case including, without limitation, the officers and board of directors thereof acting in their fiduciary capacity, or any employee benefit plan of the Company or of any Subsidiary of the Company or any entity or trustee holding shares of capital stock of the Company for or pursuant to the terms of any such plan, or for the purpose of funding other employee benefits for employees of the Company or any Subsidiary of the Company.

1.9. "*Person*" shall mean any individual, partnership, joint venture, limited liability company, firm, corporation, unincorporated association, trust or other entity, and shall include any successor (by merger or otherwise) of such entity.

1.10. "*Right to Acquire*" shall mean a legal, equitable or contractual right to acquire (whether directly or indirectly and whether exercisable immediately, or only after the passage of time, compliance with regulatory requirements, fulfillment of a condition or otherwise), pursuant to any agreement, arrangement or understanding, whether or not in writing (excluding customary agreements entered into in good faith with and between an underwriter and selling group members in connection with a firm commitment underwriting registered under the Securities Act), or upon the exercise of any option, warrant or right, through conversion of a security, pursuant to the power to revoke a trust, discretionary account or similar arrangement, or pursuant to the automatic termination of a trust, discretionary account or similar arrangement.

1.11. "*Shares Acquisition Date*" shall mean the first date of public announcement (which, for purposes of this definition, shall include, without limitation, the filing of a report pursuant to Section 13(d) of the Exchange Act or pursuant to a comparable successor statute) by the Company or an Acquiring Person that an Acquiring Person has become such or that discloses information which reveals the existence of an Acquiring Person or such earlier date as a majority of the Board of Directors shall become aware of the existence of an Acquiring Person.

1.12. "*Subsidiary*" of any Person shall mean any partnership, joint venture, limited liability company, firm, unincorporated association, trust corporation or other entity of which a majority of the voting power of the voting equity securities or equity interests is owned, of record or beneficially, directly or indirectly, by such Person.

1.13. A "*Trigger Event*" shall be deemed to have occurred upon any Person becoming an Acquiring Person.

1.14. The following terms shall have the meanings defined for such terms in the Sections set forth below:

Term	Section
Acquiring Person	1.1.
Adjustment Shares	11.1.2
Affiliate	1.2.
Agreement	3.3.
Associate	1.2.
Beneficial Owner	1.3.
Beneficial Ownership	1.3.
Beneficially own	1.3.
Business Day	1.4.
close of business	1.5.
Common Shares	1.6.
Common stock equivalent	11.1.3
Company	Recitals, 3.3.
current per share market price	11.4.
Current Value	11.1.3
Distribution Date	3.1.
equivalent preferred stock	11.2.
Exchange Act	1.7.
Exchange Consideration	26.1.
Exempt Ownership Percentage	1.1.
Exempt Person	1.8.
Existing Holder	1.1.
Expiration Date	7.1.
Final Expiration Date	7.1.
Nasdaq	9
NYSE	9
Original Rights	1.3.
Person	1.9.
Preferred Shares	Recitals
Principal Party	13.2.
Purchase Price	4
Record Date	Recitals
Redemption Date	7.1.
Redemption Price	23.1.
Right	Recitals
Right Certificate	3.1.
Rights Agent	Recitals
Right to Acquire	1.10.

Term	Section
Security	11.4.1
Shares Acquisition Date	1.11.
Spread	11.1.3
Substitution Period	11.1.3
Summary of Rights	3.2.
Trading Day	11.4.1
Trigger Event	1.13.

Section 2. Appointment of Rights Agent. The Company hereby appoints the Rights Agent to act as agent for the Company and the holders of the Rights (who, in accordance with Section 3, shall prior to the Distribution Date also be the holders of the Common Shares) in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-Rights Agents as it may deem necessary or desirable. In the event the Company appoints one or more co-Rights Agents, the respective duties of the Rights Agent and any co-Rights Agent shall be as the Company shall determine. Contemporaneously with such appointment, if any, the Company shall notify the Rights Agent thereof.

Section 3. Issuance of Right Certificates.

3.1. Rights Evidenced by Share Certificates. Until the earlier of (i) the tenth day after the Shares Acquisition Date or (ii) the tenth Business Day after the date of the commencement of, or first public announcement of, the intent of any Person (other than an Exempt Person) to commence, a tender or exchange offer the consummation of which would result in any Person (other than an Exempt Person) becoming the Beneficial Owner of Common Shares aggregating **[15]%** or more of the then outstanding Common Shares of the Company (the earlier of (i) and (ii) being herein referred to as the "*Distribution Date*"), (x) the Rights (unless earlier expired, redeemed or terminated) will be evidenced (subject to the provisions of Section 3.2) by the certificates for Common Shares registered in the names of the holders thereof (which certificates for Common Shares shall also be deemed to be Right Certificates) and not by separate certificates, and (y) the Rights (and the right to receive certificates therefor) will be transferable only in connection with the transfer of the underlying Common Shares. The preceding sentence notwithstanding, prior to the occurrence of a Distribution Date specified as a result of an event described in clause (ii) (or such later Distribution Date as the Board of Directors of the Company may select pursuant to this sentence), the Board of Directors may postpone, one or more times, the Distribution Date which would occur as a result of an event described in clause (ii) beyond the date set forth in such clause (ii). Nothing herein shall permit such a postponement of a Distribution Date after a Person becomes an Acquiring Person, except as a result of the operation of the third sentence of Section 1.1. As soon as practicable after the Distribution Date, the Company will prepare and execute, the Rights Agent will countersign and the Company (or, if requested, the Rights Agent) will send, by first-class, postage-prepaid mail, to each record holder of Common Shares as of the close of business on the Distribution Date (other than any Acquiring Person or any Associate or Affiliate of an Acquiring Person), at the address of such holder shown on the records of the Company, one or more certificates for Rights, in substantially the form of Exhibit A hereto (a "*Right Certificate*"), evidencing one Right

(subject to adjustment as provided herein) for each Common Share so held. As of the Distribution Date, the Rights will be evidenced solely by such Right Certificates.

3.2. Summary of Rights. On the Record Date or as soon as practicable thereafter, the Company will send or cause to be sent a copy of a Summary of Rights to Purchase Preferred Shares, in substantially the form attached hereto as Exhibit B (the "*Summary of Rights*"), by first-class, postage-prepaid mail, to each record holder of Common Shares as of the close of business on the Record Date at the address of such holder shown on the records of the Company. With respect to certificates for Common Shares outstanding as of the close of business on the Record Date, until the Distribution Date (or the earlier Expiration Date), the Rights will be evidenced by such certificates for Common Shares registered in the names of the holders thereof together with a copy of the Summary of Rights and the registered holders of the Common Shares shall also be registered holders of the associated Rights. Until the Distribution Date (or the earlier Expiration Date), the surrender for transfer of any certificate for Common Shares outstanding at the close of business on the Record Date, with or without a copy of the Summary of Rights, shall also constitute the transfer of the Rights associated with the Common Shares represented thereby.

3.3. New Certificates After Record Date. Certificates for Common Shares which become outstanding after the Record Date but prior to the earliest of the Distribution Date or the Expiration Date, shall have impressed, printed, stamped, written or otherwise affixed onto them the following legend:

> This certificate also evidences and entitles the holder hereof to certain rights as set forth in an Agreement between Ulta Salon, Cosmetics & Fragrance, Inc. (the "*Company*") and **[Name of Rights Agent]**, as Rights Agent, dated as of**__________**, ___, as the same may be amended from time to time (the "*Agreement*"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal executive offices of the Company. Under certain circumstances, as set forth in the Agreement, such Rights will be evidenced by separate certificates and will no longer be evidenced by this certificate. The Company will mail to the holder of this certificate a copy of the Agreement without charge after receipt of a written request therefor. ***As described in the Agreement, Rights which are owned by, transferred to or have been owned by Acquiring Persons or Associates or Affiliates thereof (as defined in the Agreement) shall become null and void and will no longer be transferable.***

With respect to such certificates containing the foregoing legend, until the Distribution Date (or the earlier Expiration Date), the Rights associated with the Common Shares represented by such certificates shall be evidenced by such certificates alone, and the surrender for transfer of any such certificates, except as otherwise provided herein, shall also constitute the transfer of the Rights associated with the Common Shares represented thereby. In the event that the Company purchases or acquires any Common Shares after the Record Date but prior to the Distribution Date, any Rights associated with such Common Shares shall be deemed canceled and retired so that the Company shall not be entitled to exercise any Rights associated with the Common Shares which are no longer outstanding.

Notwithstanding this Section 3.3, the omission of a legend shall not affect the enforceability of any part of this Agreement or the rights of any holder of the Rights.

Section 4. Form of Right Certificates. The Right Certificates (and the forms of election to purchase shares, certification and assignment to be printed on the reverse thereof) shall be substantially the same as Exhibit A hereto and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or trading system on which the Rights may from time to time be listed or quoted, or to conform to usage. Subject to the terms and conditions hereof, the Right Certificates, whenever issued, shall be dated as of the Record Date, and shall show the date of countersignature by the Rights Agent, and on their face shall entitle the holders thereof to purchase such number of one-thousandths of a Preferred Share as shall be set forth therein at the price per one-thousandth of a Preferred Share set forth therein (the "*Purchase Price*"), but the number of such one-thousandths of a Preferred Share and the Purchase Price shall be subject to adjustment as provided herein.

Section 5. Countersignature and Registration. The Right Certificates shall be executed on behalf of the Company by the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Operating Officer or any Vice President, either manually or by facsimile signature, and shall have affixed thereto the Company's seal or a facsimile thereof which shall be attested by the Secretary or any Assistant Secretary of the Company, either manually or by facsimile signature. The Right Certificates shall be countersigned, either manually or by facsimile signature, by an authorized signatory of the Rights Agent, but it shall not be necessary for the same signatory to countersign all of the Right Certificates hereunder. No Right Certificate shall be valid for any purpose unless so countersigned. In case any officer of the Company who shall have signed any of the Right Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Right Certificates, nevertheless, may be countersigned by the Rights Agent, and issued and delivered by the Company with the same force and effect as though the person who signed such Right Certificates had not ceased to be such officer of the Company; and any Right Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Right Certificate, shall be a proper officer of the Company to sign such Right Certificate, although at the date of the execution of this Agreement any such person was not such an officer.

Following the Distribution Date, the Rights Agent will keep or cause to be kept, at its principal office, books for registration and transfer of the Right Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates, the certificate number of each of the Right Certificates and the date of each of the Right Certificates.

Section 6. Transfer, Split Up, Combination and Exchange of Right Certificates; Mutilated, Destroyed, Lost or Stolen Right Certificates Subject to the provisions of Section 11.1.2 and Section 14, at any time after the close of business on the Distribution Date, and at or prior to the close of business on the Expiration Date, any Right Certificate or Right

Certificates (other than Right Certificates representing Rights that have become void pursuant to Section 11.1.2 or that have been exchanged pursuant to Section 27) may be transferred, split up or combined or exchanged for another Right Certificate or Right Certificates, entitling the registered holder to purchase a like number of one-thousandths of a Preferred Share as the Right Certificate or Right Certificates surrendered then entitled such holder to purchase. Any registered holder desiring to transfer, split up or combine or exchange any Right Certificate shall make such request in writing delivered to the Rights Agent, and shall surrender, together with any required form of assignment and certificate duly completed, the Right Certificate or Right Certificates to be transferred, split up or combined or exchanged at the office of the Rights Agent designated for such purpose. Neither the Rights Agent nor the Company shall be obligated to take any action whatsoever with respect to the transfer of any such surrendered Right Certificate or Right Certificates until the registered holder shall have completed and signed the certificate contained in the form of assignment on the reverse side of such Right Certificate or Right Certificates and shall have provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company shall reasonably request. Thereupon the Rights Agent shall countersign and deliver to the person entitled thereto a Right Certificate or Right Certificates, as the case may be, as so requested. The Company may require payment from the holders of Right Certificates of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up or combination or exchange of such Right Certificates.

Subject to the provisions of Section 11.1.2, at any time after the Distribution Date and prior to the Expiration Date, upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Right Certificate, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and, at the Company's request, reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Right Certificate if mutilated, the Company will make and deliver a new Right Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered owner in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

Section 7. Exercise of Rights; Purchase Price; Expiration Date of Rights.

7.1. Exercise of Rights. Subject to Section 11.1.2 and except as otherwise provided herein, the registered holder of any Right Certificate may exercise the Rights evidenced thereby in whole or in part at any time after the Distribution Date upon surrender of the Right Certificate, with the form of election to purchase and certification on the reverse side thereof duly executed, to the Rights Agent at the office of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price for the total number of one-thousandths of a Preferred Share (or other securities, cash or other assets) as to which the Rights are exercised, at or prior to the time (the "*Expiration Date*") that is the earliest of (i) the close of business on__________ (the "*Final Expiration Date*"), (ii) the time at which the Rights are redeemed as provided in Section 23 (the "*Redemption Date*"), (iii) the closing of any merger or other acquisition transaction involving the Company pursuant to an agreement of the type described in Section 13.3 at which time the Rights are deemed terminated, or (iv) the time at which the Rights are exchanged as provided in Section 26.

7.2. Purchase. The Purchase Price for each one-thousandth of a Preferred Share pursuant to the exercise of a Right shall be initially $___, shall be subject to adjustment from time to time as provided in Sections 11, 13 and 26 and shall be payable in lawful money of the United States of America in accordance with Section 7.3.

7.3. Payment Procedures. Upon receipt of a Right Certificate representing exercisable Rights, with the form of election to purchase and certification duly executed, accompanied by payment of the aggregate Purchase Price for the total number of one-thousandths of a Preferred Share to be purchased and an amount equal to any applicable transfer tax required to be paid by the holder of such Right Certificate in accordance with Section 9, in cash or by certified or cashier's check or money order payable to the order of the Company, the Rights Agent shall thereupon promptly (i)(A) requisition from any transfer agent of the Preferred Shares (or make available, if the Rights Agent is the transfer agent) certificates for the number of Preferred Shares to be purchased and the Company hereby irrevocably authorizes its transfer agent to comply with all such requests, or (B) if the Company shall have elected to deposit the total number of Preferred Shares issuable upon exercise of the Rights hereunder with a depository agent, requisition from the depositary agent depositary receipts representing interests in such number of one-thousandths of a Preferred Share as are to be purchased (in which case certificates for the Preferred Shares represented by such receipts shall be deposited by the transfer agent with the depositary agent) and the Company hereby directs the depositary agent to comply with all such requests, (ii) when appropriate, requisition from the Company the amount of cash to be paid in lieu of the issuance of fractional shares in accordance with Section 14 or otherwise in accordance with Section 11.1.3, (iii) promptly after receipt of such certificates or depositary receipts, cause the same to be delivered to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder and (iv) when appropriate, after receipt, promptly deliver such cash to or upon the order of the registered holder of such Right Certificate. In the event that the Company is obligated to issue other securities of the Company, pay cash and/or distribute other property pursuant to Section 11.1.3, the Company will make all arrangements necessary so that such other securities, cash and/or other property are available for distribution by the Rights Agent, if and when appropriate.

7.4. Partial Exercise. In case the registered holder of any Right Certificate shall exercise less than all the Rights evidenced thereby, a new Right Certificate evidencing Rights equivalent to the Rights remaining unexercised shall be issued by the Rights Agent and delivered to the registered holder of such Right Certificate or to his duly authorized assigns, subject to the provisions of Section 14.

7.5. Full Information Concerning Ownership. Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder of Rights upon the occurrence of any purported exercise as set forth in this Section 7 unless the certificate contained in the form of election to purchase set forth on the reverse side of the Right Certificate surrendered for such exercise shall have been duly completed and signed by the registered holder thereof and the Company shall have been provided with such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company shall reasonably request.

Section 8. Cancellation and Destruction of Right Certificates. All Right Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if surrendered to the Rights Agent, shall be canceled by it, and no Right Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Right Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all canceled Right Certificates to the Company, or shall, at the written request of the Company, destroy such canceled Right Certificates, and in such case shall deliver a certificate of destruction thereof to the Company.

Section 9. Reservation and Availability of Capital Stock. The Company covenants and agrees that from and after the Distribution Date it will cause to be reserved and kept available out of its authorized and unissued Preferred Shares (and, following the occurrence of a Trigger Event, out of its authorized and unissued Common Shares or other securities or out of its shares held in its treasury) the number of Preferred Shares (and, following the occurrence of a Trigger Event, Common Shares and/or other securities) that will be sufficient to permit the exercise in full of all outstanding Rights.

So long as the Preferred Shares (and, following the occurrence of a Trigger Event, Common Shares and/or other securities) issuable upon the exercise of Rights may be listed on New York Stock Exchange ("*NYSE*") or any other national securities exchange or traded in the over-the-counter market and quoted on the National Association of Securities Dealers, Inc. Automated Quotation System ("*Nasdaq*") (including the National Market and the Small Cap Market), the Company shall use its best efforts to cause, from and after such time as the Rights become exercisable, all shares reserved for such issuance to be listed or admitted to trading on the NYSE or such other exchange or quoted on Nasdaq upon official notice of issuance upon such exercise.

The Company covenants and agrees that it will take all such action as may be necessary to ensure that all Preferred Shares (and, following the occurrence of a Trigger Event, Common Shares and/or other securities) delivered upon exercise of Rights shall, at the time of delivery of the certificates for such shares (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable shares.

From and after such time as the Rights become exercisable, the Company shall use its best efforts, if then necessary to permit the issuance of Preferred Shares upon the exercise of Rights, to register and qualify such Preferred Shares under the Securities Act and any applicable state securities or "Blue Sky" laws (to the extent exemptions therefrom are not available), cause such registration statement and qualifications to become effective as soon as possible after such filing and keep such registration and qualifications effective until the earlier of the date as of which the Rights are no longer exercisable for such securities and the Expiration Date. The Company may temporarily suspend, for a period of time not to exceed one hundred twenty (120) days, the exercisability of the Rights in order to prepare and file a registration statement under the Securities Act and permit it to become effective. Upon any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has

been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. Notwithstanding any provision of this Agreement to the contrary, the Rights shall not be exercisable in any jurisdiction unless the requisite qualification in such jurisdiction shall have been obtained and until a registration statement under the Securities Act (if required) shall have been declared effective.

The Company further covenants and agrees that it will pay when due and payable any and all Federal and state transfer taxes and charges which may be payable in respect of the issuance or delivery of the Right Certificates or of any Preferred Shares (or Common Shares and/or other securities, as the case may be) upon the exercise of Rights. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer or delivery of Right Certificates to a person other than, or the issuance or delivery of certificates for the Preferred Shares (or Common Shares and/or other securities, as the case may be) in a name other than that of, the registered holder of the Right Certificate evidencing Rights surrendered for exercise or to issue or deliver any certificates for Preferred Shares (or Common Shares and/or other securities, as the case may be) in a name other than that of the registered holder upon the exercise of any Rights until any such tax shall have been paid (any such tax being payable by the holder of such Right Certificate at the time of surrender) or until it has been established to the Company's satisfaction that no such tax is due.

Section 10. Preferred Shares Record Date. Each person in whose name any certificate for Preferred Shares (or Common Shares and/or other securities, as the case may be) is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the Preferred Shares (or Common Shares and/or other securities, as the case may be) represented thereby on, and such certificate shall be dated, the date upon which the Right Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price (and any applicable transfer taxes) was made; ***provided, however,*** that if the date of such surrender and payment is a date upon which the Preferred Shares (or Common Shares and/or other securities, as the case may be) transfer books of the Company are closed, such person shall be deemed to have become the record holder of such shares (fractional or otherwise) on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Shares (or Common Shares and/or other securities, as the case may be) transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Right Certificate shall not be entitled to any rights of a holder of Preferred Shares for which the Rights shall be exercisable, including, without limitation, the right to vote or to receive dividends or other distributions, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

Section 11. Adjustment of Purchase Price, Number of Shares or Number of Rights. The Purchase Price, the number of Preferred Shares or other securities or property purchasable upon exercise of each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

11.1. Post-Execution Events.

11.1.1. Corporate Dividends, Reclassifications, Etc. In the event the Company shall at any time after the date of this Agreement (A) declare and pay a dividend on the Preferred

Shares payable in Preferred Shares, (B) subdivide the outstanding Preferred Shares, (C) combine the outstanding Preferred Shares into a smaller number of Preferred Shares or (D) issue any shares of its capital stock in a reclassification of the Preferred Shares (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11.1, the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of shares of capital stock issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive the aggregate number and kind of shares of capital stock which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Shares transfer books of the Company were open, he would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification; ***provided, however,*** that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one Right. If an event occurs which would require an adjustment under both Section 11.1.1 and Section 11.1.2, the adjustment provided for in this Section 11.1.1 shall be in addition to, and shall be made prior to, the adjustment required pursuant to, Section 11.1.2.

11.1.2. Acquiring Person Events; Trigger Events. Subject to Sections 23.1 and 26, in the event that a Trigger Event occurs, then, from and after the first occurrence of such event, each holder of a Right, except as provided below, shall thereafter have a right to receive, upon exercise thereof at a price per Right equal to the then current Purchase Price multiplied by the number of one-thousandths of a Preferred Share for which a Right is then exercisable (without giving effect to this Section 11.1.2), in accordance with the terms of this Agreement and in lieu of Preferred Shares, such number of Common Shares as shall equal the result obtained by (x) multiplying the then current Purchase Price by the then number of one-thousandths of a Preferred Share for which a Right is then exercisable (without giving effect to this Section 11.1.2) and (y) dividing that product by 50% of the current per share market price of the Common Shares (determined pursuant to Section 11.4) on the first of the date of the occurrence of, or the date of the first public announcement of, a Trigger Event (the "*Adjustment Shares*"); ***provided*** that the Purchase Price and the number of Adjustment Shares shall thereafter be subject to further adjustment as appropriate in accordance with Section 11.6. Notwithstanding the foregoing, upon the occurrence of a Trigger Event, any Rights that are or were acquired or beneficially owned by (1) any Acquiring Person or any Associate or Affiliate thereof, (2) a transferee of any Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee after the Acquiring Person becomes such, or (3) a transferee of any Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person to holders of equity interests in such Acquiring Person or to any Person with whom the Acquiring Person has any continuing agreement, arrangement or understanding regarding the transferred Rights or (B) a transfer which the Board of Directors of the Company has determined is part of a plan, arrangement or understanding which has as a primary purpose or effect avoidance of this Section 11.1.2, and subsequent transferees, shall become void without any further action, and any holder (whether or not such holder is an Acquiring Person or an Associate or Affiliate of an Acquiring Person) of such Rights shall thereafter have no right to exercise such Rights under any provision of this

Agreement or otherwise. From and after the Trigger Event, no Right Certificate shall be issued pursuant to Section 3 or Section 6 that represents Rights that are or have become void pursuant to the provisions of this paragraph, and any Right Certificate delivered to the Rights Agent that represents Rights that are or have become void pursuant to the provisions of this paragraph shall be canceled.

The Company shall use all reasonable efforts to ensure that the provisions of this Section 11.1.2 are complied with, but shall have no liability to any holder of Right Certificates or any other Person as a result of its failure to make any determinations with respect to any Acquiring Person or its Affiliates, Associates or transferees hereunder.

From and after the occurrence of an event specified in Section 13.1, any Rights that theretofore have not been exercised pursuant to this Section 11.1.2 shall thereafter be exercisable only in accordance with Section 13 and not pursuant to this Section 11.1.2.

11.1.3. Insufficient Shares. The Company may at its option substitute for a Common Share issuable upon the exercise of Rights in accordance with the foregoing Section 11.1.2 a number of Preferred Shares or fraction thereof such that the current per share market price of one Preferred Share multiplied by such number or fraction is equal to the current per share market price of one Common Share. In the event that upon the occurrence of a Trigger Event there shall not be sufficient Common Shares authorized but unissued, or held by the Company as treasury shares, to permit the exercise in full of the Rights in accordance with the foregoing Section 11.1.2, the Company shall take all such action as may be necessary to authorize additional Common Shares for issuance upon exercise of the Rights, ***provided, however,*** that if the Company determines that it is unable to cause the authorization of a sufficient number of additional Common Shares, then, in the event the Rights become exercisable, the Company, with respect to each Right and to the extent necessary and permitted by applicable law and any agreements or instruments in effect on the date hereof to which it is a party, shall: (A) determine the excess of (1) the value of the Adjustment Shares issuable upon the exercise of a Right (the "*Current Value*"), over (2) the Purchase Price (such excess, the "*Spread*") and (B) with respect to each Right (other than Rights which have become void pursuant to Section 11.1.2), make adequate provision to substitute for the Adjustment Shares, upon payment of the applicable Purchase Price, (1) cash, (2) a reduction in the Purchase Price, (3) Preferred Shares, (4) other equity securities of the Company (including, without limitation, shares, or fractions of shares, of preferred stock which, by virtue of having dividend, voting and liquidation rights substantially comparable to those of the Common Shares, the Board of Directors of the Company has deemed in good faith to have substantially the same value as Common Shares) (each such share of preferred stock or fractions of shares of preferred stock constituting a "*common stock equivalent*")), (5) debt securities of the Company, (6) other assets or (7) any combination of the foregoing having an aggregate value equal to the Current Value, where such aggregate value has been determined by the Board of Directors of the Company based upon the advice of a nationally recognized investment banking firm selected in good faith by the Board of Directors of the Company; ***provided, however,*** that if the Company shall not have made adequate provision to deliver value pursuant to clause (B) above within thirty (30) days following the occurrence of a Trigger Event, then the Company shall be obligated to deliver, to the extent necessary and permitted by applicable law and any agreements or instruments in effect on the date hereof to which it is a party, upon the surrender for exercise of a

Right and without requiring payment of the Purchase Price, Common Shares (to the extent available) and then, if necessary, such number or fractions of Preferred Shares (to the extent available) and then, if necessary, cash, which shares and/or cash have an aggregate value equal to the Spread. If the Board of Directors of the Company shall determine in good faith that it is unlikely that sufficient additional Common Shares could be authorized for issuance upon exercise in full of the Rights, the thirty (30) day period set forth above may be extended and re-extended to the extent necessary, but not more than ninety (90) days following the occurrence of a Trigger Event, in order that the Company may seek stockholder approval for the authorization of such additional shares (such period as may be extended, the "*Substitution Period*"). To the extent that the Company determines that some actions need be taken pursuant to the second and/or third sentences of this Section 11.1.3, the Company (x) shall provide that such action shall apply uniformly to all outstanding Rights, and (y) may suspend the exercisability of the Rights until the expiration of the Substitution Period in order to seek any authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to such first sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended as well as a public announcement at such time as the suspension is no longer in effect. For purposes of this Section 11.1.3, the value of a Common Share shall be the current per share market price (as determined pursuant to Section 11.4) on the date of the occurrence of a Trigger Event and the value of any "common stock equivalent" shall be deemed to have the same value as the Common Shares on such date. The Board of Directors of the Company may, but shall not be required to, establish procedures to allocate the right to receive Common Shares upon the exercise of the Rights among holders of Rights pursuant to this Section 11.1.3.

11.2. Dilutive Rights Offering. In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Shares entitling them (for a period expiring within forty-five (45) calendar days after such record date) to subscribe for or purchase Preferred Shares (or securities having the same rights, privileges and preferences as the Preferred Shares ("*equivalent preferred stock*")) or securities convertible into Preferred Shares or equivalent preferred stock at a price per Preferred Share or per share of equivalent preferred stock (or having a conversion or exercise price per share, if a security convertible into or exercisable for Preferred Shares or equivalent preferred stock) less than the current per share market price of the Preferred Shares (as determined pursuant to Section 11.4) on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of Preferred Shares and shares of equivalent preferred stock outstanding on such record date plus the number of Preferred Shares and shares of equivalent preferred stock which the aggregate offering price of the total number of Preferred Shares and/or shares of equivalent preferred stock to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such current per share market price and the denominator of which shall be the number of Preferred Shares and shares of equivalent preferred stock outstanding on such record date plus the number of additional Preferred Shares and/or shares of equivalent preferred stock to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); ***provided, however,*** that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon exercise of one

Right. In case such subscription price may be paid in a consideration part or all of which shall be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights. Preferred Shares and shares of equivalent preferred stock owned by or held for the account of the Company or any Subsidiary of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such rights or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

11.3. Distributions. In case the Company shall fix a record date for the making of a distribution to all holders of the Preferred Shares (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing or surviving corporation) of evidences of indebtedness, cash, securities or assets (other than a regular periodic cash dividend at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of the Company for the four quarters ended immediately prior to the payment of such dividend, or a dividend payable in Preferred Shares {which dividend, for purposes of this Agreement, shall be subject to the provisions of Section 11.1.1(A)}) or convertible securities, or subscription rights or warrants (excluding those referred to in Section 11.2), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the current per share market price of the Preferred Shares (as determined pursuant to Section 11.4) on such record date, less the fair market value (as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent) of the portion of the cash, assets, securities or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to one Preferred Share and the denominator of which shall be such current per share market price of the Preferred Shares (as determined pursuant to Section 11.4); ***provided, however,*** that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company to be issued upon exercise of one Right. Such adjustments shall be made successively whenever such a record date is fixed; and in the event that such distribution is not so made, the Purchase Price shall again be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

11.4. Current Per Share Market Value.

11.4.1. General. For the purpose of any computation hereunder, the "*current per share market price*" of any security (a "*Security*" for the purpose of this Section 11.4.1) on any date shall be deemed to be the average of the daily closing prices per share of such Security for the thirty (30) consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date; ***provided, however,*** that in the event that the current per share market price of the Security is determined during any period following the announcement by the issuer of such Security of (i) a dividend or distribution on such Security payable in shares of such Security or securities convertible into such shares or (ii) any subdivision, combination or reclassification of

such Security, and prior to the expiration of thirty (30) Trading Days after the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification, then, and in each such case, the "current per share market price" shall be appropriately adjusted to reflect the current market price per share equivalent of such Security. The closing price for each day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if the Security is not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Security is listed or admitted to trading or, if the Security is not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by Nasdaq or such other system then in use, or, if on any such date the Security is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Security selected by the Board of Directors of the Company. If on any such date no such market maker is making a market in the Security, the fair value of the Security on such date as determined in good faith by the Board of Directors of the Company shall be used. The term "*Trading Day*" shall mean a day on which the principal national securities exchange on which the Security is listed or admitted to trading is open for the transaction of business or, if the Security is not listed or admitted to trading on any national securities exchange, a Business Day. If the Security is not publicly held or not so listed or traded, or if on any such date the Security is not so quoted and no such market maker is making a market in the Security, "current per share market price" shall mean the fair value per share as determined in good faith by the Board of Directors of the Company or, if at the time of such determination there is an Acquiring Person, by a nationally recognized investment banking firm selected by the Board of Directors, which shall have the duty to make such determination in a reasonable and objective manner, whose determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes.

11.4.2. Preferred Shares. Notwithstanding Section 11.4.1, for the purpose of any computation hereunder, the "current per share market price" of the Preferred Shares shall be determined in the same manner as set forth above in Section 11.4.1 (other than the last sentence thereof). If the current per share market price of the Preferred Shares cannot be determined in the manner described in Section 11.4.1, the "current per share market price" of the Preferred Shares shall be conclusively deemed to be an amount equal to 1,000 (as such number may be appropriately adjusted for such events as stock splits, stock dividends and recapitalizations with respect to the Common Shares occurring after the date of this Agreement) multiplied by the current per share market price of the Common Shares (as determined pursuant to Section 11.4.1). If neither the Common Shares nor the Preferred Shares are publicly held or so listed or traded, or if on any such date neither the Common Shares nor the Preferred Shares are so quoted and no such market maker is making a market in either the Common Shares or the Preferred Shares, "current per share market price" of the Preferred Shares shall mean the fair value per share as determined in good faith by the Board of Directors of the Company, or, if at the time of such determination there is an Acquiring Person, by a nationally recognized investment banking firm selected by the Board of Directors of the Company, which shall have the duty to make such determination in a reasonable and objective manner, which determination shall be described in a

statement filed with the Rights Agent and shall be conclusive for all purposes. For purposes of this Agreement, the "current per share market price" of one-thousandth of a Preferred Share shall be equal to the "current per share market price" of one Preferred Share divided by 1,000.

11.5. Insignificant Changes. No adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price. Any adjustments which by reason of this Section 11.5 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest one-thousandth of a Preferred Share or the nearest one-thousandth of a Common Share or other share or security, as the case may be.

11.6. Shares Other Than Preferred Shares. If as a result of an adjustment made pursuant to Section 11.1, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock of the Company other than Preferred Shares, thereafter the number of such other shares so receivable upon exercise of any Right shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Shares contained in Sections 11.1, 11.2, 11.3, 11.5, 11.8, 11.9 and 11.13, and the provisions of Sections 7, 9, 10, 13 and 14 with respect to the Preferred Shares shall apply on like terms to any such other shares.

11.7. Rights Issued Prior to Adjustment. All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one-thousandths of a Preferred Share purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

11.8. Effect of Adjustments. Unless the Company shall have exercised its election as provided in Section 11.9, upon each adjustment of the Purchase Price as a result of the calculations made in Sections 11.2 and 11.3, each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of one-thousandths of a Preferred Share (calculated to the nearest one-millionth of a Preferred Share) obtained by (i) multiplying (x) the number of one-thousandths of a Preferred Share covered by a Right immediately prior to this adjustment by (y) the Purchase Price in effect immediately prior to such adjustment of the Purchase Price and (ii) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.

11.9. Adjustment in Number of Rights. The Company may elect on or after the date of any adjustment of the Purchase Price to adjust the number of Rights, in substitution for any adjustment in the number of one-thousandths of a Preferred Share issuable upon the exercise of a Right. Each of the Rights outstanding after such adjustment of the number of Rights shall be exercisable for the number of one-thousandths of a Preferred Share for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest thousandth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of

the Purchase Price. The Company shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Right Certificates have been issued, shall be at least ten (10) days later than the date of the public announcement. If Right Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11.9, the Company may, as promptly as practicable, cause to be distributed to holders of record of Right Certificates on such record date Right Certificates evidencing, subject to Section 14, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Right Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Right Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Right Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein (and may bear, at the option of the Company, the adjusted Purchase Price) and shall be registered in the names of the holders of record of Right Certificates on the record date specified in the public announcement.

11.10. Right Certificates Unchanged. Irrespective of any adjustment or change in the Purchase Price or the number of one-thousandths of a Preferred Share issuable upon the exercise of the Rights, the Right Certificates theretofore and thereafter issued may continue to express the Purchase Price per share and the number of one-thousandths of a Preferred Share which were expressed in the initial Right Certificates issued hereunder.

11.11. Par Value Limitations. Before taking any action that would cause an adjustment reducing the Purchase Price below one-thousandth of the then par value, if any, of the Preferred Shares or other shares of capital stock issuable upon exercise of the Rights, the Company shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable Preferred Shares or other such shares at such adjusted Purchase Price.

11.12. Deferred Issuance. In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event the issuance to the holder of any Right exercised after such record date of that number of Preferred Shares and shares of other capital stock or securities of the Company, if any, issuable upon such exercise over and above the Preferred Shares and shares of other capital stock or other securities, assets or cash of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; ***provided, however,*** that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares upon the occurrence of the event requiring such adjustment.

11.13. Reduction in Purchase Price. Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that it in its sole discretion shall determine to be advisable in order that any consolidation or subdivision of the Preferred Shares, issuance wholly for cash of any of the Preferred Shares at

less than the current market price, issuance wholly for cash of Preferred Shares or securities which by their terms are convertible into or exchangeable for Preferred Shares, dividends on Preferred Shares payable in Preferred Shares or issuance of rights, options or warrants referred to hereinabove in this Section 11, hereafter made by the Company to holders of its Preferred Shares shall not be taxable to such stockholders.

11.14. Company Not to Diminish Benefits of Rights. The Company covenants and agrees that after the earlier of the Shares Acquisition Date or Distribution Date it will not, except as permitted by Section 23, Section 25 or Section 26, take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights.

11.15. Adjustment of Rights Associated with Common Shares. Notwithstanding anything contained in this Agreement to the contrary, in the event that the Company shall at any time after the date hereof and prior to the Distribution Date (i) declare or pay any dividend on the outstanding Common Shares payable in Common Shares, (ii) effect a subdivision or consolidation of the outstanding Common Shares (by reclassification or otherwise than by the payment of dividends payable in Common Shares), or (iii) combine the outstanding Common Shares into a greater or lesser number of Common Shares, then in any such case, the number of Rights associated with each Common Share then outstanding, or issued or delivered thereafter but prior to the Distribution Date or in accordance with Section 22 shall be proportionately adjusted so that the number of Rights thereafter associated with each Common Share following any such event shall equal the result obtained by multiplying the number of Rights associated with each Common Share immediately prior to such event by a fraction, the numerator of which shall be the total number of Common Shares outstanding immediately prior to the occurrence of the event and the denominator of which shall be the total number of Common Shares outstanding immediately following the occurrence of such event. The adjustments provided for in this Section 11.15 shall be made successively whenever such a dividend is declared or paid or such a subdivision, combination or consolidation is effected.

Section 12. Certificate of Adjusted Purchase Price or Number of Shares. Whenever an adjustment is made as provided in Sections 11 or 13, the Company shall (a) promptly prepare a certificate setting forth such adjustment, and a brief statement of the facts accounting for such adjustment, (b) promptly file with the Rights Agent and with each transfer agent for the Common Shares or the Preferred Shares a copy of such certificate and (c) mail a brief summary thereof to each holder of a Right Certificate in accordance with Section 24. The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment therein contained and shall not be deemed to have knowledge of any such adjustment unless and until it shall have received such certificate.

Section 13. Consolidation, Merger or Sale or Transfer of Assets or Earning Power.

13.1. Certain Transactions. In the event that, from and after the first occurrence of a Trigger Event, directly or indirectly, (A) the Company shall consolidate with, or merge with and into, any other Person and the Company shall not be the continuing or surviving

corporation, (B) any Person shall consolidate with the Company, or merge with and into the Company and the Company shall be the continuing or surviving corporation of such merger and, in connection with such merger, all or part of the Common Shares shall be changed into or exchanged for stock or other securities of the Company or any other Person or cash or any other property, or (C) the Company shall sell, exchange, mortgage or otherwise transfer (or one or more of its Subsidiaries shall sell, exchange, mortgage or otherwise transfer), in one or more transactions, 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 or Persons (other than the Company or one or more wholly-owned Subsidiaries of the Company in one or more transactions each of which complies with Section 11.14), then, and in each such case, proper provision shall be made so that (i) each holder of a Right (other than Rights which have become void pursuant to Section 11.1.2) shall thereafter have the right to receive, upon the exercise thereof at a price per Right equal to the then current Purchase Price multiplied by the number of one-thousandths of a Preferred Share for which a Right was exercisable immediately prior to the first occurrence of a Trigger Event (as subsequently adjusted pursuant to Sections 11.1.1, 11.2, 11.3, 11.8, 11.9 and 11.12), in accordance with the terms of this Agreement and in lieu of Preferred Shares or Common Shares, such number of validly authorized and issued, fully paid, non-assessable and freely tradable Common Shares of the Principal Party (as such term is hereinafter defined) not subject to any liens, encumbrances, rights of first refusal or other adverse claims, as shall be equal to the result obtained by (x) multiplying the then current Purchase Price by the number of one-thousandths of a Preferred Share for which a Right was exercisable immediately prior to the first occurrence of a Trigger Event (as subsequently adjusted pursuant to Sections 11.1.1, 11.2, 11.3, 11.8, 11.9 and 11.12) and (y) dividing that product by 50% of the then current per share market price of the Common Shares of such Principal Party (determined pursuant to Section 11.4) on the date of consummation of such consolidation, merger, sale or transfer; ***provided,*** that the price per Right so payable and the number of Common Shares of such Principal Party so receivable upon exercise of a Right shall thereafter be subject to further adjustment as appropriate in accordance with Section 11.6 to reflect any events covered thereby occurring in respect of the Common Shares of such Principal Party after the occurrence of such consolidation, merger, sale or transfer; (ii) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such consolidation, merger, sale or transfer, all the obligations and duties of the Company pursuant to this Agreement; (iii) the term “Company” shall thereafter be deemed to refer to such Principal Party; and (iv) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of its Common Shares in accordance with Section 9) in connection with such consummation as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to its Common Shares thereafter deliverable upon the exercise of the Rights; ***provided*** that, upon the subsequent occurrence of any consolidation, merger, sale or transfer of assets or other extraordinary transaction in respect of such Principal Party, each holder of a Right shall thereupon be entitled to receive, upon exercise of a Right and payment of the Purchase Price as provided in this Section 13.1, such cash, shares, rights, warrants and other property which such holder would have been entitled to receive had such holder, at the time of such transaction, owned the Common Shares of the Principal Party receivable upon the exercise of a Right pursuant to this Section 13.1, and such Principal Party shall take such steps (including, but not limited to, reservation of shares of stock) as may be necessary to permit the subsequent exercise of the Rights in accordance with the terms hereof for such cash, shares, rights, warrants and other

property. The Company shall not consummate any such consolidation, merger, sale or transfer unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement confirming that the requirements of this Section 13.1 and Section 13.2 shall promptly be performed in accordance with their terms and that such consolidation, merger, sale or transfer of assets shall not result in a default by the Principal Party under this Agreement as the same shall have been assumed by the Principal Party pursuant to this Section 13.1 and Section 13.2 and providing that, as soon as practicable after executing such agreement pursuant to this Section 13, the Principal Party, at its own expense, shall

(1) prepare and file a registration statement under the Securities Act, if necessary, with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, use its best efforts to cause such registration statement to become effective as soon as practicable after such filing and use its best efforts to cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the Expiration Date and similarly comply with applicable state securities laws;

(2) use its best efforts, if the Common Shares of the Principal Party shall be listed or admitted to trading on the NYSE or on another national securities exchange, to list or admit to trading (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on the NYSE or such securities exchange, or, if the Common Shares of the Principal Party shall not be listed or admitted to trading on the NYSE or a national securities exchange, to cause the Rights and the securities receivable upon exercise of the Rights to be authorized for quotation on Nasdaq or on such other system then in use;

(3) deliver to holders of the Rights historical financial statements for the Principal Party which comply in all respects with the requirements for registration on Form 10 (or any successor form) under the Exchange Act; and

(4) obtain waivers of any rights of first refusal or preemptive rights in respect of the Common Shares of the Principal Party subject to purchase upon exercise of outstanding Rights.

In case the Principal Party has provision in any of its authorized securities or in its articles or certificate of incorporation or by-laws or other instrument governing its corporate affairs, which provision would have the effect of (i) causing such Principal Party to issue (other than to holders of Rights pursuant to this Section 13), in connection with, or as a consequence of, the consummation of a transaction referred to in this Section 13, Common Shares or common stock equivalents of such Principal Party at less than the then current market price per share thereof (determined pursuant to Section 11.4) or securities exercisable for, or convertible into, Common Shares or common stock equivalents of such Principal Party at less than such then current market price (other than to holders of Rights pursuant to this Section 13), or (ii) providing for any special payment, taxes or similar provision in connection with the issuance of the Common Shares of such Principal Party pursuant to the provision of Section 13, then, in such event, the Company hereby agrees with each holder of Rights that it shall not consummate any such transaction unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing that the provision in

question of such Principal Party shall have been canceled, waived or amended, or that the authorized securities shall be redeemed, so that the applicable provision will have no effect in connection with, or as a consequence of, the consummation of the proposed transaction.

The Company covenants and agrees that it shall not, at any time after the Trigger Event, enter into any transaction of the type described in clauses (A) through (C) of this Section 13.1 if (i) at the time of or immediately after such consolidation, merger, sale, transfer or other transaction there are any rights, warrants or other instruments or securities outstanding or agreements in effect which would substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights, (ii) prior to, simultaneously with or immediately after such consolidation, merger, sale, transfer or other transaction, the stockholders of the Person who constitutes, or would constitute, the Principal Party for purposes of Section 13.2 shall have received a distribution of Rights previously owned by such Person or any of its Affiliates or Associates or (iii) the form or nature of organization of the Principal Party would preclude or limit the exercisability of the Rights. The provisions of this Section 13 shall similarly apply to successive transactions of the type described in clauses (A) through (C) of this Section 13.1.

13.2. Principal Party. “Principal Party” shall mean:

(i) in the case of any transaction described in clauses (A) or (B) of the first sentence of Section 13.1: (i) the Person that is the issuer of the securities into which the Common Shares are converted in such merger or consolidation, or, if there is more than one such issuer, the issuer the Common Shares of which have the greatest aggregate market value of shares outstanding, or (ii) if no securities are so issued, (x) the Person that is the other party to the merger, if such Person survives said merger, or, if there is more than one such Person, the Person the Common Shares of which have the greatest aggregate market value of shares outstanding or (y) if the Person that is the other party to the merger does not survive the merger, the Person that does survive the merger (including the Company if it survives) or (z) the Person resulting from the consolidation; and

(ii) in the case of any transaction described in clause (C) of the first sentence in Section 13.1, the Person that is the party receiving the greatest portion of the assets or earning power transferred pursuant to such transaction or transactions, or, if each Person that is a party to such transaction or transactions receives the same portion of the assets or earning power so transferred or if the Person receiving the greatest portion of the assets or earning power cannot be determined, whichever of such Persons is the issuer of Common Shares having the greatest aggregate market value of shares outstanding; ***provided, however,*** that in any such case described in the foregoing clause (i) or (ii) of this Section 13.2, if the Common Shares of such Person are not at such time or have not been continuously over the preceding 12-month period registered under Section 12 of the Exchange Act, then (1) if such Person is a direct or indirect Subsidiary of another Person the Common Shares of which are and have been so registered, the term “Principal Party” shall refer to such other Person, or (2) if such Person is a Subsidiary, directly or indirectly, of more than one Person, the Common Shares of all of which are and have been so registered, the term “Principal Party” shall refer to whichever of such Persons is the issuer of Common Shares having the greatest aggregate market value of shares outstanding, or (3) if such Person is owned, directly or indirectly, by a joint venture formed by two or more Persons that are not owned, directly or indirectly, by the same Person, the rules set forth in

clauses (1) and (2) above shall apply to each of the owners having an interest in the venture as if the Person owned by the joint venture was a Subsidiary of both or all of such joint venturers, and the Principal Party in each such case shall bear the obligations set forth in this Section 13 in the same ratio as its interest in such Person bears to the total of such interests.

13.3. Approved Acquisitions. Notwithstanding anything contained herein to the contrary, upon the consummation of any merger or other acquisition transaction of the type described in clause (A), (B) or (C) of Section 13.1 involving the Company pursuant to a merger or other acquisition agreement between the Company and any Person (or one or more of such Person's Affiliates or Associates) which agreement has been approved by the Board of Directors of the Company prior to any Person becoming an Acquiring Person, this Agreement and the rights of holders of Rights hereunder shall be terminated in accordance with Section 7.1.

Section 14. Fractional Rights and Fractional Shares.

14.1. Cash in Lieu of Fractional Rights. The Company shall not be required to issue fractions of Rights or to distribute Right Certificates which evidence fractional Rights (except prior to the Distribution Date in accordance with Section 11.15). In lieu of such fractional Rights, there shall be paid to the registered holders of the Right Certificates with regard to which such fractional Rights would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole Right. For the purposes of this Section 14.1, the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if the Rights are not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading or, if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by Nasdaq or such other system then in use or, if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board of Directors of the Company. If on any such date no such market maker is making a market in the Rights, the current market value of the Rights on such date shall be the fair value of the Rights as determined in good faith by the Board of Directors of the Company, or, if at the time of such determination there is an Acquiring Person, by a nationally recognized investment banking firm selected by the Board of Directors of the Company, which shall have the duty to make such determination in a reasonable and objective manner, which determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes.

14.2. Cash in Lieu of Fractional Preferred Shares. The Company shall not be required to issue fractions of Preferred Shares (other than fractions which are integral multiples of one-thousandth of a Preferred Share) upon exercise or exchange of the Rights or to distribute certificates which evidence fractional Preferred Shares (other than fractions which are integral

multiples of one-thousandth of a Preferred Share). Interests in fractions of Preferred Shares in integral multiples of one-thousandth of a Preferred Share may, at the election of the Company, be evidenced by depositary receipts, pursuant to an appropriate agreement between the Company and a depositary selected by it; ***provided,*** that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as beneficial owners of the Preferred Shares represented by such depositary receipts. In lieu of fractional Preferred Shares that are not integral multiples of one-thousandth of a Preferred Share, the Company shall pay to the registered holders of Right Certificates at the time such Rights are exercised or exchanged as herein provided an amount in cash equal to the same fraction of the current per share market price of one Preferred Share (as determined in accordance with Section 14.1) for the Trading Day immediately prior to the date of such exercise or exchange.

14.3. Cash in Lieu of Fractional Common Shares. The Company shall not be required to issue fractions of Common Shares or to distribute certificates which evidence fractional Common Shares upon the exercise or exchange of Rights. In lieu of such fractional Common Shares, the Company shall pay to the registered holders of the Right Certificates with regard to which such fractional Common Shares would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole Common Share (as determined in accordance with Section 14.1) for the Trading Day immediately prior to the date of such exercise or exchange.

14.4. Waiver of Right to Receive Fractional Rights or Shares. The holder of a Right by the acceptance of the Rights expressly waives his right to receive any fractional Rights or any fractional shares upon exercise or exchange of a Right, except as permitted by this Section 14.

Section 15. Rights of Action. All rights of action in respect of this Agreement, except the rights of action given to the Rights Agent under Section 18, are vested in the respective registered holders of the Right Certificates (and, prior to the Distribution Date, the registered holders of the Common Shares); and any registered holder of any Right Certificate (or, prior to the Distribution Date, of the Common Shares), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the Common Shares), may, in his own behalf and for his own benefit, enforce this Agreement, and may institute and maintain any suit, action or proceeding against the Company to enforce this Agreement, or otherwise enforce or act in respect of his right to exercise the Rights evidenced by such Right Certificate in the manner provided in such Right Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and shall be entitled to specific performance of the obligations under, and injunctive relief against actual or threatened violations of, the obligations of any Person (including, without limitation, the Company) subject to this Agreement.

Section 16. Agreement of Right Holders. Every holder of a Right by accepting the same consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will be transferable only in connection with the transfer of the Common Shares;

(b) as of and after the Distribution Date, the Right Certificates are transferable only on the registry books of the Rights Agent if surrendered at the office of the Rights Agent designated for such purpose, duly endorsed or accompanied by a proper instrument of transfer with all required certifications completed; and

(c) the Company and the Rights Agent may deem and treat the Person in whose name the Right Certificate (or, prior to the Distribution Date, the associated Common Shares certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificates or the associated Common Shares certificate made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent shall be affected by any notice to the contrary.

Section 17. Right Certificate Holder Not Deemed a Stockholder. No holder, as such, of any Right Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the Preferred Shares or any other securities of the Company which may at any time be issuable on the exercise of the Rights represented thereby, nor shall anything contained herein or in any Right Certificate be construed to confer upon the holder of any Right Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in Section 24), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Right Certificate shall have been exercised in accordance with the provisions hereof.

Section 18. Concerning the Rights Agent. The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder in accordance with a fee schedule to be mutually agreed upon and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and other disbursements incurred in the administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, or expense, incurred without negligence, bad faith or willful misconduct on the part of the Rights Agent, for anything done or omitted by the Rights Agent in connection with the acceptance and administration of this Agreement, including the costs and expenses of defending against any claim of liability arising therefrom, directly or indirectly.

The Rights Agent shall be protected and shall incur no liability for or in respect of any action taken, suffered or omitted by it in connection with its administration of this Agreement in reliance upon any Right Certificate or certificate for the Preferred Shares or the Common Shares or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, instruction, direction, consent, certificate, statement, or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons.

Section 19. Merger or Consolidation or Change of Name of Rights Agent. Any corporation or limited liability company into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any corporation or limited liability company resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any corporation or limited liability company succeeding to the corporate trust or stock transfer business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, ***provided*** that such corporation or limited liability company would be eligible for appointment as a successor Rights Agent under the provisions of Section 21. In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement, any of the Right Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

In case at any time the name of the Rights Agent shall be changed and at such time any of the Right Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Agreement.

Section 20. Duties of Rights Agent. The Rights Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by all of which the Company and the holders of Right Certificates, by their acceptance thereof, shall be bound:

20.1. Legal Counsel. The Rights Agent may consult with legal counsel selected by it (who may be legal counsel for the Company), and the opinion of such counsel shall be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion.

20.2. Certificates as to Facts or Matters. Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by any one of the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Operating Officer, any Vice President, the Secretary or any Assistant Secretary of the Company and delivered to the Rights Agent; and such certificate shall be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.

20.3. Standard of Care. The Rights Agent shall be liable hereunder only for its own negligence, bad faith or willful misconduct.

20.4. Reliance on Agreement and Right Certificates. The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Right Certificates (except as to its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

20.5. No Responsibility as to Certain Matters. The Rights Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Right Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Right Certificate; nor shall it be responsible for any change in the exercisability of the Rights (including the Rights becoming void pursuant to Section 11.1.2) or any adjustment required under the provisions of Sections 3, 11, 13, 23 or 27 or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after actual notice of any such change or adjustment); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Preferred Shares or other securities to be issued pursuant to this Agreement or any Right Certificate or as to whether any Preferred Shares will, when so issued, be validly authorized and issued, fully paid and nonassessable.

20.6. Further Assurance by Company. The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

20.7. Authorized Company Officers. The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from any one of the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Operating Officer, any Vice President, the Secretary or any Assistant Secretary of the Company, and to apply to such officers for advice or instructions in connection with its duties under this Agreement, and it shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer or for any delay in acting while waiting for these instructions. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken or omitted by the Rights Agent with respect to its duties or obligations under this Agreement and the date on and/or after which such action shall be taken or such omission shall be effective. The Rights Agent shall not be liable to the Company for any action taken by, or omission of, the Rights Agent in accordance with a proposal included in any such application on or after the date specified therein (which date shall not be less than three (3) Business Days after the date any such officer actually receives such application, unless any such officer shall have consented in writing to an earlier date) unless, prior to taking any such action (or the effective

date in the case of omission), the Rights Agent shall have received written instructions in response to such application specifying the action to be taken or omitted.

20.8. Freedom to Trade in Company Securities. The Rights Agent and any stockholder, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the Company or for any other legal entity.

20.9. Reliance on Attorneys and Agents. The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, omission, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company resulting from any such act, omission, default, neglect or misconduct, ***provided*** that reasonable care was exercised in the selection and continued employment thereof.

20.10. Incomplete Certificate. If, with respect to any Rights Certificate surrendered to the Rights Agent for exercise or transfer, the certificate contained in the form of assignment or the form of election to purchase set forth on the reverse thereof, as the case may be, has not been completed to certify the holder is not an Acquiring Person (or an Affiliate or Associate thereof), the Rights Agent shall not take any further action with respect to such requested exercise or transfer without first consulting with the Company.

20.11. Rights Holders List. At any time and from time to time after the Distribution Date, upon the request of the Company, the Rights Agent shall promptly deliver to the Company a list, as of the most recent practicable date (or as of such earlier date as may be specified by the Company), of the holders of record of Rights.

Section 21. Change of Rights Agent. The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon thirty (30) days' notice in writing mailed to the Company and to each transfer agent of the Common Shares and/or Preferred Shares, as applicable, by registered or certified mail. Following the Distribution Date, the Company shall promptly notify the holders of the Right Certificates by first-class mail of any such resignation. The Company may remove the Rights Agent or any successor Rights Agent upon thirty (30) days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Shares and/or Preferred Shares, as applicable, by registered or certified mail, and to the holders of the Right Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the resigning, removed, or incapacitated Rights Agent shall remit to the Company, or to any successor Rights Agent designated by the Company, all books, records, funds, certificates or other documents or instruments of any kind then in its possession which were acquired by such resigning, removed or incapacitated Rights Agent in connection with its services as Rights Agent hereunder, and shall thereafter be discharged from all duties and obligations hereunder. Following notice of such removal, resignation or incapacity, the

Company shall appoint a successor to such Rights Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (who shall, with such notice, submit his Right Certificate for inspection by the Company), then the registered holder of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be a corporation organized and doing business under the laws of the United States or of the State of New York or the State of Delaware (or any other state of the United States so long as such corporation is authorized to do business as a banking institution in the State of New York or Delaware) in good standing, having an office in the State of New York or the State of Delaware, which is authorized under such laws to exercise stock transfer or corporate trust powers and is subject to supervision or examination by Federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least $10 million. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment the Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Shares and/or Preferred Shares, as applicable, and, following the Distribution Date, mail a notice thereof in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. Issuance of New Right Certificates. Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Right Certificates evidencing Rights in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Right Certificates made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale of Common Shares following the Distribution Date and prior to the Expiration Date, the Company shall, with respect to Common Shares so issued or sold pursuant to the exercise of stock options or under any employee plan or arrangement, granted or awarded, or upon exercise, conversion or exchange of securities hereinafter issued by the Company, in each case existing prior to the Distribution Date, issue Right Certificates representing the appropriate number of Rights in connection with such issuance or sale; ***provided, however,*** that (i) no such Right Certificate shall be issued if, and to the extent that, the Company shall be advised by counsel that such issuance would create a significant risk of material adverse tax consequences to the Company or the Person to whom such Right Certificate would be issued and (ii) no such Right Certificate shall be issued if, and to the extent that, appropriate adjustment shall otherwise have been made in lieu of the issuance thereof.

Section 23. Redemption.

23.1. Right to Redeem. The Board of Directors of the Company may, at its option, at any time prior to a Trigger Event, redeem all but not less than all of the then outstanding Rights at a redemption price of $0.01 per Right, appropriately adjusted to reflect any stock split, stock dividend, recapitalization or similar transaction occurring after the date hereof (such redemption price being hereinafter referred to as the "*Redemption Price*"), and the Company may, at its option, pay the Redemption Price in Common Shares (based on the "current per share market price," determined pursuant to Section 11.4, of the Common Shares at the time of redemption), cash or any other form of consideration deemed appropriate by the Board of Directors. The redemption of the Rights by the Board of Directors may be made effective at such time, on such basis and subject to such conditions as the Board of Directors in its sole discretion may establish.

23.2. Redemption Procedures. Immediately upon the action of the Board of Directors of the Company ordering the redemption of the Rights (or at such later time as the Board of Directors may establish for the effectiveness of such redemption), and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price for each Right so held. The Company shall promptly give public notice of such redemption; ***provided, however,*** that the failure to give, or any defect in, any such notice shall not affect the validity of such redemption. The Company shall promptly give, or cause the Rights Agent to give, notice of such redemption to the holders of the then outstanding Rights by mailing such notice to all such holders at their last addresses as they appear upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Shares. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption shall state the method by which the payment of the Redemption Price will be made. Neither the Company nor any of its Affiliates or Associates may redeem, acquire or purchase for value any Rights at any time in any manner other than that specifically set forth in this Section 23 or in Section 26, and other than in connection with the purchase, acquisition or redemption of Common Shares prior to the Distribution Date.

23.3. Notice of Certain Events. In case the Company shall propose at any time after the earlier of the Shares Acquisition Date and the Distribution Date (a) to pay any dividend payable in stock of any class to the holders of Preferred Shares or to make any other distribution to the holders of Preferred Shares (other than a regular periodic cash dividend at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of the Company for the four quarters ended immediately prior to the payment of such dividends, or a stock dividend on, or a subdivision, combination or reclassification of the Common Shares), or (b) to offer to the holders of Preferred Shares rights or warrants to subscribe for or to purchase any additional Preferred Shares or shares of stock of any class or any other securities, rights or options, or (c) to effect any reclassification of its Preferred Shares (other than a reclassification involving only the subdivision of outstanding Preferred Shares), or (d) to effect any consolidation or merger into or with, or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect

any sale or other transfer), in one or more transactions, of 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 pursuant to a merger or other acquisition agreement of the type described in Section 1.3(ii)(A)(z)), or (e) to effect the liquidation, dissolution or winding up of the Company, or (f) to declare or pay any dividend on the Common Shares payable in Common Shares or to effect a subdivision, combination or consolidation of the Common Shares (by reclassification or otherwise than by payment of dividends in Common Shares), then, in each such case, the Company shall give to the Rights Agent and to each holder of a Right Certificate, in accordance with Section 24, a notice of such proposed action, which shall specify the record date for the purposes of such stock dividend, distribution of rights or warrants, or the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution, or winding up is to take place and the date of participation therein by the holders of the Preferred Shares and/or Common Shares, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (a) or (b) above at least ten (10) days prior to the record date for determining holders of the Preferred Shares for purposes of such action, and in the case of any such other action, at least ten (10) days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the Preferred Shares and/or Common Shares, whichever shall be the earlier.

In case any event set forth in Section 11.1.2 or Section 13 shall occur, then, in any such case, (i) the Company shall as soon as practicable thereafter give to the Rights Agent and to each holder of a Right Certificate, in accordance with Section 24, a notice of the occurrence of such event, which notice shall describe the event and the consequences of the event to holders of Rights under Section 11.1.2 and Section 13, and (ii) all references in this Section 23 to Preferred Shares shall be deemed thereafter to refer to Common Shares and/or, if appropriate, other securities.

Notwithstanding anything in this Agreement to the contrary, prior to the Distribution Date a filing by the Company with the Securities and Exchange Commission shall constitute sufficient notice to the holders of securities of the Company, including the Rights, for purposes of this Agreement and no other notice need be given.

Section 24. Notices. Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Right Certificate to or on the Company shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Ulta Salon, Cosmetics & Fragrance, Inc.
Windham Lakes Business Park
1135 Arbor Drive
Romeoville, Illinois 60446
Attention: Secretary

Subject to the provisions of Section 21 and Section 23, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Right Certificate to or on the Rights Agent shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

[Rights Agent]

Attention: Shareholder Services Division

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Right Certificate (or, prior to the Distribution Date, to the holder of any certificate representing Common Shares) shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

Section 25. Supplements and Amendments. For so long as the Rights are then redeemable, the Company may in its sole and absolute discretion, and the Rights Agent shall, if the Company so directs, supplement or amend any provision of this Agreement in any respect without the approval of any holders of Rights or Common Shares. From and after the time that the Rights are no longer redeemable, the Company may, and the Rights Agent shall, if the Company so directs, from time to time supplement or amend this Agreement without the approval of any holders of Rights (i) to cure any ambiguity or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein or (ii) to make any other changes or provisions in regard to matters or questions arising hereunder which the Company may deem necessary or desirable, including but not limited to extending the Final Expiration Date; ***provided, however,*** that no such supplement or amendment shall adversely affect the interests of the holders of Rights as such (other than an Acquiring Person or an Affiliate or Associate of an Acquiring Person), and no such supplement or amendment may cause the Rights again to become redeemable or cause this Agreement again to become amendable other than in accordance with this sentence; ***provided further,*** that the right of the Board of Directors to extend the Distribution Date shall not require any amendment or supplement hereunder. Upon the delivery of a certificate from an appropriate officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of this Section 25, the Rights Agent shall execute such supplement or amendment.

Section 26. Exchange.

26.1. Exchange of Common Shares for Rights. The Board of Directors of the Company may, at its option, at any time after the occurrence of a Trigger Event, exchange Common Shares for all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become void pursuant to the provisions of Section 11.1.2) by exchanging at an exchange ratio of that number of Common Shares having an aggregate value equal to the Spread (with such value being based on the current per share market price {as determined pursuant to Section 11.4} on the date of the occurrence of a Trigger Event) per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such amount per Right being hereinafter referred to as the "*Exchange Consideration*"). Notwithstanding the foregoing, the Board of Directors shall not be empowered to effect such exchange at any time after any Acquiring Person shall have become the Beneficial Owner of 50% or more of the Common Shares then outstanding. From and after the occurrence of an event specified in Section 13.1, any Rights that theretofore have not been exchanged pursuant to this Section 26.1 shall thereafter be exercisable only in accordance with Section 13

and may not be exchanged pursuant to this Section 26.1. The exchange of the Rights by the Board of Directors may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish.

26.2. Exchange Procedures. Immediately upon the action of the Board of Directors of the Company ordering the exchange for any Rights pursuant to Section 26.1 and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive the Exchange Consideration. The Company shall promptly give public notice of any such exchange; ***provided, however,*** that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company promptly shall mail a notice of any such exchange to all of the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange shall state the method by which the exchange of the Common Shares for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than the Rights that have become void pursuant to the provisions of Section 11.1.2) held by each holder of Rights.

26.3. Insufficient Shares. The Company may at its option substitute, and, in the event that there shall not be sufficient Common Shares issued but not outstanding or authorized but unissued to permit an exchange of Rights for Common Shares as contemplated in accordance with this Section 26, the Company shall substitute to the extent of such insufficiency, for each Common Share that would otherwise be issuable upon exchange of a Right, a number of Preferred Shares or fraction thereof (or equivalent preferred stock, as such term is defined in Section 11.2) such that the current per share market price (determined pursuant to Section 11.4) of one Preferred Share (or equivalent preferred share) multiplied by such number or fraction is equal to the current per share market price of one Common Share (determined pursuant to Section 11.4) as of the date of such exchange.

Section 27. Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 28. Benefits of this Agreement. Nothing in this Agreement shall be construed to give to any Person or corporation other than the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Shares) any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the Common Shares).

Section 29. Determination and Actions by the Board of Directors. The Board of Directors of the Company shall have the exclusive power and authority to administer this Agreement and to exercise the rights and powers specifically granted to the Board of Directors of the Company or to the Company, or as may be necessary or advisable in the administration of this Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Agreement and (ii) make all determinations deemed necessary or advisable for the

administration of this Agreement (including, without limitation, a determination to redeem or not redeem the Rights or amend this Agreement). All such actions, calculations, interpretations and determinations (including, for purposes of clause (y) below, all omissions with respect to the foregoing) that are done or made by the Board of Directors of the Company in good faith shall (x) be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights, as such, and all other parties, and (y) not subject the Board of Directors to any liability to the holders of the Rights.

Section 30. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 31. Governing Law. This Agreement and each Right Certificate issued hereunder shall be deemed to be a contract made under the internal laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State.

Section 32. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 33. Descriptive Heading. Descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, as of the day and year first above written.

Ulta Salon, Cosmetics & Fragrance, Inc.

By ______________________________
Name:
Title:

[NAME OF RIGHTS AGENT]

By ______________________________
Name:
Title:

EXHIBIT A

Form of Right Certificate

Certificate No. R- __________ Rights

NOT EXERCISABLE AFTER __________ OR EARLIER IF NOTICE OF REDEMPTION OR EXCHANGE IS GIVEN OR IF THE COMPANY IS MERGED OR ACQUIRED PURSUANT TO AN AGREEMENT OF THE TYPE DESCRIBED IN SECTION 1.3(ii)(A)(z) OF THE AGREEMENT. THE RIGHTS ARE SUBJECT TO REDEMPTION AT $0.01 PER RIGHT, AND TO EXCHANGE ON THE TERMS SET FORTH IN THE AGREEMENT. UNDER CERTAIN CIRCUMSTANCES (SPECIFIED IN SECTION 11.1.2 OF THE AGREEMENT), RIGHTS BENEFICIALLY OWNED BY OR TRANSFERRED TO AN ACQUIRING PERSON (AS DEFINED IN THE AGREEMENT), OR ANY SUBSEQUENT HOLDER OF SUCH RIGHTS WILL BECOME NULL AND VOID AND WILL NO LONGER BE TRANSFERABLE.

Right Certificate

ULTA SALON, COSMETICS & FRAGRANCE, INC.

This certifies that __________, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Stockholder Rights Agreement, dated as of __________, ___, as the same may be amended from time to time (the "*Agreement*"), between Ulta Salon, Cosmetics and Fragrance, Inc., a Delaware corporation (the "*Company*"), and **[Name of Rights Agent]**, a __________ corporation, as Rights Agent (the "*Rights Agent*"), to purchase from the Company at any time after the Distribution Date and prior to 5:00 P.M. (New York time) on__________, at the offices of the Rights Agent, or its successors as Rights Agent, designated for such purpose, one-thousandth of a fully paid, nonassessable share of Series A Junior Participating Preferred Stock, par value $0.01 per share (the "*Preferred Shares*"), of the Company, at a purchase price of $__________ per one-thousandth of a Preferred Share, subject to adjustment (the "*Purchase Price*"), upon presentation and surrender of this Right Certificate with the Form of Election to Purchase and certification duly executed. The number of Rights evidenced by this Right Certificate (and the number of one-thousandths of a Preferred Share which may be purchased upon exercise thereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of __________, ___based on the Preferred Shares as constituted at such date. Capitalized terms used in this Right Certificate without definition shall have the meanings ascribed to them in the Agreement. As provided in the Agreement, the Purchase Price and the number of Preferred Shares which may be purchased upon the exercise of the Rights evidenced by this Right Certificate are subject to modification and adjustment upon the happening of certain events.

This Right Certificate is subject to all of the terms, provisions and conditions of the Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Agreement reference is hereby made for a full

description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Right Certificates. Copies of the Agreement are on file at the principal offices of the Company and the Rights Agent.

This Right Certificate, with or without other Right Certificates, upon surrender at the offices of the Rights Agent designated for such purpose, may be exchanged for another Right Certificate or Right Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of one-thousandths of a Preferred Share as the Rights evidenced by the Right Certificate or Right Certificates surrendered shall have entitled such holder to purchase. If this Right Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Right Certificate or Right Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Agreement, the Board of Directors may, at its option, (i) redeem the Rights evidenced by this Right Certificate at a redemption price of $0.01 per Right or (ii) exchange Common Shares for the Rights evidenced by this Certificate, in whole or in part.

No fractional Preferred Shares will be issued upon the exercise of any Right or Rights evidenced hereby (other than fractions of Preferred Shares which are integral multiples of one-thousandth of a Preferred Share, which may, at the election of the Company, be evidenced by depository receipts), but in lieu thereof a cash payment will be made, as provided in the Agreement.

No holder of this Right Certificate, as such, shall be entitled to vote or receive dividends or be deemed for any purpose the holder of the Preferred Shares or of any other securities of the Company which may at any time be issuable on the exercise hereof, nor shall anything contained in the Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in the Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right Certificate shall have been exercised as provided in the Agreement.

If any term, provision, covenant or restriction of the Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

This Right Certificate shall not be valid or binding for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal. Dated as of__________.

Attest:

By ____________________________________

Title:

Ulta Salon, Cosmetics & Fragrance, Inc.

By ____________________________________

Title:

Countersigned:

[NAME OF RIGHTS AGENT], as Rights Agent

By ____________________________________

Authorized Signature

Form of Reverse Side of Right Certificate

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Right Certificate.)

FOR VALUE RECEIVED ______________________________
hereby sells, assigns and transfers unto ______________________________

____

____

(Please print name and address of transferee)

Rights evidenced by this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint__________ Attorney, to transfer the within Right Certificate on the books of the within-named Company, with full power of substitution.

Dated:__________

____
Signature

Signature Guaranteed:

____

Signatures must be guaranteed by an "eligible guarantor institution" as defined in Rule 17Ad-15 promulgated under the Securities Exchange Act of 1934, as amended.

The undersigned hereby certifies that:

(1) the Rights evidenced by this Right Certificate are not beneficially owned by and are not being assigned to an Acquiring Person or an Affiliate or an Associate thereof; and

(2) after due inquiry and to the best knowledge of the undersigned, the undersigned did not acquire the Rights evidenced by this Right Certificate from any person who is, was or subsequently became an Acquiring Person or an Affiliate or Associate thereof.

Dated:__________

____
Signature

FORM OF ELECTION TO PURCHASE

(To be executed if holder desires to
exercise the Right Certificate.)

To: Ulta Salon, Cosmetics & Fragrance, Inc.

The undersigned hereby irrevocably elects to exercise __________ Rights represented by this Right Certificate to purchase the Preferred Shares issuable upon the exercise of such Rights (or such other securities or property of the Company or of any other Person which may be issuable upon the exercise of the Rights) and requests that certificates for such shares be issued in the name of:

____

(Please print name and address)

____

If such number of Rights shall not be all the Rights evidenced by this Right Certificate, a new Right Certificate for the balance remaining of such Rights shall be registered in the name of and delivered to:

Please insert social security
or other identifying number

____

(Please print name and address)

____

Dated: ____________________

____
Signature

Signature Guaranteed:

____

Signatures must be guaranteed by an "eligible guarantor institution" as defined in Rule 17Ad-15 promulgated under the Securities Exchange Act of 1934, as amended.

The undersigned hereby certifies that:

(1) the Rights evidenced by this Right Certificate are not beneficially owned by and are not being assigned to an Acquiring Person or an Affiliate or an Associate thereof; and

(2) after due inquiry and to the best knowledge of the undersigned, the undersigned did not acquire the Rights evidenced by this Right Certificate from any person who is, was or subsequently became an Acquiring Person or an Affiliate or Associate thereof.

Dated:__________

____
Signature

NOTICE

The signature in the foregoing Form of Assignment and Form of Election to Purchase must conform to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

In the event the certification set forth above in the Form of Assignment or Form of Election to Purchase is not completed, the Company will deem the beneficial owner of the Rights evidenced by this Right Certificate to be an Acquiring Person or an Affiliate or Associate hereof and such Assignment or Election to Purchase will not be honored.

EXHIBIT B

As described in the Stockholder Rights Agreement, Rights which are
held by or have been held by an Acquiring Person or Associates
or Affiliates thereof (as defined in the Stockholder Rights Agreement) and certain
transferees thereof shall become null and void and will no longer be transferable

SUMMARY OF RIGHTS TO PURCHASE
PREFERRED SHARES

On __________, ___the Board of Directors of Ulta Salon, Cosmetics & Fragrance, Inc. (the "*Company*") declared a dividend of one preferred share purchase right (a "Right") for each share of common stock, $.01 par value (the "*Common Shares*"), of the Company outstanding at the close of business on__________, ___(the "*Record Date*"). As long as the Rights are attached to the Common Shares, the Company will issue one Right (subject to adjustment) with each new Common Share so that all such shares will have attached Rights. When exercisable, each Right will entitle the registered holder to purchase from the Company one-thousandth of a share of Series A Junior Participating Preferred Stock (the "*Preferred Shares*") at a price of $__________ per one-thousandth of a Preferred Share, subject to adjustment (the "*Purchase Price*"). The description and terms of the Rights are set forth in a Stockholder Rights Agreement, dated as of __________, ___, as the same may be amended from time to time (the "*Agreement*"), between the Company and **[Name of Rights Agent]**, as Rights Agent (the "*Rights Agent*").

Until the earlier to occur of (i) ten (10) days following a public announcement that a person or group of affiliated or associated persons, other than [Doublemousse B.V., together with all of its affiliates, Oak Investment Partners VII, together with all of its affiliates, and GRP II, L.P., together with all of its affiliates][1], has acquired or obtained the right to acquire beneficial ownership of **[15]%** or more of the Common Shares (an "*Acquiring Person*") or (ii) ten (10) Business Days (or such later date as may be determined by action of the Board of Directors prior to such time as any person or group of affiliated persons becomes an Acquiring Person) following the commencement or announcement of an intention to make a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of **[15]%** or more of the Common Shares (the earlier of (i) and (ii) being called the "*Distribution Date*"), the Rights will be evidenced, with respect to any of the Common Share certificates outstanding as of the Record Date, by such Common Share certificate together with a copy of this Summary of Rights.

The Agreement provides that until the Distribution Date (or earlier redemption exchange, termination, or expiration of the Rights), the Rights will be transferred with and only with the Common Shares. Until the Distribution Date (or earlier redemption or expiration of the Rights), new Common Share certificates issued after the close of business on the Record Date upon transfer or new issuance of the Common Shares will contain a notation incorporating the

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1 Revise as appropriate to reflect Existing Holders and/or Exempt Persons, if any, at the time the Stockholder Rights Agreement is adopted.

Agreement by reference. Until the Distribution Date (or earlier redemption, exchange, termination or expiration of the Rights), the surrender for transfer of any certificates for Common Shares, with or without such notation or a copy of this Summary of Rights, will also constitute the transfer of the Rights associated with the Common Shares represented by such certificate. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights ("*Right Certificates*") will be mailed to holders of record of the Common Shares as of the close of business on the Distribution Date and such separate Right Certificates alone will evidence the Rights.

The Rights are not exercisable until the Distribution Date. The Rights will expire on__________, subject to the Company's right to extend such date (the "*Final Expiration Date*"), unless earlier redeemed or exchanged by the Company or terminated.

Each Preferred Share purchasable upon exercise of the Rights will be entitled, when, as and if declared, to a minimum preferential quarterly dividend payment of $1.00 per share but will be entitled to an aggregate dividend of 1,000 times the dividend, if any, declared per Common Share. In the event of liquidation, dissolution or winding up of the Company, the holders of the Preferred Shares will be entitled to a minimum preferential liquidation payment of $1,000 per share (plus any accrued but unpaid dividends) but will be entitled to an aggregate payment of 1,000 times any payment made per Common Share. Each Preferred Share will have 1,000 votes and will vote together with the Common Shares. Finally, in the event of any merger, consolidation or other transaction in which Common Shares are exchanged, each Preferred Share will be entitled to receive 1,000 times the amount received per Common Share. Preferred Shares will not be redeemable. These rights are protected by customary antidilution provisions. Because of the nature of the Preferred Share's dividend, liquidation and voting rights, the value of one-thousandth of a Preferred Share purchasable upon exercise of each Right should approximate the value of one Common Share.

The Purchase Price payable, and the number of Preferred Shares or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of the Preferred Shares, (ii) upon the grant to holders of the Preferred Shares of certain rights or warrants to subscribe for or purchase Preferred Shares or convertible securities at less than the current market price of the Preferred Shares or (iii) upon the distribution to holders of the Preferred Shares of evidences of indebtedness, cash, securities or assets (excluding regular periodic cash dividends at a rate not in excess of 125% of the rate of the last regular periodic cash dividend theretofore paid or, in case regular periodic cash dividends have not theretofore been paid, at a rate not in excess of 50% of the average net income per share of the Company for the four quarters ended immediately prior to the payment of such dividend, or dividends payable in Preferred Shares (which dividends will be subject to the adjustment described in clause (i) above)) or of subscription rights or warrants (other than those referred to above).

In the event that a Person becomes an Acquiring Person or if the Company were the surviving corporation in a merger with an Acquiring Person or any affiliate or associate of an Acquiring Person and the Common Shares were not changed or exchanged, each holder of a Right, other than Rights that are or were acquired or beneficially owned by the Acquiring Person

(which Rights will thereafter be void), will thereafter have the right to receive upon exercise that number of Common Shares having a market value of two times the then current Purchase Price of the Right. In the event that, after a person has become an Acquiring Person, the Company were acquired in a merger or other business combination transaction or more than 50% of its assets or earning power were sold, proper provision shall be made so that each holder of a Right shall thereafter have the right to receive, upon the exercise thereof at the then current Purchase Price of the Right, that number of shares of common stock of the acquiring company which at the time of such transaction would have a market value of two times the then current Purchase Price of the Right.

At any time after a Person becomes an Acquiring Person and prior to the earlier of one of the events described in the last sentence of the previous paragraph or the acquisition by such Acquiring Person of 50% or more of the outstanding Common Shares, the Board of Directors may cause the Company to exchange the Rights (other than Rights owned by an Acquiring Person which will have become void), in whole or in part, for Common Shares at an exchange rate per Right of the number of Common Shares having an aggregate value equal to the difference between the value of the Common Shares issuable upon the exercise of a Right and the Purchase Price of a Right (subject to adjustment).

No adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional Preferred Shares or Common Shares will be issued (other than fractions of Preferred Shares which are integral multiples of one-thousandth of a Preferred Share, which may, at the election of the Company, be evidenced by depository receipts), and in lieu thereof, a payment in cash will be made based on the market price of the Preferred Shares or Common Shares on the last trading date prior to the date of exercise.

The Rights may be redeemed in whole, but not in part, at a price of $0.01 per Right (the "*Redemption Price*") by the Board of Directors at any time prior to the time that an Acquiring Person has become such. The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company beyond those as an existing stockholder, including, without limitation, the right to vote or to receive dividends.

Any of the provisions of the Agreement may be amended by the Board of Directors of the Company for so long as the Rights are then redeemable, and after the Rights are no longer redeemable, the Company may amend or supplement the Agreement in any manner that does not adversely affect the interests of the holders of the Rights (other than an Acquiring Person or an affiliate or associate of an Acquiring Person).

A copy of the Agreement is available free of charge from the Company. This summary description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Agreement, which is incorporated herein by reference.

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EXHIBIT 10.1

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into as of the 23rd day of June, 2006, between **Ulta Salon, Cosmetics & Fragrance, Inc,** a Delaware corporation (the "Company") and **Lyn Kirby** (the "Executive").

RECITALS

A. The Company and the Executive previously have entered into an Amended and Restated Employment Agreement, dated as of March 15, 2002 (the "Prior Agreement"), pursuant to which the Company currently employs the Executive; and

B. The Company and the Executive each have determined that it would be to the advantage and best interest of the Company and the Executive to terminate the Prior Agreement and enter into this Agreement as a means of extending Executive's current employment and modifying certain of the Executive's and the Company's obligations and responsibilities under the Prior Agreement; and

C. The Company and the Executive desire to have the Prior Agreement terminate and that this Agreement supersedes the Prior Agreement in all respects;

D. It is the desire of the Company to continue employing the Executive as the Company's president and chief executive officer as described in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and of the respective covenants and agreements set forth below, the parties hereto agree as follows:

ARTICLE I.
SERVICES AND TERM

1.1 Services. The Company agrees to continue employing the Executive, and the Executive accepts such employment upon the terms set forth in this Agreement. The Executive shall report directly to, and receive direction from, the Board of Directors of the Company (the "Board"). Executive shall serve as the Company's President and Chief Executive Officer and will be primarily responsible for overseeing the implementation of the Company's business strategy and such other duties as reasonably determined, from time to time, by the Board. Notwithstanding the foregoing, the Executive acknowledges and agrees upon request of the Board that she will assist and cooperate with the Board to establish and implement a successorship strategy in which she will (a) transition the President and Chief Executive Officer duties to a successor chosen by the Board and (b) become the Executive Chairman of the Board.

1.2 Services to Subsidiaries. Executive will also serve, without further compensation, in such capacities of each subsidiary of the Company as specified by the Board.

1.3 Term. The term of employment under this Agreement (the "Term") shall begin on February 1, 2006 (the "Commencement Date") and end on the last day of the

Company's fiscal year (the "Fiscal Year") ending in February 2008, unless otherwise sooner terminated by the parties under Article III. The Term shall automatically renew for additional one year period(s), unless either party provides written notice to the other of their intent not to renew the term at least sixty (60) days prior to the then expiration of the Term or as otherwise terminated as herein provided.

ARTICLE II.
COMPENSATION PACKAGE

2.1 Compensation. The Company shall pay Executive a base salary of $600,000 per year (the "Base Salary") in accordance with the normal payment procedures of the Company and subject to such withholding and other normal employee deductions as may be required by law. The Board shall perform a performance review of Executive after the end of each Fiscal Year, beginning with the Fiscal Year ending in 2006. In connection with such review the Board may adjust Executive's Base Salary after taking into account Executive's and the Company's performance, and such other factors as the Board deems appropriate; provided, however, Executive's Base Salary may not be decreased without Executive's express written consent unless the decrease is pursuant to a general compensation reduction applicable to all, or substantially all, officers of the Company.

2.2 Benefits. During the Term, Executive shall be eligible to participate in such medical, health, pension, welfare, and insurance plans offered by the Company as she elects from time to time (subject to the terms of such plans), and to receive other fringe benefits that are at least as favorable as the fringe benefits generally provided to other senior officers of the Company at the time such other fringe benefits are made available to them.

2.3 Bonus. Each Fiscal Year during the Term, beginning with the Fiscal Year ending in 2007, Executive will be eligible to earn a cash performance bonus targeted at $750,000 (the "Target Bonus"). Each Fiscal Year the Board shall establish performance targets based on sales, earnings before interest and taxes, and other pre-established performance objectives. The actual bonus will be (a) determined based upon the achievement of the performance targets set by the Board, (b) earned in full by the Executive as of the last day of the related Fiscal Year, if the set performance targets are in fact met, and (c) paid to Executive no later than April 15 following the end of the related Fiscal Year, unless it is administratively not practicable to make payment by April 15 due to unforeseen circumstances, in which case it shall be paid as soon as administratively practical to make such payment but no later than December 31 of such year. If the established performance targets are met or exceeded, then the Target Bonus will be paid to Executive. The Board in its sole discretion may pay Executive an amount in excess of the Target Bonus. Appendix I sets forth the calculation of bonus payments for the Fiscal Year ending in February 2007.

2.4 Loan. At the Executive's request, the Company will loan Executive up to $4,094,340 in order that Executive may exercise previously granted options to purchase shares of the Company's common stock. Such loan will be secured by the shares purchased upon exercise of the options and will be recourse against the Executive's other assets. Interest on such loan will be the minimum interest rate applicable to mid-term obligations in order that such loan will not be treated as having a below market rate of interest for Federal income tax purposes.

Executive shall be obligated to repay interest accrued each year from the proceeds of any bonus paid under Section 2.3. Executive may prepay the loan at anytime, but will be required to repay the loan in full upon the earliest to occur of: the date (i) immediately prior to the Company becoming an "issuer" under the Sarbanes-Oxley Act of 2002, either by filing a Form S-1 registration statement with the Securities and Exchange Commission or otherwise (an "IPO"), (ii) expiration of the time period provided under the terms of her option agreements and the Company's stockholders' agreements for repurchase of shares following termination of employment, or (iii) five years from the date of the loan. If Executive is required to repay the loan upon an IPO, if not informed of another form of payment, the Company shall repurchase or offset the loan balance by the amount of shares of Common Stock necessary to repay the loan at the then fair market value of such shares.

2.5 Business Expenses. The Company will reimburse Executive for reasonable business-related expenses incurred by her in connection with the performance of her duties hereunder upon presentation of written documentation, subject, however, to the Company's reasonable policies relating to business-related expenses as then in effect from time to time. The Company will reimburse the Executive for legal expenses incurred in the negotiation and documentation of this Agreement in an amount not to exceed $10,000.

2.6 Vacation. Executive shall be entitled to four weeks of annual vacation to be accrued and taken in accordance with the Company's vacation policy for senior executives.

2.7 Indemnification. Executive shall be entitled to the same indemnification under the terms of the Company's By-Laws and Articles of Incorporation as is provided, and such liability insurance as the Company may from time to time purchase, for its Board members and senior officer.

2.8 Additional Equity. In the event the Board adopts a program for grants of equity compensation to officers of the Company in connection with or contemplation of an initial public offering, Executive shall be eligible to be considered for additional equity grants under such program; provided, however, that nothing contained herein guarantees any level of grant.

ARTICLE III.
TERMINATION OF SERVICES

3.1 Automatic Termination. This Agreement, the Executive's employment with the Company and the Company's obligations to the Executive under Article II will terminate:

(a) Death. Automatically, upon the Executive's death;

(b) Resignation. Upon the date specified by the Executive at the time of her resignation;

(c) Disability. Upon the date elected by the Company, after the failure of the Executive to render services to the Company for a continuous period of six (6) months because of the Executive's physical or mental disability or illness ("Disability"). If there should be any dispute between the parties as to the Executive's physical or mental disability at any time,

such question shall be settled by the opinion of an impartial reputable physician agreed upon for such purpose by the parties or their representatives. The certificate of such physician as to the matter in dispute shall be final and binding on the parties.

(d) Cause. Immediately, upon notice to the Executive that the Company is terminating her for Cause. For purpose of this Agreement "Cause" means (i) the Executive's gross misconduct, including any intentional or grossly negligent breach of the Company's policies and procedures, including its policies relating to discrimination, harassment or trading in the Company's securities, or any material breach of the Company's Policy Regarding Noncompetition, Nonsolicitation and Confidential Information (the "Policy"); (ii) conviction of, or plea of guilty or nolo contendere by the Executive with respect to a felony; or (iii) any act of fraud, dishonesty or moral turpitude committed by the Executive which is materially detrimental to the business or reputation of the Company as determined by the Board.

(e) Termination without Cause. Upon the date specified by the Company, upon written notice to the Executive that her employment is being terminated without Cause.

(f) Expiration of Term. The expiration or non-renewal of the Term as provided in Section 1.3 hereof.

3.2 Payment on Termination with Cause or Without Good Reason. In the event that Executive's employment is terminated for Cause or by the Executive without Good Reason (as defined below), Executive shall be entitled to receive (a) all earned but unpaid Base Salary through and including the date of termination; (b) all earned but unpaid bonus for any Fiscal Year ending prior to the date of termination; (c) accrued, but unused, vacation time; (d) reimbursement of unreimbursed business expenses incurred prior to the date of termination; and (e) any vested benefits under the Company's employee benefit plans, in accordance with their terms (collectively the "Accrued Compensation").

3.3 Payment on Termination without Cause, for Good Reason or Nonrenewal of Term. Subject to Executive's continuing compliance with the provisions of Section 4.3 of this Agreement and the Policy referred to therein and execution by the Executive of a binding general waiver and release of claims in a form agreed upon by the parties (a "Release"), if Executive's employment is terminated by the Company without Cause, by the Executive for Good Reason or upon expiration/non-renewal of the Term by reason of the Company providing Executive notice of nonrenewal in accordance with Section 1.3, then in addition to the Accrued Compensation, the Executive shall be entitled to receive in full settlement of all obligations of the Company under this Agreement continuation of the Base Salary (at the rate in effect at the termination date) for a period of one year following the date of termination, which payments shall be made ratably in accordance with the Company's ordinary payroll practices in effect during such period.

For purposes of this Agreement, "Good Reason" shall mean: (i) without the consent of the Executive, an adverse or material change in Executive's reporting responsibilities and/or diminution of any material duties or responsibilities previously assigned to Executive by the Board; (ii) the failure of the Company to pay Executive Base Salary or bonus earned as required by Article II of this Agreement or to perform its other material obligations hereunder;

(iii) a significant reduction in Executive's overall compensation (Base Salary and bonus on a combined basis), other than based on performance, unless such modification applies generally to the senior executives of the Company. Executive must give written notice to the Company within thirty (30) days of the event giving rise to Good Reason and the Company must fail to cure within thirty (30) days of such notice in order for such event to qualify as a Good Reason termination. In no event shall implementation of a successorship strategy by the Company under Section 1.1 give rise to Good Reason under this Agreement.

3.4 Payment upon Death or Disability. In addition to the Accrued Compensation, in the event that Executive's employment is terminated by reason of death or Disability, Executive (or in the event of Executive's death, Executive's estate) shall be entitled to receive, subject to the execution by Executive (or as appropriate the executor of Executive's estate or Executive's guardian) of a binding Release, payment of a lump-sum equal to the Base Salary (at the rate in effect at the time of death or Disability) for a one year period minus the amount of any payments that Executive is entitled to receive from any disability insurance that may be provided at such time by the Company.

ARTICLE IV.
COVENANTS

4.1 Services as President and Chief Executive Officer. Executive hereby covenants and agrees that she will faithfully and in conformity with the directions of the Board perform her duties as President and Chief Executive Officer, and that she shall devote to the performance of said duties all such time and attention as they shall reasonably require.

4.2 No Detraction From Performance. The Executive hereby consents and agrees that she will not, without the express consent of the Board, become engaged in any business other than that of the Company, which interferes with her duties and responsibilities to the Company.

4.3 Policy Regarding Noncompetition, Nonsolicitation and Confidential Information. Executive has signed the Policy and agrees to continue complying with the terms of the Policy.

4.4 Remedies. The Executive and the Company agree that the Company will be irreparably harmed by any violation or threatened violation of any of the foregoing provisions of this Article 4 if such provisions are not specifically enforced and therefore that the Company shall be entitled to an injunction restraining any violation of such provisions by the Executive, or any other appropriate decree of specific performance. Such remedies shall not be exclusive and shall be in addition to any other remedy to which the Company may be entitled under this Agreement or at law.

4.5 Non-Disparagement. Neither Executive nor the Company shall make defamatory or disparaging remarks about the other following the termination of Executive's employment with the Company.

ARTICLE V.
MISCELLANEOUS

5.1 Successors. This Agreement shall inure to the benefit of the Company and its successors and assigns, as applicable. If the Company shall merge or consolidate with or into, or transfer substantially all of its assets, including goodwill, to another corporation or other form of business organization, this Agreement shall be binding on, and run to the benefit of, the successor of the Company resulting from such merger, consolidation, or transfer. The Executive shall not assign, pledge, or encumber her interest in this Agreement, or any part thereof, without the prior written consent of the Company, and any such attempt to assign, pledge or encumber any interest in this Agreement shall be null and void and shall have no effect whatsoever.

5.2 Governing Law. This Agreement is being made and executed in and is intended to be performed in the State of Illinois and shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of Illinois, without regard to the conflict of laws principles thereof.

5.3 Entire Agreement. This Agreement, the promissory note and pledge agreement evidencing the loan under Section 2.4 hereof, all option and restricted stock agreements previously entered into between Executive and the Company and the Policy (collectively the “Governing Agreements”) comprise the entire agreements between the parties hereto relating to the subject matter hereof and as of the Commencement Date, this Agreement supersedes, cancels and annuls the Prior Agreement and all previous agreements between the Company (and/or its predecessors) and the Executive, as the same may have been amended or modified, and any right of the Executive thereunder (other than the Governing Agreements) and all other prior oral agreements between the Executive and the Company or any predecessor to the Company. The terms of this Agreement, including by reference the Governing Agreements are intended by the parties to be the final expression of their agreement with respect to the retention of the Executive by the Company and may not be contradicted by evidence of any prior or contemporaneous agreement.

5.4 Gender. Words in the masculine herein may be interpreted as feminine or neuter, and words in the singular as plural, and vice versa, where the sense requires.

5.5 Disputes.

(a) Any dispute or controversy arising under, out of, in connection with or in relation to this Agreement (except with respect to the Policy referred to in Section 4.3, which shall be governed by the dispute resolution provisions specified therein), including any claims for discrimination or other similar violation of federal law, shall be finally determined and settled by arbitration in Chicago, Illinois, in accordance with the rules and procedures regarding employment contract disputes as established by the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof.

(b) If any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or

prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief that may be granted.

5.6 Severability; Enforceability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held to be invalid, unenforceable, or void by the final determination of a court of competent jurisdiction in any jurisdiction and all appeals therefrom shall have failed or the time for such appeals shall have expired, as to that jurisdiction and subject to this Section 5.6, such clause or provision shall be deemed eliminated from this Agreement but the remaining provisions shall nevertheless be given full force and effect. In the event this Agreement or any portion hereof is more restrictive than permitted by the law of the jurisdiction in which enforcement is sought, this Agreement or such portion shall be limited in that jurisdiction only, and shall be enforced in that jurisdiction as so limited to the maximum extent permitted by the law of that jurisdiction.

5.7 Validity. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

5.8 Notices. Any notice, request, claim, demand, document and other communication hereunder to any party shall be effective upon receipt (or refusal of receipt) and shall be in writing and delivered personally or sent by telex, telecopy, or certified or registered mail, postage prepaid, as follows:

(a) If to the Company, c/o Global Retail Partners attn: Steven Lebow, at Global Retail Partners, Suite 1630, 2121 Avenue of the Stars, Los Angeles, California 90067, with a copy to Donald Schwartz at Latham & Watkins, Sears Tower, Suite 5800, 233 South Wacker Drive, Chicago, Illinois 60606 (312-993-9767 fax) or to such other address or addresses as the Company may specify in writing from time to time.

(b) If to the Executive, to her at the address set forth below under her signature or such other residence as she may designate to the Company as her residence from time to time; or at any other address as she may specify in writing from time to time.

5.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement.

5.10 Amendments; Waivers. This Agreement may not be modified, amended, or terminated except by an instrument in writing, approved by the Board and signed by the Executive and the Company. By an instrument in writing similarly executed, the Executive or the Company may waive compliance by the other party or parties with any provision of this Agreement that such other party was or is obligated to comply with or perform; *provided, however*, that such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy or power provided herein or by law or in equity. Notwithstanding the foregoing, the Company may amend this Agreement at anytime without the consent of the Executive and/or take such action as it

deems necessary and reasonable in order to make any payments pursuant to this Agreement compliant with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended and any guidance issued thereunder.

5.11 No Inconsistent Actions. The parties hereto shall not voluntarily undertake or fail to undertake any action or course of action inconsistent with, or to avoid or evade, 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

[Signature Pages Immediately Follow]

[Signature Page to Employment Agreement Dated June 23, 2006]

ULTA SALON, COSMETICS & FRAGRANCE, INC.	EXECUTIVE
By: /s/ Dennis Eck	/s/ Lyn Kirby
Name: Dennis Eck	Name: Lyn Kirby
Title: Non-Executive Chairman	

Appendix I

If 100% of performance target is met, then Executive shall receive her full bonus. If the performance targets are not met, then Executive shall be eligible for a bonus equal to a percentage of her Target Bonus only if at least 91% of the performance targets are met. Such percentage shall equal 12.5% of her Target Bonus for each 1% increase in performance over 90% of the performance targets.

Percent of Performance Target Achieved	Bonus Percentage	Actual Bonus Paid
91%	12.5	75,000
92%	25	150,000
93%	37.5	225,000
94%	50	300,000
95%	62.5	375,000
96%	75	450,000
97%	87.5	525,000
98%	100	600,000
99%	112.5	675,000
100%	125	750,000

EXHIBIT 10.2

SECURED PROMISSORY NOTE

$4,094,340.00 **June 30, 2006**
Chicago, Illinois

1. Principal Amount. For value received, the undersigned Lyn Kirby, an individual residing in Illinois ("**Maker**"), does hereby promise to pay to the order of Ulta Salon, Cosmetics & Fragrance, Inc., a Delaware corporation (the "**Company**"), or its assignee (collectively, "**Payee**"), the principal sum of **FOUR MILLION NINETY FOUR THOUSAND THREE HUNDRED FORTY AND 00/100 DOLLARS** (**$4,094,340.00**) (the "**Loan**"), upon the terms and conditions set forth herein.

2. Interest.

(a) Accrual of Interest. Interest shall accrue on the unpaid principal of this promissory note (the "**Note**") from the date hereof until all amounts due hereunder are paid in full at an interest rate per annum equal to 5.06%. Interest hereon shall be calculated on the basis of the actual number of days elapsed and a year of 365 days and shall compound annually. Payments of interest on the unpaid principal hereof shall be due and payable pursuant to Sections 3 or 4 hereof, as appropriate.

(b) No Usury. It is the intention of Maker and Payee to conform to applicable usury laws, if any. Accordingly, notwithstanding anything to the contrary in this Note or any other agreement entered into in connection herewith, it is agreed as follows: (i) the aggregate amount of all interest and any other charges constituting interest under applicable law whether contracted for, chargeable, or receivable under this Note or otherwise in connection with the obligation evidenced hereby shall under no circumstances exceed the maximum amount of interest permitted by applicable law, if any, and any excess shall be deemed a mistake and cancelled automatically and, if theretofore paid, shall, at the option of Maker, be refunded to Maker or credited on the principal amount of this Note; and (ii) in the event that the entire unpaid balance of this Note is declared due and payable by Payee, then earned interest may never include more than the maximum amount permitted by applicable law, if any, and any unearned interest shall be cancelled automatically and, if theretofore paid, shall at the option of Maker, either be refunded to Maker or credited, to the extent permitted by law, on the principal amount of this Note.

3. Post-Maturity Interest. Any amount of principal and/or interest hereon which is not paid when due, whether at stated maturity, by acceleration or otherwise, shall bear interest from the date when due or, if earlier, the date of the first occurrence of an Event of Default (as defined below) hereunder, until said principal and/or interest amount is paid in full, at the greater of (a) an interest rate equal to two percent (2.0%) per annum in excess of the interest rate set forth in Section 2(a) hereof or (b) the "**Prime Rate**" (as defined in the Company's Second Amended and Restated Loan Agreement dated May 31, 2005), as determined and calculated as set forth in such loan agreement, plus two percent (2.0%) per annum.

4. Payments.

(a) Principal; Interest and Enforcement Costs. Subject to Sections 5(b) and 8 below, (i) the outstanding principal amount of this Note , (ii) all accrued and unpaid interest thereon and (iii) all of Payee's costs and expenses (including reasonable fees and expenses of Payee's attorneys, accountants and other professionals) of enforcing this Note ("**Enforcement Costs**"), shall be due and payable in full on the earliest to occur of (A) any acceleration of the Obligations pursuant to Section 8 below, (B) one Business Day (as defined below) before the Company becomes an "issuer" under the Sarbanes-Oxley Act of 2002, either by filing a Form S-1 registration statement with the Securities and Exchange Commission or otherwise (an "**IPO**"), (C) expiration of the time period provided under the terms of Maker's option agreements with the Company and the Company's stockholders' agreements for repurchase of shares following termination of Maker's employment and (D) the fifth anniversary of the date hereof (each such event, the "**Maturity**"). All amounts due under this Note, including, without limitation, principal, interest and Enforcement Costs are collectively referred to herein as the "**Obligations**".

(b) Interest. Maker shall be obligated to apply the proceeds of any bonus paid to Maker by the Company while any of the Obligations remain outstanding to repayment of accrued interest. Should the bonus proceeds be insufficient to pay such interest, the interest shall be added to the principal hereof and be paid from the following year's bonus or upon Maturity.

(c) Making of Payments. All payments of the Obligations in respect of this Note shall be made by (i) delivery of a certified or bank cashier's check or of other immediately available funds or (ii) payroll withholding with respect to payments under Section 4(b) and 5(b) and delivered to Payee on the date or dates due at the address of Payee set forth on the signature page hereof, or at such other place as the holder hereof may from time to time designate in writing. Whenever any payment on this Note shall be stated to be due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest on this Note. For purposes of this Note, "**Business Day**" means each day other than a Saturday, a Sunday or any other day on which banking institutions in Chicago, Illinois are authorized or obligated by law or executive order to be closed.

5. Prepayment.

(a) Voluntary Prepayment. Maker, without premium or penalty, may prepay the Obligations in whole or in part upon three (3) Business Days' prior written notice to Payee.

(b) Mandatory Prepayment. Notwithstanding any contrary provision in this Note, all amounts owing hereunder shall become automatically due and payable in full, without further notice or demand, upon the occurrence of any of the events referred to in Section 4(a) hereof. If Maker is required to repay the loan upon an IPO, if not informed

of another form of payment, the Company shall offset the outstanding balance of the Loan by the shares of the Company's common stock held as collateral on the Note pursuant to that Stock Pledge Agreement of even date herewith by and between Maker and the Company, based on the fair market value of such shares, as determined by the Board of Directors of the Company at such time (*i.e.* immediately prior to the IPO). In addition, Maker shall promptly prepay the Obligations (i) with 100% of the proceeds of any transfer, sale, disposition, pledge, hypothecation or encumbrance (a "**Transfer**") of all or any portion of Maker's equity interest in the Company (whether owned directly or indirectly), (ii) to the extent of all proceeds (after any tax withholding) of any distribution received by Maker in respect of or on account of Maker's equity interest in the Company (whether owned directly or indirectly), and (iii) to the extent of 100% of the proceeds (after any tax withholding) of any bonus payments made by the Company or its subsidiaries to Maker. To the extent lawful and practicable, Maker hereby instructs the Company to pay over all amounts subject to mandatory prepayment under this Section 5(b) directly to the Payee, and such payments shall be deemed to have been made to the Maker by the Company and then paid by Maker to Payee.

(c) Application of Prepayment Proceeds. All proceeds of any prepayments made pursuant to this Section 5 shall be applied first to the payment of Enforcement Costs, second to the payment of accrued but unpaid interest hereon and third to the payment of the outstanding principal balance of this Note.

6. Use of Proceeds. Maker acknowledges and agrees that 100% of the proceeds of the Loan shall be used pursuant to her Employment Agreement with the Company to exercise her options (the "Options") to purchase common stock of the Company and to make related withholding tax or estimated state and federal income tax payments. It is anticipated that the Company, as Payee, will apply the proceeds of the Loan directly to the Maker's exercise of the Options and related withholding tax payments and that no amount of the proceeds will actually be distributed to Maker. Upon request, to the extent that any amount of the Loan proceeds is actually distributed directly to Maker, Maker will provide the Payee with evidence of such tax payments and shall repay any amounts not used to make such tax payments.

7. Events of Default. The occurrence of any one or more of the following events shall constitute an "**Event of Default**" under this Note:

(a) Principal Payment Default. Maker shall fail to pay the outstanding principal amount due hereunder, or any portion thereof within (5) days of when due, whether at Maturity, at such earlier date as is required by Sections 5(b) and/or 8, or otherwise;

(b) Interest and Enforcement Cost Payment Default. Maker shall fail to pay any interest which has accrued and is payable hereunder or any Enforcement Costs within (5) days of when due;

(c) Dissolution; Termination. The dissolution, termination and/or liquidation of the Company;

(d) Covenant Default. Maker shall default in the observance or performance of any covenant or agreement contained in this Note (other than those defaults set forth in this Section 7) and such default shall not of its nature be curable by Maker, or if such default shall be curable, such default shall continue uncured for a period of ten (10) days after receipt by Maker of written notice from Payee to such effect;

(e) Bankruptcy, etc. Maker or the Company becomes insolvent or generally fails to pay, or admits in writing their respective inability or refusal to pay, their respective debts as they become due; or Maker's or the Company's application for, consent to or acquiescence in, the appointment of a trustee in bankruptcy, receiver or other custodian for Maker or the Company or any of their respective properties or assets, or Maker's or the Company's making a general assignment for the benefit of their respective creditors; or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for Maker or the Company or for a substantial part of their respective properties or assets and such appointment is not discharged within 60 days thereafter; or any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any liquidation proceeding is commenced in respect of Maker or the Company and, if such case or proceeding is not commenced by Maker or the Company, as the case may be, it is either (i) consented to or acquiesced in by Maker or the Company, as the case may be, or (ii) remains undismissed for 60 days;

(f) Termination for Cause by Company. The Company shall have terminated the Maker's employment with the Company for "Cause," as defined in Maker's then current employment agreement with the Company;

(g) Default under Stock Pledge Agreement. Maker defaults under the Stock Pledge Agreement dated as of the date hereof (the '**Stock Pledge Agreement**") made by the Maker in favor of the Payee; and

(h) Use of Proceeds. Use of the proceeds of the Loan for any purpose other than those set forth in Section 6 hereof.

8. Remedies. Upon or at any time after the occurrence of an Event of Default specified in Sections 7(a), 7(b), 7(c), 7(d), 7(f), 7(g) or 7(h) hereof, the Obligations shall, at the option of Payee, become due and payable without presentment, demand, protest, notice of acceleration, notice of intent to accelerate or other notice of any kind, all of which are hereby expressly waived by Maker, anything in this Note to the contrary notwithstanding. Upon the occurrence of an Event of Default specified in Section 7(e) hereof, the Obligations shall thereupon and concurrently therewith become due and payable. The Maker and every endorser or guarantor hereof agrees, subject only to any limitation imposed by law, to pay on demand all Enforcement Costs incurred by the holder of this Note in endeavoring to collect any amounts payable hereunder which are not paid when due, whether by acceleration or otherwise, in addition to any other remedy available in law or equity.

9. Waivers. Maker and every endorser and guarantor of this Note hereby jointly and severally waives presentment, demand, notice, protest and all other demands and notices in

connection with the delivery, acceptance, performance, default or enforcement hereof that no such extension or other indulgence, and no substitution, release or surrender of collateral, and no discharge or release of any other party primarily or secondarily liable hereof, shall discharge or otherwise affect the liability of Maker. No delay or omission on the part of holder in exercising any right hereunder shall operate as a waiver of any such right, and the waiver of any such right on any one occasion shall not be construed as a bar to or waiver of any such right on any future occasion.

10. Security. This Note is secured pursuant to a Stock Pledge Agreement by shares purchased upon the exercise of Maker's previously granted options to acquire shares of the Company's common stock.

11. Transfer of Note. Until notified by Payee in writing of the transfer of this Note, Maker shall be entitled to deem Payee or such person who has been so identified by Payee in writing to Maker as the owner and holder of this Note.

12. Notices. Every notice or other communication required or desired to be given hereunder shall be in writing and shall be delivered either by personal delivery, a nationally recognized courier service, postage-prepaid certified or registered mail, return receipt requested, or facsimile or other electronic mail transmission with acknowledgment of receipt, addressed to the party to whom intended at the address set forth on the signature page attached to this Note or at such other address as the intended recipient previously shall have designated by written notice. Notice by courier or certified or registered mail shall be effective on the date it is officially recorded as delivered to the intended recipient by return receipt or similar acknowledgment, or the date of attempted delivery where delivery is refused by the intended recipient. Notice sent by overnight, express carrier, shall be deemed to have been delivered and shall be effective on the next business day immediately following the day sent. All notices and communications delivered in person shall be deemed to have been delivered to and received by the addressee, and shall be effective, on the date of personal delivery. Any notice transmitted by telecopy, facsimile or other electronic mail transmission shall be deemed to have been delivered to and received by the addressee, and shall be effective, on the date on the date sent if a business day, or if such day is not a business day, then on the next business day.

13. Governing Law. This Note shall be governed and construed and the rights and liabilities of the parties hereto shall be determined in accordance with the internal laws of the State of Illinois, without giving effect to any conflict of laws principles that would result in the application of any law other than the State of Illinois.

14. Jurisdiction; Service of Process. Maker hereby submits to the nonexclusive jurisdiction of the applicable court having jurisdiction over the matter located in Chicago, Illinois for all purposes of or in connection with this Agreement; provided that nothing in this Agreement shall affect Payee's right to bring any action or proceeding against Maker or Maker's property in the courts of any other jurisdiction. Maker hereby consents to process being served in any suit, action or proceeding of the nature referred to above either (a) by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to its address shown below its signature hereto or (b) by serving a copy thereof upon Maker's authorized agent for service of process (to the extent permitted by applicable law, regardless

whether the appointment of such agent for service of process for any reason shall prove to be ineffective or such agent for service of process shall accept or acknowledge such service); provided that, to the extent lawful and practicable, written notice of said service upon said agent shall be mailed by registered or certified mail, postage prepaid, return receipt requested, to Maker at Maker's address shown below its signature hereto. Maker agrees that such service, to the fullest extent permitted by law, (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall be taken and held to be valid personal service upon and personal delivery to Maker. Nothing herein shall affect Payee's right to serve process in any other manner permitted by law, or limit Payee's right to bring proceedings against Maker in the courts of any other jurisdiction.

15. Waiver of Jury Trial. **MAKER HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS NOTE OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS NOTE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

16. Recourse. Maker acknowledges that the obligations of Maker to Payee under or in connection with this Note are recourse to Maker as to 100% of the accrued interest hereon and any principal balance, as well as all Enforcement Costs. For the purposes of clarification and not in limitation of Payees rights hereunder, in the event that Maker fails to pay all the obligations hereunder when due and, the value of the collateral under the Stock Pledge Agreement does not fully defease Maker's obligations hereunder, Payee shall have recourse to Maker to the extent of any deficiency up to 100% of outstanding Obligations.

17. Assignment. This Note and all rights and remedies hereunder shall be fully assignable by Payee and, following such assignment, any such assignee shall be deemed the "Payee" for all purposes hereunder. Neither this Note nor any obligations or duties hereunder may be sold, assigned or delegated by the Maker without the prior written consent of the Payee.

18. Distribution Instructions. Maker hereby instructs Payee to make payment of all amounts borrowed hereunder by Maker directly to the Company in payment of the exercise price upon the exercise of Maker's options to acquire Company common stock from the Company or by check payable directly to the taxing authorities which Maker may designate to the Company in writing.

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of the day and year first above written.

MAKER:

/s/ Lyn Kirby
Lyn Kirby

PAYEE'S ADDRESS:

Ulta Salon, Cosmetics & Fragrance, Inc.
Windham Lakes Business Park
1135 Arbor Drive
Romeoville, Illinois 60446
Attention: Chief Financial Officer
Facsimile:

Copy to:
Donald L. Schwartz
Latham & Watkins LLP
Sears Tower, Suite 5800
233 South Wacker Drive
Chicago, IL 60606
Facsimile: (312) 993-9767

EXHIBIT 10.3

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into as of the 12th day of December, 2005, between **Ulta Salon, Cosmetics & Fragrance, Inc.**, a Delaware corporation (the "Company") and **Bruce Barkus** (the "Executive").

RECITALS

A. It is the desire of the Company to employ the Executive to serve as the Company's chief operating officer as described in this Agreement.

B. The Executive desires to become an employee and to provide his services to the Company on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and of the respective covenants and agreements set forth below, the parties hereto agree as follows:

ARTICLE I.
SERVICES AND TERM

1.1 Services. The Company agrees to employ the Executive as its Chief Operating Officer and the Executive accepts such employment upon the terms set forth in this Agreement. The Executive shall report to and receive direction from the President and Chief Executive Officer of the Company. Executive shall have those duties, responsibilities and authority customarily accorded a person holding the position of Chief Operating Officer in a company of a size such as the Company.

1.2 Services to Subsidiaries. Executive will also serve, without further compensation, in such capacities of each subsidiary of the Company as specified by the Board of Directors of the Company (the "Board").

1.3 Term. The term of employment under this Agreement (the "Term") shall begin on December 19, 2006 (the "Commencement Date") and end on the last day of the Company's fiscal year (the "Fiscal Year") ending in February 2009, unless otherwise sooner terminated by the parties under Article III. The Term shall automatically renew for additional one year period(s), unless either party provides written notice to the other of their intent not to renew at least sixty (60) days prior to the then expiration of the Term or as otherwise terminated as herein provided.

ARTICLE II.
COMPENSATION PACKAGE

2.1 Compensation. The Company shall pay Executive a base salary of $580,000 per year (the "Base Salary") in accordance with the normal payment procedures of the Company and subject to such withholding and other normal employee deductions as may be required by law. The Board shall perform a performance review of Executive after the end of each Fiscal Year, beginning with the Fiscal Year ending in 2007. In connection with such

review the Board may adjust Executive's Base Salary after taking into account Executive's and the Company's performance, and such other factors as the Board deems appropriate; provided, however, Executive's Base Salary may not be decreased without Executive's express written consent unless the decrease is pursuant to a general compensation reduction applicable to all, or substantially all, officers of the Company.

2.2 Benefits. During the Term, Executive shall be eligible to participate in such medical, health, pension, welfare, and insurance plans offered by the Company as he elects from time to time (subject to the terms of such plans), and to receive other fringe benefits that are at least as favorable as the fringe benefits generally provided to other senior officers of the Company at the time such other fringe benefits are made available to them.

2.3 Bonus. Each Fiscal Year during the Term, beginning with the Fiscal Year ending in 2007, Executive will be eligible to earn a cash performance bonus targeted at $725,000 (the "Target Bonus"). Each Fiscal Year the Board shall establish performance targets based on sales, earnings before interest and taxes, and other pre-established performance objectives. The actual bonus will be determined based upon the achievement of the performance targets set by the Board. If the established performance targets are met or exceeded, then the Target Bonus will be paid to Executive. The Board in its sole discretion may pay in excess of Target Bonus. Appendix I sets forth the calculation of bonus payments for the Fiscal Year ending in February 2007.

2.4 Options. The Company shall grant to Executive, as of the date of the first meeting of the Board of Directors of the Company on or after the Commencement Date (the "Grant Date") the following options:

(a) a stock option with respect to 600,000 shares of common stock, par value $0.01 per share, of the Company (the "Common Stock") at an exercise price equal to the fair market value on the date of grant, as determined by the Board (the "First Option"). One-third of the First Option shall be vested on the Grant Date, and one-third of the First Option shall vest, provided the Executive is employed by the Company, on each anniversary of the Grant Date thereafter, such that the Executive shall be vested in one hundred percent (100%) of the First Option on the second anniversary of the Grant Date. All shares of Common Stock acquired upon exercise of the First Option will be subject to repurchase rights upon cessation of employment at Fair Market Value as described in the Company's 2002 Equity Incentive Plan; and

(b) 400,000 shares of Common Stock at an exercise price equal to fair market value on the date of grant, as determined by the Board (the "Second Option"). Fifty-percent of the Second Option shall vest and be exercisable, provided Executive is employed by the Company, on each of the first and second anniversaries of the date the Company first closes an underwritten offering of its Common Stock to the public.

2.5 Business Expenses. The Company will reimburse Executive for reasonable business-related expenses incurred by him in connection with the performance of his duties hereunder upon presentation of written documentation, subject, however, to the

Company's reasonable policies relating to business-related expenses as then in effect from time to time.

2.6 Vacation. Executive shall be entitled to four weeks of annual vacation to be accrued and taken in accordance with the Company's vacation policy for senior executives.

2.7 Attorney's Fees. The Company shall reimburse Executive for up to $5,000 of reasonable attorney's fees and expenses incurred in connection with the negotiation and entering into this Agreement.

2.8 Relocation. Executive shall make a good faith effort to relocate to the Chicago, Illinois area on a permanent basis within a reasonable period of time, given the desire of the Company that Executive relocate expeditiously. The Company will reimburse Executive for the cost of such relocation in accordance with the Company's relocation policy.

2.9 Indemnification. Executive shall be entitled to the same indemnification under the terms of the Company's By-Laws and Articles of Incorporation as is provided, and such liability insurance as the Company may from time to time purchase, for its Board members and senior officers.

ARTICLE III.
TERMINATION OF SERVICES

3.1 Termination. This Agreement, the Executive's employment with the Company and the Company's obligations to the Executive under Article II will terminate:

(a) Death. Automatically, upon the Executive's death;

(b) Resignation. Upon the date specified by the Executive at the time of his resignation;

(c) Disability. Upon the date elected by the Company, after the failure of the Executive to render services to the Company for a continuous period of six (6) months because of the Executive's physical or mental disability or illness ("Disability"). If there should be any dispute between the parties as to the Executive's physical or mental disability at any time, such question shall be settled by the opinion of an impartial reputable physician agreed upon for such purpose by the parties or their representatives. The certificate of such physician as to the matter in dispute shall be final and binding on the parties.

(d) Cause. Immediately, upon notice to the Executive that the Company is terminating him for Cause. For purpose of this Agreement "Cause" means (i) the Executive's gross misconduct, including any intentional or grossly negligent breach of the Company's policies and procedures, including its policies relating to discrimination, harassment or trading in the Company's securities, or any material breach of the Company's Policy Regarding Noncompetition, Nonsolicitation and Confidential Information;
(ii) conviction of, or plea of guilty or nolo contendere by the Executive with respect to a felony; or (iii) any act of fraud, dishonesty or moral turpitude committed by the Executive which is materially detrimental to the business or reputation of the Company as determined by the Board.

(e) Termination without Cause. Upon the date specified by the Company, upon written notice to the Executive that his employment is being terminated without Cause.

(f) Expiration of Term. The expiration or non-renewal of the Term as provided in Section 1.3 hereof.

3.2 Payment on Termination with Cause or Without Good Reason In the event that Executive's employment is terminated for Cause or by the Executive without Good Reason (as defined below), Executive shall be entitled to receive (a) all earned but unpaid Base Salary through and including the date of termination; (b) accrued, but unused, vacation time; (c) reimbursement of unreimbursed business expenses incurred prior to the date of termination; and (d) any vested benefits under the Company's employee benefit plans, in accordance with their terms (collectively the "Accrued Compensation").

3.3 Payment on Termination without Cause, for Good Reason or Nonrenewal of Term Subject to Executive's continuing compliance with the provisions of Section 4.3 of this Agreement and the Policy referred to therein and execution by the Executive of a binding general waiver and release of claims in the form agreed upon by the parties and attached hereto as Appendix II (a "Release"), if Executive's employment is terminated by the Company without Cause, by the Executive for Good Reason or upon expiration/non-renewal of the Term by reason of the Company providing Executive notice of nonrenewal in accordance with Section 1.3, then in addition to the Accrued Compensation, the Executive shall be entitled to receive in full settlement of all obligations of the Company under this Agreement continuation of the Base Salary (at the rate in effect at the termination date) for a period of one year following the date of termination, which payments shall be made ratably in accordance with the Company's ordinary payroll practices in effect during such period.

For purposes of this Agreement, "Good Reason" shall mean without the consent of the Executive: (i) an adverse or material change in Executive's reporting responsibilities and/or diminution of any material duties or responsibilities previously assigned to Executive by the Board; or (ii) the failure of the Company to pay Executive Base Salary as required by Section 2.1 of this Agreement or to perform its other material obligations hereunder; (. Executive must give written notice to the Company within thirty (30) days of the event giving rise to Good Reason and the Company must fail to cure within thirty (30) days of such notice in order for such event to qualify as a Good Reason termination.

3.4 Payment upon Death or Disability. In addition to the Accrued Compensation, in the event that Executive's employment is terminated by reason of death or Disability, Executive (or in the event of Executive's death, Executive's estate) shall be entitled to receive, subject to the execution by Executive (or as appropriate the executor of Executive's estate or Executive's guardian) of a binding Release, payment of a lump-sum equal to the Base Salary (at the rate in effect at the time of death or Disability) for a one year period minus the amount of any payments that Executive is entitled to receive from any disability insurance that may be provided at such time by the Company.

ARTICLE IV.
COVENANTS

4.1 Services as Chief Operating Officer. Executive hereby covenants and agrees that he will faithfully and in conformity with the directions of the Chief Executive Officer and the Board perform his duties as Chief Operating Officer, and that he shall devote to the performance of said duties all such time and attention as they shall reasonably require.

4.2 No Detraction From Performance. The Executive hereby consents and agrees that he will not, without the express consent of the Board, become engaged in any business other than that of the Company, which interferes with his duties and responsibilities to the Company.

4.3 Policy Regarding Noncompetition, Nonsolicitation and Confidential Information. Executive has signed the Company's Policy Regarding Noncompetition, Nonsolicitation and Confidential Information (the "Policy") and agrees to continue complying with the terms of such Policy.

4.4 Remedies. The Executive and the Company agree that the Company will be irreparably harmed by any violation or threatened violation of any of the foregoing provisions of this Article 4 if such provisions are not specifically enforced and therefore that the Company shall be entitled to an injunction restraining any violation of such provisions by the Executive, or any other appropriate decree of specific performance. Such remedies shall not be exclusive and shall be in addition to any other remedy to which the Company may be entitled under this Agreement or at law.

4.5 Non-Disparagement. Neither Executive nor the Company shall make defamatory or disparaging remarks about the other following the termination of Executive's employment with the Company.

ARTICLE V.
MISCELLANEOUS

5.1 Successors. This Agreement shall inure to the benefit of the Company and its successors and assigns, as applicable. If the Company shall merge or consolidate with or into, or transfer substantially all of its assets, including goodwill, to another corporation or other form of business organization, this Agreement shall be binding on, and run to the benefit of, the successor of the Company resulting from such merger, consolidation, or transfer. The Executive shall not assign, pledge, or encumber his interest in this Agreement, or any part thereof, without the prior written consent of the Company, and any such attempt to assign, pledge or encumber any interest in this Agreement shall be null and void and shall have no effect whatsoever.

5.2 Governing Law. This Agreement is being made and executed in and is intended to be performed in the State of Illinois and shall be governed, construed, interpreted and enforced in accordance with the substantive laws of the State of Illinois, without regard to the conflict of laws principles thereof.

5.3 Entire Agreement. This Agreement comprises the entire agreement between the parties hereto relating to the subject matter hereof and as of the Commencement Date, supersedes, cancels and annuls all previous agreements between the Company (and/or its predecessors) and the Executive, as the same may have been amended or modified, and any right of the Executive thereunder other than for compensation accrued thereunder as of the date hereof, and supersedes, cancels and annuls all other prior written and oral agreements between the Executive and the Company or any predecessor to the Company. The terms of this Agreement are intended by the parties to be the final expression of their agreement with respect to the retention of the Executive by the Company and may not be contradicted by evidence of any prior or contemporaneous agreement.

5.4 Gender. Words in the masculine herein may be interpreted as feminine or neuter, and words in the singular as plural, and vice versa, where the sense requires.

5.5 Disputes.

(a) Any dispute or controversy arising under, out of, in connection with or in relation to this Agreement (except with respect to the Policy referred to in Section 4.3, which shall be governed by the dispute resolution provisions specified therein), including any claims for discrimination or other similar violation of federal law, shall be finally determined and settled by arbitration in Chicago, Illinois, in accordance with the rules and procedures regarding employment contract disputes as established by the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof.

(b) If any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief that may be granted.

5.6 Severability; Enforceability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held to be invalid, unenforceable, or void by the final determination of a court of competent jurisdiction in any jurisdiction and all appeals therefrom shall have failed or the time for such appeals shall have expired, as to that jurisdiction and subject to this Section 5.6, such clause or provision shall be deemed eliminated from this Agreement but the remaining provisions shall nevertheless be given full force and effect. In the event this Agreement or any portion hereof is more restrictive than permitted by the law of the jurisdiction in which enforcement is sought, this Agreement or such portion shall be limited in that jurisdiction only, and shall be enforced in that jurisdiction as so limited to the maximum extent permitted by the law of that jurisdiction.

5.7 Validity. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

5.8 Notices. Any notice, request, claim, demand, document and other communication hereunder to any party shall be effective upon receipt (or refusal of receipt) and

shall be in writing and delivered personally or sent by telex, telecopy, or certified or registered mail, postage prepaid, as follows:

(a) If to the Company, attn: Chief Executive Officer, Windham Lakes Business Park, 1135 Arbor Drive Romeoville, IL 60446, with a copy to Donald Schwartz at Latham & Watkins, 5800 Sears Tower, Chicago, Illinois 60606 (312-993-9767 fax) or to such other address or addresses as the Company may specify in writing from time to time.

(b) If to the Executive, to him at the address set forth below under his signature or such other residence as he may designate to the Company as his residence from time to time; or at any other address as he may specify in writing from time to time.

5.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement.

5.10 Amendments; Waivers. This Agreement may not be modified, amended, or terminated except by an instrument in writing, approved by the Board and signed by the Executive and the Company. By an instrument in writing similarly executed, the Executive or the Company may waive compliance by the other party or parties with any provision of this Agreement that such other party was or is obligated to comply with or perform; *provided, however*, that such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy or power provided herein or by law or in equity. Notwithstanding the foregoing, the Company may amend this Agreement at anytime without the consent of the Executive and/or take such action as it deems necessary and reasonable in order to make any payments pursuant to this Agreement compliant with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended and any guidance issued thereunder.

5.11 No Inconsistent Actions. The parties hereto shall not voluntarily undertake or fail to undertake any action or course of action inconsistent with, or to avoid or evade, 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

ULTA SALON, COSMETICS & FRAGRANCE, INC.	EXECUTIVE
By: /s/ Dennis Eck	/s/ Bruce Barkus
Name: Dennis Eck	Name: Bruce Barkus
Title: Non-Executive Chairman	Address:

Appendix I

If 100% of performance target is met, then Executive shall receive his full bonus. If the performance targets are not met, then Executive shall be eligible for a bonus equal to a percentage of his Target Bonus only if at least 91% of the performance targets are met. Such percentage shall equal 12.5% of his Target Bonus for each 1% increase in performance over 90% of the performance targets.

Percent of Performance Target Achieved	Bonus Percentage	Actual Bonus Paid
91%	12.5	72500
92%	25	145000
93%	37.5	217500
94%	50	290000
95%	62.5	362500
96%	75	435000
97%	87.5	507500
98%	100	580000
99%	112.5	652500
100%	125	725000

EXHIBIT 10.3(a)

AMENDMENT TO EMPLOYMENT AGREEMENT

Ulta Salon, Cosmetics & Fragrance, Inc., a Delaware corporation (the "Company") and **Bruce Barkus** (the "Executive") entered into an EMPLOYMENT AGREEMENT dated December 12, 2005, (the "Agreement"). Pursuant to Section 5.10 of the Agreement, the Company and the Executive hereby, agree to amend the Agreement as of the 28th day of June, 2006 (the "Amendment"), by adding the following Section 2.10 to the Agreement:

2.10 Additional Bonus. On the last day of each Fiscal Year, beginning with the Fiscal Year ending in 2007 and ending with the Fiscal Year ending in 2012, Executive will earn a cash bonus of $100,000 provided he is employed by the Company on such day. Such bonus shall be paid as part of the next regularly scheduled payroll; *provided, however*, that in no event shall such bonus be paid later than March 15th of the calendar year immediately following the year in which the Executive became entitled to such bonus.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written.

ULTA SALON, COSMETICS &
FRAGRANCE, INC.

By: /s/ Dennis Eck
Name: Dennis Eck
Title: Non-Executive Chairman

EXECUTIVE

/s/ Bruce Barkus
Name: Bruce Barkus
Address:

Exhibit 10.4

ULTA SALON, COSMETICS & FRAGRANCE, INC.
RESTRICTED STOCK AGREEMENT - VESTING
(DENNIS ECK)

ULTA SALON, COSMETICS & FRAGRANCE, INC.
RESTRICTED STOCK AGREEMENT – VESTING
(DENNIS ECK)

THIS RESTRICTED AGREEMENT (“Agreement”), made as of June 21, 2004 (the “Date of Issuance”), is by and between Ulta Salon, Cosmetics & Fragrance, Inc. (the “Company”) and Dennis Eck (“Director”).

The Company desires to grant to the Director $.01 par value common shares of the Company (“Common Stock”), pursuant to the terms of the Second Amendment and Restatement of the Ulta Salon, Cosmetics & Fragrance Inc. Restricted Stock Plan (the “Plan”).

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the parties agree as follows:

1. DEFINITIONS. Capitalized terms used herein that are not otherwise defined shall have the meanings assigned to them in the Plan.

2. GRANT OF STOCK. As of the date hereof Company hereby grants to Director 500,000 shares of Common Stock (the “Restricted Stock”), subject to the terms and conditions of this Agreement.

3. VESTING. Except as otherwise provided hereunder or pursuant to the terms of the Plan, shares of Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered from the Date of Issuance until the Director becomes vested in the shares of Restricted Stock (and restrictions thereon terminate) (the “Vested Shares”) in accordance with the following schedule:

Date	Cumulative Percentage of Shares of Restricted Stock Which are Vested Shares
the Date of Issuance	25%
May 1, 2005 – April 30, 2006	50%
May 1, 2006 –April 30, 2007	75%
May 1, 2007	100%

Upon a Sale of the Company all shares of Restricted Stock shall become Vested Shares. Additionally, if the Director ceases to be a member of the Board of Directors of the Company by reason of death or Disability (as defined below) any time after the Company’s annual meeting of stockholders (the “Annual Meeting”) occurring in 2005, then all shares of Restricted Stock shall become Vested Shares. Otherwise, if Director ceases to be a member of the Board of Directors of the Company for any reason, he shall forfeit any unvested shares of Restricted Stock and such shares shall be returned to the Company. For purposes of this Agreement, the term “Disability” shall mean the mental or physical incapacity of the Director such that Director would be eligible

to receive disability benefits under the Company's long-term disability plan assuming for this purpose that Director is eligible for participation in such plan and that Directors occupation consist of his duties as a member of the Board of Directors prior to such incapacity.

4. RESTRICTIONS ON COMMON STOCK. Director acknowledges and agrees that the Restricted Stock is subject to various restrictions set forth in the Plan. Director agrees as a holder of Restricted Stock to be bound by all terms, conditions and restrictions contained in the Plan. Director acknowledges that he has received a copy of the Plan.

5. REPURCHASE RIGHTS.

(a) In the event the Director (i) is removed as a director of the Company pursuant to Delaware law, (ii) is slated for election or re-election to the Board of Directors of the Company and refuses to serve, or (iii) resigns as a director of the Company then, the Vested Shares shall be subject to repurchase by the Company at their then Fair Market Value (and unvested shares of Restricted Stock shall be forfeited and returned to the Company) pursuant to the terms and conditions contained in Section 3 of the Plan.

(b) In the event the Director is not slated for re-election to the Board of Directors of the Company, then upon his termination as a director, the Company shall waive its repurchase option under Section 3 of the Plan with respect to the Vested Shares and the unvested Shares of Restricted Stock shall be forfeited and returned to the Company. Notwithstanding the foregoing, the Investors (as defined in the Plan) shall retain their repurchase option under Section 3 of the Plan for any Vested Shares.

(c) The Company shall waive its repurchase option under Section 3 of the Plan in the event the Director ceases to be a member of the Board of Directors of the Company by reason of death or Disability as follows: (i) if the Director's service as a director ceases prior to the 2005 Annual Meeting, the Company will waive its repurchase option as to 25% of the Vested Shares, (ii) if the Director's service ceases on or after the 2005 Annual Meeting, but prior to the 2006 Annual Meeting, the Company shall waive its repurchase option as to 50% of the Vested Shares, (iii) if the Director's service ceases on or after the 2006 Annual Meeting, but prior to the 2007 Annual Meeting, the Company shall waive its repurchase option as to 75% of the Vested Shares, and (iv) if the Director's service ceases on or after the 2007 Annual Meeting, the Company shall waive its repurchase option as to 100% of the Vested Shares. Notwithstanding the foregoing, the Investors shall retain their repurchase option under the terms and conditions of Section 3 of the Plan.

6. NO ASSURANCES OF SERVICES. Nothing in this Agreement confers any right on the Director to continue as a director of the Company, or shall affect in any way the stockholders of the Company's right to terminate the Director as a director at any time.

7. SUBJECT TO COVENANTS. Director hereby agrees that the Restricted Stock issued hereunder is subject to and conditioned upon Director's execution and full compliance with the terms of the Agreement Regarding Non Competition, Non Solicitation and Confidential Information (the "Non-Compete Agreement") as set forth on Exhibit A hereto. If Director

breaches any term of the Non-Compete Agreement he shall forfeit all rights to future vesting in any unvested shares of Restricted Stock.

8. SECURITIES LAWS. Director represents and warrants to the Company that she is acquiring the Restricted Stock for her own account for investment purposes only and that she has no agreement, understanding, arrangement or intent to subdivide, sell assign or transfer any portion of or interest in the Restricted Stock to any other person.

9. AMENDMENTS. Any amendment, alteration, suspension, discontinuation, cancellation or termination of the provisions of this Agreement that would impair the rights of the Director or any beneficiary of the Director shall not be effective without the consent of the Director or the beneficiary of the Director, as the case may be.

10. MISCELLANEOUS.

(a) Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

(b) Successors and Assigns. Except as otherwise provided herein, this Agreement shall bind and inure to the benefit of and be enforceable by Director, the Company, the Investors and their respective successors and assigns (including subsequent holders of Director Stock); provided that the rights and obligations of Director under this Agreement shall not be assignable except as permitted in connection with a permitted transfer of Restricted Stock under the Plan.

(c) Choice of Law. The corporate law of the State of Delaware will govern all questions concerning the relative rights of the Company and the holders of Common Stock. All other questions concerning the construction, validity and interpretation of this Agreement will be governed by the internal law, and not the law of conflicts, of the State of Delaware.

(d) Notices. All notices and other communications under this Agreement shall be in writing. Unless and until the Director is notified in writing to the contrary, all notices, communications and documents directed to the Company and related to the Agreement, if not delivered by hand, shall be mailed, addressed as follows:

Ulta Salon, Cosmetics & Fragrance, Inc.
1135 Arbor Drive
Romeoville, Illinois 60446
Attn: Chief Financial Officer

Unless and until the Company is notified in writing to the contrary, all notices, communications and documents intended for the Director and related to this Agreement, if not delivered by hand, shall be delivered by registered first-class mail, telex, telecopier, or air courier

guaranteeing overnight delivery to Director's last known address as shown on the Company's books. All mailings and deliveries related to this Agreement shall be deemed received only when actually received.

IN WITNESS WHEREOF, the Company and the Director have executed this Agreement as of the Date of Issuance.

ULTA SALON, COSMETICS & FRAGRANCE INC.

By: /s/ Lyn Kirby
Its: Chief Executive Officer

DIRECTOR:

/s/ Dennis Eck
Dennis Eck

EXHIBIT A

AGREEMENT REGARDING
NONCOMPETITION, NONSOLICITATION
AND CONFIDENTIAL INFORMATION

In consideration of my service as a consultant and as a director of Ulta Salon, Cosmetics & Fragrance, Inc. (“Ulta”), if elected, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, I, Dennis Eck hereby agree as follows:

1. **Noncompetition With Ulta.** I understand and agree that I may receive valuable Confidential Information of Ulta and exposure to key suppliers and regular and near permanent customers of Ulta, including the operations of the Ulta Beauty Club and similar programs and Ulta’s plans and procedures for conducting its business on the World Wide Web/Internet (“Internet”). I, therefore, agree that, during the period beginning at the time I first serve as a consultant for Ulta and ending two years following the termination of my relationship as either a consultant to or as a director of Ulta, whichever is later (my “Noncompete Period”), I will not, directly or indirectly, own (other than as a shareholder or beneficial owner directly or indirectly owning five percent (5%) or less of the outstanding securities of a public company, publicly traded partnership or mutual fund), organize, consult with, be employed by, advise, be a partner of or joint venturer with, be a director or managing member of, or otherwise assist any Competitor of Ulta. on the Internet or within the continents of North America, Australia and Asia (my “Restricted Area”).

For purpose of this Agreement a “Competitor” means any person, company, firm, organization or other entity which is substantially similar to the business in which Ulta is engaged during my term as a consultant or director with Ulta. A business shall be deemed to be substantially similar to that of Ulta if it has a business strategy and product mix (including, without limitation, Sephora) which is similar to that of Ulta at the time in question or if it has the intent to develop such a business. However, for purposes of this Agreement the business and operations of Cole Myer, Ltd. Australia (“Cole Myer”) in Australia shall not be considered as a “Competitor” of Ulta, and Ulta acknowledges and agrees that I may continue to perform consulting services for Cole Myer with respect to its business in Australia without violating my covenants regarding non-competition under this Agreement.

2. **Nonsolicitation of Employees.** I understand and agree that Ulta has expended and will continue to expend enormous time, effort and resources in the hiring, training and development of an unusual and extraordinary workforce whose identity and ability I would not learn but for my status as a consultant or director of Ulta. Therefore, I agree that, during my Nonsolicitation Period, I will not, without Ulta’s consent directly or indirectly, (a) hire, employ, retain or solicit, or attempt to hire, employ, retain or solicit, any employee of Ulta to work for, contract with, become a partner with or otherwise be retained by any person, company (except Ulta), firm, organization or other entity engaged in any business in which Ulta is engaged; (b) assist or advise any person, company (except Ulta), firm, organization or other entity in such hiring, employing, retaining, soliciting, or attempting to hire, employ, retain or solicit employees of Ulta; or (c) encourage any employee to be hired, employed, retained or solicited by any person, company (except Ulta), firm, organization or other entity. This paragraph shall not apply to the solicitation and hiring of employees of Ulta who perform strictly clerical duties for Ulta.

3. **Nonsolicitation of Suppliers.** I understand and agree that I will receive valuable Confidential Information of Ulta with respect to its relationships with suppliers of Ulta and that such relationships and the right to purchase and distribute products from many such suppliers are limited by such suppliers and constitute a valuable asset of Ulta. I, therefore, agree that, for my Noncompete Period, I will not, directly or indirectly, call upon, solicit or otherwise contact any suppliers of Ulta with whom I had contact during my term as a consultant or director of Ulta for purposes of introducing such supplier to a Competitor of Ulta or for purposes of inducing or encouraging any such supplier to sell any such product line to any other retailer that seeks to become a Competitor.

4. **Confidentiality of Information.** I understand that during my term as a consultant or director of Ulta I will be exposed to Ulta's Confidential Information. I agree to keep such information strictly confidential. Except as required by virtue of a subpoena or other court order which has also been served on Ulta, I agree not to disclose any Confidential Information to any person, company, firm, organization or other entity nor to make use, nor to allow any other person, company (except Ulta), firm, organization or other entity to make use, of Confidential Information.

For purposes of this Agreement "Confidential Information" means any and all confidential and proprietary documents, information or other data (whether recorded or otherwise) not publicly known or available and otherwise not know in the retail or wholesale hair styling, beauty salon, spa services, fragrance, cosmetics, salon products or beauty aid/products industries or trades concerning Ulta and its businesses, customers, potential customers, suppliers, marketing plans, advertising, contracts, potential contracts, strategies, forecasts, pricing, methods, practices, techniques, business plans, financial plans, research, development, manufacturing, purchasing, accounting, engineering, know-how, technical data, processes and product development and/or any other trade secrets of Ulta

5. **Return of Documents and Electronic Media.** At the termination of my relationship as either a consultant or director with Ulta, I agree to promptly return to Ulta any and all confidential and proprietary documents and other tangible Confidential Information and data, regardless of the form in which it is recorded, as well as any and all copies and reproductions of such documents or other tangible Confidential Information and data (regardless of the form of such copies or reproductions), which I (i) received or obtained from or on behalf of Ulta or (ii) prepared, compiled or collected during the course of my directorship with Ulta. I specifically agree not to retain any copies of any Confidential Information. I further agree that upon Ulta's request, I will execute a sworn statement certifying that I have complied with this paragraph.

6. **Injunctive Relief.** I understand and agree that any violation of this Agreement will cause immediate and irreparable harm to Ulta, the exact extent of which will be difficult to ascertain, and that the remedies at law for any such violation could not adequately compensate Ulta. Therefore, I agree that Ulta shall be entitled to specific performance and/or immediate, preliminary and permanent injunctive relief for any violations of this Agreement. Ulta shall be entitled to such relief without the necessity of proving actual damages. I waive any necessity for the posting of a bond.

7. **Choice of Law; Jurisdiction; Venue; Other Enforcement Issues.**This Agreement shall be governed by the laws of the State of Illinois. Ulta and I, both, irrevocably consent to the jurisdiction of the United States District Court for the Northern District of Illinois and to the Illinois Circuit Court of Cook County to adjudicate any disputes arising out of this Agreement. Ulta and I, both, further agree that, to the extent permitted by law, venue for all disputes arising under or related to this Agreement shall be in Chicago, Illinois. By entering into this Agreement, Ulta expressly does not release, compromise or waive any rights, remedies, claims or causes of action it may have against me for violation of any law, including without limitation the Illinois Trade Secrets Act, 765 ILCS 1065 et seq. or similar laws that may be applicable in other states.

8. **Breach of Covenants.** I acknowledge and agree that any breach by me of any of the covenants or agreements contained herein during the period of my directorship shall be grounds for immediate forfeiture of such directorship and forfeiture of any accrued and unpaid fees or other compensation and any stock options, as liquidated damages. I acknowledge that any such liquidated damages shall be in addition to, and not exclusive of, any and all other rights and remedies Ulta may exercise against me. In the event Ulta is required to enforce any of its rights hereunder, I shall be obligated to reimburse Ulta for all reasonable costs and expenses, including reasonable attorney's fees, incurred by Ulta in connection with the enforcement of its rights hereunder.

9. **Nonassignment.** I shall not assign, sell, transfer, delegate or otherwise dispose of any rights or obligations under this Agreement.

10. **Voluntary Agreement.** I expressly acknowledge that I have voluntarily executed this Agreement and that I have had the opportunity to be represented and advised by counsel concerning the terms and conditions of this Agreement as well as my execution thereof.

11. **Entire Agreement; Waivers; Modification.** This Agreement is intended by the parties to be the complete, exclusive and final expression of Ulta's and my agreement with respect to non-compete, non-solicitation and confidentiality provisions set forth above and supersedes, and may not be contradicted by, or modified or supplemented by, evidence of any prior or contemporaneous agreement as to such matters, and no extrinsic evidence whatsoever may be introduced to vary the terms of this Agreement. No waiver of any of the provisions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further, continuing or subsequent waiver of any such provision or as a waiver of any other provision of this Agreement. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy or power provided herein or by law or in equity. Ulta and I expressly agree that (i) this Agreement shall survive any termination or cessation of my term as a director of Ulta, whether the same be initiated or caused by either me or Ulta and regardless of the reason or merits for such termination or cessation and (ii) this Agreement may not be altered, amended, changed, terminated or modified in any respect except by a written instrument clearly expressing the intent to so modify this Agreement signed by me and an officer or director of Ulta.

12. **Blue Pencil; Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to exceed the limitations permitted by applicable law, as determined by such court in such action, then the provisions will be deemed reformed to the maximum less restrictive limitations permitted by applicable law and the parties hereby expressly acknowledge their desire that in such event such action be taken. Notwithstanding the foregoing, Ulta and I further agree that if any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and in no way shall be affected, impaired or invalidated.

13. **Descriptive Headings.** Descriptive headings contained herein are for reference only and in no way define, limit, extend or describe the scope of this Agreement or any provisions thereof.

Dated: May ___, 2003

DENNIS ECK

____

ULTA SALON, COSMETICS & FRAGRANCE, INC.

By: ____

Its : ____

EXHIBIT 10.5

ULTA SALON, COSMETICS & FRAGRANCE, INC.
RESTRICTED STOCK AGREEMENT — VESTING
(ROBERT DIROMUALDO)

ULTA SALON, COSMETICS & FRAGRANCE, INC.
RESTRICTED STOCK AGREEMENT – VESTING
(ROBERT DIROMUALDO)

THIS RESTRICTED AGREEMENT ("Agreement"), made as of June ___, 2004 (the "Date of Issuance"), is by and between Ulta Salon, Cosmetics & Fragrance, Inc. (the "Company") and Robert DiRomualdo ("Director").

The Company desires to grant to the Director $.01 par value common shares of the Company ("Common Stock"), pursuant to the terms of the Second Amendment and Restatement of Ulta Salon, Cosmetics & Fragrance Inc. Restricted Stock Plan (the "Plan").

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the parties agree as follows:

1. DEFINITIONS. Capitalized terms used herein that are not otherwise defined shall have the meanings assigned to them in the Plan.

2. GRANT OF STOCK. As of the date hereof Company hereby grants to Director 200,000 shares of Common Stock (the "Restricted Stock"), subject to the terms and conditions of this Agreement.

3. VESTING. Except as otherwise provided hereunder or pursuant to the terms of the Plan, shares of Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered from the Date of Issuance until the Director becomes vested in the shares of Restricted Stock (and restrictions thereon terminate) (the "Vested Shares") in accordance with the following schedule:

Date	Cumulative Percentage of Shares of Restricted Stock Which are Vested Shares
the Date of Issuance	0%
February 26, 2005 – February 25, 2006	25%
February 26, 2006 – February 25, 2007	50%
February 26, 2007 – February 25, 2008	75%
February 26, 2008	100%

Upon a Sale of the Company all shares of Restricted Stock shall become Vested Shares. Additionally, if the Director ceases to be a member of the Board of Directors of the Company by reason of death or Disability (as defined below) any time after the Company's annual meeting of stockholders (the "Annual Meeting") occurring in 2005, then all shares of Restricted Stock shall become Vested Shares. Otherwise, if Director ceases to be a member of the Board of Directors of the Company for any reason, he shall forfeit any unvested shares of Restricted Stock and such

shares shall be returned to the Company. For purposes of this Agreement, the term "Disability" shall mean the mental or physical incapacity of the Director such that Director would be eligible to receive disability benefits under the Company's long-term disability plan assuming for this purpose that Director is eligible for participation in such plan and that Directors occupation consist of his duties as a member of the Board of Directors prior to such incapacity.

4. RESTRICTIONS ON COMMON STOCK. Director acknowledges and agrees that the Restricted Stock is subject to various restrictions set forth in the Plan. Director agrees as a holder of Restricted Stock to be bound by all terms, conditions and restrictions contained in the Plan. Director acknowledges that he has received a copy of the Plan.

5. REPURCHASE RIGHTS.

(a) In the event the Director (i) is removed as a director of the Company pursuant to Delaware law, (ii) is slated for election or re-election to the Board of Directors of the Company and refuses to serve, or (iii) resigns as a director of the Company then, the Vested Shares shall be subject to repurchase by the Company at their then Fair Market Value (and unvested shares of Restricted Stock shall be forfeited and returned to the Company) pursuant to the terms and conditions contained in Section 3 of the Plan.

(b) In the event the Director is not slated for re-election to the Board of Directors of the Company, then upon his termination as a director, the Company shall waive its repurchase option under Section 3 of the Plan with respect to the Vested Shares and the unvested Shares of Restricted Stock shall be forfeited and returned to the Company. Notwithstanding the foregoing, the Investors (as defined in the Plan) shall retain their repurchase option under Section 3 of the Plan for any Vested Shares.

(c) The Company shall waive its repurchase option under Section 3 of the Plan in the event the Director ceases to be a member of the Board of Directors of the Company by reason of death or Disability as follows: (i) if the Director's service as a director ceases prior to the 2006 Annual Meeting, the Company will waive its repurchase option as to 25% of the Vested Shares, (ii) if the Director's service ceases on or after the 2006 Annual Meeting, but prior to the 2007 Annual Meeting, the Company shall waive its repurchase option as to 50% of the Vested Shares, (iii) if the Director's service ceases on or after the 2007 Annual Meeting, but prior to the 2008 Annual Meeting, the Company shall waive its repurchase option as to 75% of the Vested Shares, and (iv) if the Director's service ceases on or after the 2008 Annual Meeting, the Company shall waive its repurchase option as to 100% of the Vested Shares. Notwithstanding the foregoing, the Investors shall retain their repurchase option under the terms and conditions of Section 3 of the Plan.

6. NO ASSURANCES OF SERVICES. Nothing in this Agreement confers any right on the Director to continue as a director of the Company, or shall affect in any way the stockholders of the Company's right to terminate the Director as a director at any time.

7. SUBJECT TO COVENANTS. Director hereby agrees that the Restricted Stock issued hereunder is subject to and conditioned upon Director's execution and full compliance with the terms of the Agreement Regarding Non Competition, Non Solicitation and Confidential

Information (the "Non-Compete Agreement") as set forth on Exhibit A hereto. If Director breaches any term of the Non-Compete Agreement he shall forfeit all rights to future vesting in any unvested shares of Restricted Stock.

8. SECURITIES LAWS. Director represents and warrants to the Company that she is acquiring the Restricted Stock for her own account for investment purposes only and that she has no agreement, understanding, arrangement or intent to subdivide, sell assign or transfer any portion of or interest in the Restricted Stock to any other person.

9. AMENDMENTS. Any amendment, alteration, suspension, discontinuation, cancellation or termination of the provisions of this Agreement that would impair the rights of the Director or any beneficiary of the Director shall not be effective without the consent of the Director or the beneficiary of the Director, as the case may be.

10. MISCELLANEOUS.

(a) Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

(b) Successors and Assigns. Except as otherwise provided herein, this Agreement shall bind and inure to the benefit of and be enforceable by Director, the Company, the Investors and their respective successors and assigns (including subsequent holders of Director Stock); provided that the rights and obligations of Director under this Agreement shall not be assignable except as permitted in connection with a permitted transfer of Restricted Stock under the Plan.

(c) Choice of Law. The corporate law of the State of Delaware will govern all questions concerning the relative rights of the Company and the holders of Common Stock. All other questions concerning the construction, validity and interpretation of this Agreement will be governed by the internal law, and not the law of conflicts, of the State of Delaware.

(d) Notices. All notices and other communications under this Agreement shall be in writing. Unless and until the Director is notified in writing to the contrary, all notices, communications and documents directed to the Company and related to the Agreement, if not delivered by hand, shall be mailed, addressed as follows:

Ulta Salon, Cosmetics & Fragrance, Inc.
1135 Arbor Drive
Romeoville, Illinois 60446
Attn: Chief Financial Officer

Unless and until the Company is notified in writing to the contrary, all notices, communications and documents intended for the Director and related to this Agreement, if not

delivered by hand, shall be delivered by registered first-class mail, telex, telecopier, or air courier guaranteeing overnight delivery to Director's last known address as shown on the Company's books. All mailings and deliveries related to this Agreement shall be deemed received only when actually received.

IN WITNESS WHEREOF, the Company and the Director have executed this Agreement as of the Date of Issuance.

ULTA SALON, COSMETICS & FRAGRANCE INC.

By: /s/ Lyn Kirby
Its: Chief Executive Officer

DIRECTOR

/s/ Robert DiRomualdo
Robert DiRomualdo

EXHIBIT A

AGREEMENT REGARDING
NONCOMPETITION, NONSOLICITATION
AND CONFIDENTIAL INFORMATION

RECITALS

WHEREAS Ulta Salon, Cosmetics & Fragrance, Inc. (“Ulta”) is a Delaware corporation engaged, inter alia, in the business of providing hairdressing, beauty salon and other spa services and selling perfume, fragrances, cosmetics, salon products, beauty aids and related goods and services at retail and acting as a distributor of such goods throughout North America, including the sales of such goods by means of the Internet;

WHEREAS Ulta has proprietary and confidential information which it wishes to safeguard and keep confidential;

WHEREAS Ulta has strong relationships with its customer base, and is using the Ulta Beauty Club and other marketing efforts to develop regular and near permanent relationships with certain of its customers, all of which has been and is being accomplished through the expenditure of extensive time, effort and resources and which it wishes to maintain;

WHEREAS, Ulta has hired, trained and developed an unusual and extraordinary workforce through the expenditure of extensive time, effort and resources and which it wishes to retain;

WHEREAS, in my position as a consultant to Ulta and as a director of Ulta, if elected, I will be in a position to receive proprietary and confidential information regarding Ulta if disclosed or used by me in any way would be harmful to the economic interests of Ulta.

AGREEMENT

THEREFORE, in consideration of my service as a consultant and as a director of Ulta, if elected, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, I hereby agree to abide by the terms and conditions of this Agreement Regarding Noncompetition, Nonsolicitation and Confidential Information.

I HAVE READ THE FOLLOWING AGREEMENT AND HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF MY CHOICE (AT MY EXPENSE) PRIOR TO THE SIGNING OF THIS AGREEMENT. I UNDERSTAND THAT MY SIGNING THIS AGREEMENT IS A CONDITION OF MY CONSULTING AGREEMENT AND MY ELECTION AS A DIRECTOR OF ULTA.

____
Robert DiRomualdo

1. **Noncompetition With Ulta.** I understand and agree that I may receive valuable Confidential Information of Ulta and exposure to key suppliers and regular and near permanent customers of Ulta, including the membership and operations of the Ulta Beauty Club and similar programs and Ulta's plans and procedures for conducting its business on the World Wide Web/Internet ("Internet"). I, therefore, agree that, during my Noncompete Period, I will not, directly or indirectly, own (in whole or in part), organize, consult with, be employed by, advise, be a partner of or joint venturer with, be a director or managing member of, or otherwise assist any Competitor within my applicable Restricted Area.

2. **Ownership of Equity in Competitors.** I understand and agree that I will receive valuable Confidential Information of Ulta and may obtain exposure to key suppliers and regular and near permanent customers of Ulta, including the membership and operations of the Ulta Beauty Club and similar programs. I, therefore, agree that, during my Noncompete Period, I will not, directly or indirectly, purchase any equity securities of any corporation (other than as a shareholder or beneficial owner directly or indirectly owning five percent (5%) or less of the outstanding securities of a public company, publicly traded partnership or mutual fund) which is a Competitor.

3. **Nonsolicitation of Employees.** I understand and agree that Ulta has expended and will continue to expend enormous time, effort and resources in the hiring, training and development of an unusual and extraordinary workforce whose identity and ability I would not learn but for my status as a consultant or director of Ulta. Therefore, I agree that, during my Nonsolicitation Period, I will not, without Ulta's consent directly or indirectly, (a) hire, employ, retain or solicit, or attempt to hire, employ, retain or solicit, any employee of Ulta to work for, contract with, become a partner with or otherwise be retained by any person, company (except Ulta), firm, organization or other entity engaged in any business in which Ulta is engaged; (b) assist or advise any person, company (except Ulta), firm, organization or other entity in such hiring, employing, retaining, soliciting, or attempting to hire, employ, retain or solicit employees of Ulta; or (c) encourage any employee to be hired, employed, retained or solicited by any person, company (except Ulta), firm, organization or other entity. This paragraph shall not apply to the solicitation and hiring of employees of Ulta who perform strictly clerical duties for Ulta.

4. **Nonsolicitation of Customers.** I understand and agree that I will receive valuable Confidential Information of Ulta and may obtain exposure to key suppliers and regular and near permanent customers of Ulta, including the membership and operations of the Ulta Beauty Club and similar programs. I, therefore, agree that, for my Nonsolicitation Period, I will not, directly or indirectly, call upon, solicit or otherwise contact any customers, or potential customers, of Ulta with whom I had contact during my term as a director of Ulta.

5. **Nonsolicitation of Suppliers.** I understand and agree that I will receive valuable Confidential Information of Ulta with respect to its relationships with suppliers of Ulta and that such relationships and the right to purchase and distribute products from many such suppliers are limited by such suppliers and constitute a valuable asset of Ulta. I, therefore, agree that, for my Nonsolicitation Period, I will not, directly or indirectly, call upon, solicit or otherwise contact any suppliers of Ulta with whom I had contact during my term as a consultant or director of Ulta for purposes of introducing such supplier to a Competitor of Ulta or for purposes of inducing or

encouraging any such supplier to sell any such product line to any other retailer that seeks to become a Competitor.

6. **Confidentiality of Information.** I understand that during my term as a consultant or director of Ulta I will be exposed to Ulta's Confidential Information. I agree to keep such information strictly confidential. Except as required by virtue of a subpoena or other court order which has also been served on Ulta, I agree not to disclose any Confidential Information to any person, company, firm, organization or other entity nor to make use, nor to allow any other person, company (except Ulta), firm, organization or other entity to make use, of Confidential Information.

7. **Return of Documents and Electronic Media.** At the termination of my relationship as either a consultant or director with Ulta, I agree to promptly return to Ulta any and all confidential and proprietary documents and other tangible Confidential Information and data, regardless of the form in which it is recorded, as well as any and all copies and reproductions of such documents or other tangible Confidential Information and data (regardless of the form of such copies or reproductions), which I (i) received or obtained from or on behalf of Ulta or (ii) prepared, compiled or collected during the course of my directorship with Ulta. I specifically agree not to retain any copies of any Confidential Information. I further agree that upon Ulta's request, I will execute a sworn statement certifying that I have complied with this paragraph.

8. **Definitions.**

(a) A "Competitor," as used herein, shall mean any person, company (except Ulta), firm, organization or other entity which is substantially similar to the business in which Ulta is engaged during my term as a consultant or director with Ulta. A business shall be deemed to be substantially similar to that of Ulta if it has a business strategy and product mix (including, without limitation, Sephora) which is similar to that of Ulta at the time in question or if it has the intent to develop such a business.

(b) "Confidential Information," as used herein, shall mean any and all confidential and proprietary documents, information or other data (whether recorded or otherwise) not publicly known or available and otherwise not know in the retail or wholesale hair styling, beauty salon, spa services, fragrance, cosmetics, salon products or beauty aid/products industries or trades concerning Ulta and its businesses, customers, potential customers, suppliers, marketing plans, advertising, contracts, potential contracts, strategies, forecasts, pricing, methods, practices, techniques, business plans, financial plans, research, development, manufacturing, purchasing, accounting, engineering, know-how, technical data, processes and product development and/or any other trade secrets of Ulta.

(c) My "Noncompete Period" shall be a period beginning at the time I was first elected as a director of Ulta and ending two years following the termination of my relationship as either a consultant to or as a director of Ulta, whichever is later.

(d) My "Nonsolicitation Period" shall be a period beginning at the time I first serve as a consultant for Ulta and ending two years following the termination of my relationship as either a consultant to or as a director of Ulta, whichever is later.

(e) My "Restricted Area" shall be on the Internet an within the United States, Canada or Mexico.

9. **Injunctive Relief.** I understand and agree that any violation of this Agreement will cause immediate and irreparable harm to Ulta, the exact extent of which will be difficult to ascertain, and that the remedies at law for any such violation could not adequately compensate Ulta. Therefore, I agree that Ulta shall be entitled to specific performance and/or immediate, preliminary and permanent injunctive relief for any violations of this Agreement. Ulta shall be entitled to such relief without the necessity of proving actual damages. I waive any necessity for the posting of a bond.

10. **Choice of Law; Jurisdiction; Venue; Other Enforcement Issues.** This Agreement shall be governed by the laws of the State of Illinois. Ulta and I, both, irrevocably consent to the jurisdiction of the United States District Court for the Northern District of Illinois and to the Illinois Circuit Court of Cook County to adjudicate any disputes arising out of this Agreement. Ulta and I, both, further agree that, to the extent permitted by law, venue for all disputes arising under or related to this Agreement shall be in Chicago, Illinois. By entering into this Agreement, Ulta expressly does not release, compromise or waive any rights, remedies, claims or causes of action it may have against me for violation of any law, including without limitation the Illinois Trade Secrets Act, 765 ILCS 1065 et seq. or similar laws that may be applicable in other states.

11. **Breach of Covenants.** I acknowledge and agree that any breach by me of any of the covenants or agreements contained herein during the period of my directorship shall be grounds for immediate forfeiture of such directorship and forfeiture of any accrued and unpaid fees or other compensation and any stock options, as liquidated damages. I acknowledge that any such liquidated damages shall be in addition to, and not exclusive of, any and all other rights and remedies Ulta may exercise against me. In the event Ulta is required to enforce any of its rights hereunder, I shall be obligated to reimburse Ulta for all reasonable costs and expenses, including reasonable attorney's fees, incurred by Ulta in connection with the enforcement of its rights hereunder.

12. **Nonassignment.** I shall not assign, sell, transfer, delegate or otherwise dispose of any rights or obligations under this Agreement.

13. **Voluntary Agreement.** I expressly acknowledge that I have voluntarily executed this Agreement and that I have had the opportunity to be represented and advised by counsel concerning the terms and conditions of this Agreement as well as my execution thereof.

14. **Entire Agreement; Waivers; Modification.** This Agreement is intended by the parties to be the complete, exclusive and final expression of Ulta's and my agreement with respect to non-compete, non-solicitation and confidentiality provisions set forth above and supersedes, and may not be contradicted by, or modified or supplemented by, evidence of any

prior or contemporaneous agreement as to such matters, and no extrinsic evidence whatsoever may be introduced to vary the terms of this Agreement. No waiver of any of the provisions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further, continuing or subsequent waiver of any such provision or as a waiver of any other provision of this Agreement. No failure to exercise and no delay in exercising any right, remedy or power hereunder shall preclude any other or further exercise of any other right, remedy or power provided herein or by law or in equity. Ulta and I expressly agree that (i) this Agreement shall survive any termination or cessation of my term as a director of Ulta, whether the same be initiated or caused by either me or Ulta and regardless of the reason or merits for such termination or cessation and (ii) this Agreement may not be altered, amended, changed, terminated or modified in any respect except by a written instrument clearly expressing the intent to so modify this Agreement signed by me and an officer or director of Ulta.

15. **Blue Pencil; Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to exceed the limitations permitted by applicable law, as determined by such court in such action, then the provisions will be deemed reformed to the maximum less restrictive limitations permitted by applicable law and the parties hereby expressly acknowledge their desire that in such event such action be taken. Notwithstanding the foregoing, Ulta and I further agree that if any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and in no way shall be affected, impaired or invalidated.

16. **Descriptive Headings.** Descriptive headings contained herein are for reference only and in no way define, limit, extend or describe the scope of this Agreement or any provisions thereof.

EXHIBIT 10.6

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this "Agreement"), dated as of December ___, 2006, is by and among ULTA SALON, COSMETICS & FRAGRANCE, INC., a Delaware corporation ("Ulta" or the "Company") and CHARLES R. WEBER ("Executive").

Recitals

A. Executive was employed as an executive officer of the Company.

B. On October 6, 2006 ("Retirement Date"), Executive retired from the Company.

C. As of the date hereof, Executive holds 334,680 shares of Ulta common stock, par value $0.01 per share ("Common Stock") and options to purchase up to 1,214,894 shares of Common Stock ("Options") issued to Executive under the Second Amended and Restated Stock Option Plan, dated December 1, 1998 (the "Stock Option Plan") and the 2002 Equity Incentive Plan, dated June 17, 2002 (the "Equity Incentive Plan"). Attached hereto as Exhibit A is a chart detailing Executive's Options and the respective exercise price for such Options.

D. The Company and Executive desire to provide Executive certain liquidity with respect to his shares of Common Stock and Options.

Agreement

In consideration of the foregoing, and the representations, warranties, covenants and conditions set forth below, the parties hereto hereby agree as follows:

1. Purchase of Securities, etc.

(a) Purchase of Common Stock and Exercise of Options. Concurrently with the execution of this Agreement and subject to all of the terms and conditions hereof, Executive shall (i) sell, exchange, assign, transfer and convey to the Company, and the Company shall purchase and accept for exchange from Executive, all of the Common Stock held by Executive as of the date of this Agreement, free and clear of all liens, for a purchase price equal to $5.80 per share of Common Stock.

(b) Exercise of Options. Concurrently and in connection with the transactions set forth in Section 1(a), Executive shall exercise all of his Options, pursuant to the terms of and for the exercise price set forth in the agreements governing such Options, using the shares of Common Stock and/or proceeds therefrom under Section 1(a) in payment of the exercise price. In connection with such exercise of Options, the Company shall immediately repurchase 414,894 shares of Common Stock issueable upon exercise of Options for a purchase price equal to $5.80 per share of Common stock.

(c) Tax Withholding. The Company shall withhold $2,486, 260.76, for taxes due upon exercise of the Options. Executive acknowledges and agrees that such withholding is in excess of the amount of withholding that the Company would be required by law to withhold based on income and employment taxes due upon exercise of the Options, but that Executive has

requested that the Company withhold such amount. Provided, that the Company timely remit such amount to the applicable state and federal tax authorities, Executive shall hold the Company harmless from any liability relating to the amount of such withholdings.

(d) Closing Consideration; Remaining Shares Held. In connection with the transactions contemplated hereby, the Company shall deliver to an account designated by Executive, a total closing payment of $759,932.30. After the consummation of the transactions contemplated by this Agreement, Executive shall continue to own and hold 800,000 shares of Common Stock, 400,000 of which shall be deemed acquired pursuant to options granted under the Stock Option Plan and 400,000 of which shall be deemed acquired pursuant to options granted under the Equity Incentive Plan, and which shall remain subject to the terms and restrictions of the Stock Option Plan, the Equity Incentive Plan and the Second Amended and Restated Reclassification Agreement, dated as of December 18, 2000, as applicable and as each may be amended from time to time. Executive and the Company agree that Executive's termination of employment is a "Retirement" for purposes of the Stock Option Plan and the Equity Incentive Plan. In addition, for purposes of clarification, Executive and the Company acknowledge and agree that if so requested by an underwriter (or any representative of an underwriter) in connection with any registration of the Company's securities under the Securities Act of 1933, as amended, Executive shall not sell or otherwise transfer any Ulta securities held by the Executive (including, without limitation, shares of the Company's preferred stock) for a period of no less than 180 days following the public offering of the Company's securities.

2. Representations and Warranties of Executive. Executive represents and warrants that:

(a) Executive has full legal capacity, power and authority to execute and deliver this Agreement. This Agreement has been duly authorized, executed and delivered by Executive and this Agreement is the legal, valid and binding obligation of Executive, enforceable against him in accordance with the terms hereof and thereof, subject to (i) the effect of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer, preferential transfer or distribution laws and other similar laws now or hereafter in effect relating to or affecting the rights of creditors generally; and (ii) the effect of (A) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law and (B) the discretion of any court in which an action is brought.

(b) Executive has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of such transaction, is able to incur a complete loss of such investment and is able to bear the economic risk of such investment for an indefinite period of time.

(c) As of the date hereof Executive holds of record and beneficially owns 1,549,574 shares of Common Stock and the Options free and clear of all Liens. There are no outstanding powers of attorney executed by Executive that would affect his ability to exercise the Options or transfer the Common Stock to the Company free and clear of all liens.

3. Representations and Warranties of the Company . The Company represents and warrants to Executive that:

(a) The Company has the requisite power and authority to execute and deliver this Agreement. This Agreement has been duly authorized, executed and delivered by the Company and this Agreement is a legal, valid and binding obligation of the Company, enforceable against it in accordance with its respective terms, subject to (i) the effect of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer, preferential transfer or distribution laws and other similar laws now or hereafter in effect relating to or affecting the rights of creditors generally; and (ii) the effect of (A) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law and (B) the discretion of any court in which an action is brought.

4. Restrictive Covenant. As a condition to and in consideration of the Company's obligations hereunder, Executive agrees to execute and abide by the terms of the Secrecy, Non-Competition and Non-Solicitation Agreement attached hereto as Exhibit B.

5. Miscellaneous.

(a) Binding Effect; No Assignment; Benefits. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors or assigns any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained herein.

(b) Survival. All covenants, agreements, representations and warranties made herein shall survive the execution and delivery hereof.

(c) Waiver. A party hereto may by written notice to the other parties (i) extend the time for the performance of any of the obligations or other actions of the other parties under this Agreement; (ii) waive compliance with any of the conditions or covenants of the other party contained in this Agreement; and (iii) waive or modify performance of any of the obligations of the other party under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach and no failure by any party to exercise any right or privilege hereunder shall be deemed a waiver of such party's rights or privileges hereunder or shall be deemed a waiver of such party's rights to exercise the same at any subsequent time or times hereunder.

(d) Amendment. This Agreement may be amended, modified or supplemented only by a written instrument executed by Executive and the Company.

(e) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of Illinois, without giving effect to any choice or conflict of law provision or rule that would cause the application of any laws other than the law of the State of Illinois.

(f) Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Company and Charles R. Weber have executed this Agreement as of the day and year first above written.

ULTA SALON, COSMETICS & FRAGRANCE, INC.

By: ____________________________________
Name:
Its:

CHARLES R. WEBER

By: ____________________________________
Name: Charles R. Weber

ULTA SALON COSMETICS & FRAGRANCE, INC.
Signature Page to Stock Purchase Agreement

EXHIBIT A

CHARLES R. WEBER OPTIONS

Option Date	Type	Shares Subject to Options	Exercise Price	Already Exercised	Remaining to Acquire
9/16/1996	NQ	35,000	$ 0.100	26,250	8,750
5/30/1997	NQ	259,574	$ 0.100	194,680	64,894
9/18/1998	NQ	455,000	$ 0.105	113,750	341,250
7/18/2001	NQ	400,000	$ 0.700		400,000
5/1/2002	NQ*	303,847	$ 1.040		303,847
5/1/2002	ISO*	96,153	$ 1.040		96,153
Subtotal		1,549,574		334,680	1,214,894

*Option dated May 1, 2002 stated that all 400,000 shares were ISO's, but the four-year cliff-vested award exceeded the $100,000 annual limit.

EXHIBIT B

ULTA

SALON•COSMETICS•FRAGRANCE

SECRECY, NON-COMPETITION

AND NON-SOLICITATION AGREEMENT

DEFINITIONS

As used in this Agreement:

The COMPANY means ULTA Salon, Cosmetics, Fragrances, Inc., and any of their successors or assigns purchasers, acquirers, and of their existing subsidiaries, divisions or affiliates. Affiliates of the COMPANY are any corporation, entity, or organization at least 50% owned by the COMPANY, by ULTA Salon, Cosmetics, Fragrances, Inc. or by any subsidiary of ULTA Salon, Cosmetics, Fragrances, Inc.

I means Charles R. Weber, also referred to by the use of first person pronouns, such as me and my.

CONFIDENTIAL INFORMATION means information disclosed to me or known by me as a result of my employment by the COMPANY, not generally known to the trade or industry in which the COMPANY is engaged, about products, processes, technologies, customers, clients, suppliers, employees, services and strategies of the COMPANY, including, but not limited to, research, development, manufacturing, pricing, purchasing, finance, computer software, computer hardware, automated systems, marketing, merchandising, beauty club programs, branding, selling, sales volumes or strategies, names or significance of the COMPANY'S suppliers, customers or clients or their employees or representatives, preferences, needs or requirements, purchasing histories, or other supplier or customer or client-specific information or related knowledge.

CONFLICTING BUSINESS means any person, company (except Ulta), firm, organization or other entity which is engaged in the business of providing hairdressing, beauty salon and other spa services and selling perfume, fragrances, cosmetics, salon products, beauty aids and related goods and services at retail, including sales of goods over the World Wide Web/, and acting as a distributor of such goods throughout North America and with a business strategy and product mix similar to that of the Company or with the intent to develop such a business; provided, however, that any person, company, firm, organization or entity engaged primarily in the manufacturing of cosmetics, perfumes, fragrances, salon products, beauty aids and related goods shall not be a Conflicting Business so long as its business is limited primarily to the manufacture, distribution and/or the exclusive sales of the products it so manufacturers.

I recognize that the business in which the COMPANY is engaged is extremely competitive and that I am in possession of CONFIDENTIAL INFORMATION which I received as a result of my employment. I recognize that CONFIDENTIAL INFORMATION is significant to the COMPANY'S competitive position and that the COMPANY therefore expects

me to keep it secret and also expects me not to compete with the COMPANY during a period of two years from the date hereof.

Accordingly, in consideration of the entering into the Stock Purchase Agreement dated as of even date herewith by and between the Company and me, and my continued holding of common stock of the Company:

1. I recognize that CONFIDENTIAL INFORMATION is of great value to the COMPANY, that the COMPANY has legitimate business interests in protecting its CONFIDENTIAL INFORMATION, and that the disclosure to anyone not authorized to receive such information, including a CONFLICTING BUSINESS, will cause immediate irreparable injury to the COMPANY. Unless I first secure the COMPANY'S written consent, I will not disclose, use in any way, disseminate, lecture upon or publish CONFIDENTIAL INFORMATION. I understand and agree that my obligations not to disclose, use in any way, disseminate, lecture upon or publish CONFIDENTIAL INFORMATION shall continue until such information is no longer confidential. Specifically, I agree not to disclose any CONFIDENTIAL INFORMATION to Highland Capital Partners or any of its officers, directors or investors.

2. For a period of twenty-four (24) months after the date of this Agreement, I will not render own, consult with, advise, or otherwise render services, directly or indirectly, to any CONFLICTING BUSINESS in the United States or Canada, I also agree that for a period of twenty-four (24) months from the date of this Agreement, I will not own, consult with, advise or otherwise render services to any organization or person to engage in a start up organization that utilizes any CONFIDENTIAL INFORMATION, and/or creates a business model, product mix, services mix that replicates the COMPANY'S in any manner. Nothing contained herein shall prohibit me from owning less than one percent (1%) of the outstanding equity securities of a CONFLICTING BUSINESS.

3. I also agree that for a period of twelve (12) months after the date of this Agreement I will not solicit or hire on my own behalf, or on behalf of others, any COMPANY employee, supplier or contractor.

4. To enable the COMPANY to monitor my compliance with the obligations imposed by this Agreement, I agree to inform the COMPANY of the identity of any new employer and of my job title and responsibilities, and will continue to so inform the COMPANY, in writing, any time I change employment during the twenty-four (24) months following the date of this Agreement.

5. I have returned all property belonging to the COMPANY, including any computer equipment and all copies of correspondence, memoranda, reports, notebooks, drawings, photographs, or other documents in any form whatsoever (including information contained in computer memory or on any computer disk) relating in any way to the affair of the COMPANY and which were entrusted to me or obtained by me at any time during my employment with the COMPANY.

6. I understand and acknowledge that if I violate this Agreement or am about to violate this Agreement by disclosing or using CONFIDENTIAL INFORMATION or accepting employment with a CONFLICTING BUSINESS, the COMPANY shall have the right, and be entitled to, in addition to any other remedies it may have, injunctive relief; in other words,

I understand and acknowledge that the COMPANY can bar me from disclosing or using such information, bar me from accepting such employment or rendering such services for a period of twenty-four (24) months from the date hereof.

7. I hereby consent and agree to assignment by the COMPANY of this Agreement and all rights and obligations hereunder including but not limited to, an assignment in connection with any merger, sale, transfer or acquisition by the COMPANY or relating to all (part of its assets, divisions and/or affiliates).

8. This Agreement shall be interpreted according to the laws of the State of Illinois without regard to the conflict of law rules thereof I agree that any action relating to or arising out of this Agreement may be brought in the courts of the State of Illinois or if subject matter jurisdiction exists, in the United States District Court for the Northern District of Illinois. I consent to personal jurisdiction and venue in both such courts and to service of process by United States Mail or express courier service in any such action.

9. In the event that any provision of this Agreement is invalidated or unenforceable under applicable law, that shall not affect the validity or enforceability of the remaining provisions. To the extent that any provision of this Agreement is unenforceable because it is overbroad, that provision shall be limited to the extent required by applicable law and enforced as so limited.

I ACKNOWLEDGE HAVING READ, EXECUTED AND RECEIVED A COPY OF THIS AGREEMENT, and agree that with respect to the subject matter hereof it is my entire agreement with the COMPANY, superseding any previous oral or written communications, representations, understandings, or agreements with the COMPANY or any of its officials or representatives.

DATE: ____________________

____

Charles R. Weber

Exhibit 10.7

**ULTA SALON, COSMETICS & FRAGRANCE, INC.
SECOND AMENDED AND RESTATED RESTRICTED
STOCK OPTION PLAN**

Section 1. Purpose

The purpose of this Second Amended and Restated Restricted Stock Option Plan (the "Plan") is to compensate and to provide an incentive to key employees of and consultants to Ulta Salon, Cosmetics & Fragrance, Inc. (the "Company") commensurate with the financial success of the Company. It is intended that the options granted pursuant to the Plan shall not constitute "Incentive Stock Options" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code").

This Second Amended and Restated Restricted Stock Option Plan adopted by the Board of Directors effective as of December 1, 1998 amends and restates in its entirety that certain Restricted Stock Option Plan previously adopted by the Company as of January 20, 1993 ("Original Plan") as amended and restated as of May 1, 1997 ("Prior Plan"). All options previously granted under the Original Plan, Prior Plan and Restricted Stock issued as a result of the exercise of such options, are hereby subject to the terms and conditions of the Plan as stated herein.

Section 2. Definitions

(a) The "company's common stock" means common stock, par value $.01 per share, of the company.

(b) "Cause" means, as determined in the sole discretion of the Board, an Optionee's (i) commission of a felony; (ii) dishonesty or misrepresentation involving the Company; (iii) serious misconduct in the performance or non-performance of Optionee's responsibilities to the Company (e.g. gross negligence, willful misconduct, insubordination or unethical conduct); (iv) for Optionee's who are employee's, violation of the Company's Policy Regarding NonCompetition, NonSolicitation and Confidential Information or any other material condition of employment; or (v) for Optionee's who are employee's, voluntary termination of employment by the Optionee without providing the Company with a minimum of two weeks notice, unless the giving of such notice is otherwise waived by the Company.

(c) "Consultant" means any consultant or advisor to the Company if (i) such consultant or advisor renders bona fide services to the Company, (ii) the services rendered are not in connection with the offer or sale of securities in a capital raising transaction and do not directly or indirectly promote or maintain a market for the Company's securities, and (iii) the consultant or advisor is a natural person who has contracted with the Company directly to perform services.

(d) "Directing Investors" means those Investors holding a majority of the Underlying Common Stock.

(e) "Disability" means the mental or physical incapacity of the Optionee such that Optionee would qualify for disability benefits under the Company's long term disability plan, if a participant therein.

(f) The "Fair Market Value" means (i) the closing price of the Company's Common Stock on the principal exchange on which the Common Stock is then trading, if any (or as reported on any composite index which includes such principal exchange), on the trading day previous to such date, or (ii) if the Company's Common Stock is not traded on an exchange but is reported by the National Association of Securities Dealers, Inc. Automated Quotations, Inc. National Market System ("NASDAQ System") or a successor quotation system, the last sales price on the most recent trading day previous to such date, or (iii) if the Common Stock is not listed on any securities exchange or quoted in the NASDAQ System, the Fair Market Value will be the fair value of the Common Stock as determined in good faith by the Board.

(g) "Independent Third Party" means any person who, immediately prior to the contemplated transaction, does not own in excess of five percent (5%) of the Company's Common Stock on a fully-diluted basis, who is not controlling, controlled by or under common control with the Company or any such five percent (5%) owner of the Company's Common Stock and who is not the spouse or a descendent (by birth or adoption) of any such five percent (5%) owner of the Company's Common Stock,

(h) "Investors" means the record owners of the Company's Preferred Stock as of the date of repurchase of the Restricted Stock.

(i) "Preferred Stock" means Series I Convertible Preferred Stock, Series II Convertible Preferred Stock, Series IV Convertible Preferred Stock of the Company and such other additional convertible preferred stock as the Company may issue from time to time.

(j) "Public Offering" means the sale, in an underwritten public offering registered under the 1933 Act, of shares of the Company's Common Stock.

(k) "Qualified Public Offering"' means a Public Offering in which (i) the aggregate cash proceeds received by the Corporation for the shares sold in such offering is at least $15 million; (ii) the price per share paid by the public for the shares sold in such offering implies a total equity valuation of the Corporation of at least $100 million; and (iii) the shares sold in such offering are listed on the American Stock Exchange or the New York Stock Exchange or are quoted on the NASDAQ System.

(l) "Restricted Stock" The Company's Common Stock to be issued upon the exercise of options granted under this Plan. For purposes of this Plan, Restricted Stock will continue to be Restricted Stock in the hands of any holder other than the Optionee to whom issued (except for the Company, any Investor and purchasers pursuant to an offering registered with the Securities Exchange Commission or purchasers pursuant to a Rule 144 transaction), and each such other holder of Restricted Stock will succeed to all rights and obligations attributable to such Optionee as a holder of Restricted Stock hereunder. Restricted Stock will also include shares of the Company's capital stock issued with respect to shares of Restricted Stock by way of a stock split, stock dividend or other recapitalization.

(m) "Retirement" means the retirement of the Optionee from the Company on or after attaining age 55, or as otherwise may be agreed upon by the Optionee and the Company with the approval of the Committee.

(n) A "Sale of the Company" means the sale of the Company to an Independent Third Party or affiliated group of Independent Third Parties pursuant to which such party or parties (i) acquire, in one transaction or a series of related transactions, capital stock of the Company possessing the voting power to elect a majority of the Company's board of directors (whether by merger, consolidation or sale or transfer of the Company's capital stock) or (ii) acquire by sale, lease, assignment, transfer or other conveyance all or substantially all of the Company's assets determined on a consolidated basis.

(o) "Underlying Common Stock" means (i) the Common Stock issued or issuable upon conversion of the Preferred Stock and (ii) any Common Stock issued or issuable with respect to the securities referred to in clause (i) above by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization. Any person or entity who holds Preferred Stock will be deemed to be the holder of the Underlying Common Stock obtainable upon conversion of the Preferred Stock in connection with the transfer thereof or otherwise regardless of any restriction or limitation on the conversion of the Preferred Stock. As to any particular shares of Underlying Common Stock, such shares will cease to be Underlying Common Stock when the), have been (a) effectively registered under the Securities Act and disposed of in accordance with the registration statement covering them or (b) distributed to the public through a broker, dealer or market maker pursuant to Rule 144 under the Securities Act (or any similar provision then in force).

Section 3. Administration

This Plan shall be administered by a Committee (the "Committee") composed of at least two (2) members of the Company's Board of Directors (the "Board") as appointed by the Board, but if no Committee is so appointed, then the Committee shall consist of the entire Board. Each appointed Committee member may be removed from the Committee by the Board at any time without cause. In the event the Company has issued any class of common stock required to be registered under Section 12 of the Exchange Act, the Committee shall be composed of "outside directors" as described in Section 162(m) of the Code, and the Committee shall be so constituted so as to comply with the disinterested administration requirements under Rule 16b-3 of the Exchange Act. Members of the Committee shall serve at the pleasure of the Board.

The Committee shall have authority to:

(a) determine the eligible employees of the Company and Consultants to the Company to be granted options, when such option shall be granted and the number of shares and terms with respect to each such option;

(b) prescribe rules and regulations for administering the Plan; and

(c) decide any questions arising as to the interpretation or application of any provision under this Plan.

The determination of the Committee as to any of these matters shall be final and binding upon all persons whomsoever and shall be reported to the Board at its next ensuing meeting. The Committee, may, with the approval of the Board, employ attorneys, consultants, accountants, appraisers or other persons to assist in the administration of the Plan. The Committee, the Company and the Board shall be entitled to rely upon the advice, opinions or valuations of any such persons. All actions taken in good faith shall be final and binding upon all Optionees or other holders of Restricted Stock, the Company and all other interested persons. No members of the Committee or Board shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan, any option or Restricted Stock and all members of the Committee and the Board shall be fully protected by the Company in respect of any such action, determination or interpretation.

Section 4. Number of Options

A grantee of an option under this Plan (an "Optionee") may hold more than one option hereunder, but only on the terms and conditions set forth herein and in any agreement granting options to an Optionee pursuant to Section 6.

Section 5. Stock to Be Issued Under This Plan

The Restricted Stock to be issued upon the exercise of options granted under this Plan may either be authorized and unissued shares or issued shares held in or hereafter acquired for the treasury of the Company. The aggregate number of shares of Restricted Stock which may be issued under options granted hereunder shall not exceed Six Million Three Hundred Forty-Four Thousand Seven Hundred and Fifty-Five (6,344,755) shares, subject to adjustment under Section 12. Options on not more than twenty-five percent (25%) of Restricted Stock reserved for issuance under the Plan may be awarded to any individual participant.

In the event that any outstanding option under this Plan expires or is terminated, the shares of Restricted Stock allocable to the unexercised portion of such option may again be subject to an option under the Plan.

The date of issuance of the option is referred to herein as the "Date of Issuance." An option may only be exercised to the extent vested in accordance with the terms and conditions of this Plan. Subject to the provisions contained herein, the option will vest in accordance with the following schedule if as of each date set forth the Optionee remains employed by the Company either as an employee or as a Consultant, except as provided herein:

Date	Cumulative Percentage of Option Which is Vested
Date of Issuance	0%
First Anniversary of the Date of Issuance	25%
Second Anniversary of the Date of Issuance	50%
Third Anniversary of the Date of Issuance	75%
Fourth Anniversary of the Date of Issuance	100%

The option shall be 100% vested and fully exercisable if the Optionee's employment with the Company or retention as a Consultant is terminated by reason of death or Disability. Unless the Committee specifically waives the application of this sentence, then notwithstanding the vesting schedule contained herein or in the Optionee's agreement, if the Optionee's employment or retention as a Consultant is terminated for Cause all options granted to such Optionee shall be immediately canceled and forfeited. Upon termination of employment with the Company or retention as a Consultant for any reason other than death, Disability or Cause any portion of an option that is not yet vested shall be forfeited and canceled. In the event of a Sale of the Company, the option shall become 100% vested and fully exercisable on the date of such Sale of the Company.

Section 6. Terms and Conditions of Options

Each option granted under this Plan shall be evidenced by an agreement in writing which shall be subject to such amendment and modification from time to time as the Committee shall deem necessary to comply with applicable laws or regulations, and which shall contain, in such form and with such other provisions as the Committee shall from time to time determine, provisions which comply with the following terms and conditions:

(a) The Number of Shares. Each option shall state the number of shares of Restricted Stock to which it pertains.

(b) Option Price. Each option shall state the option price per share of Restricted Stock, which shall be equal to the Fair Market Value of one share of Restricted Stock on the Date of Issuance.

(c) Medium and Time of Payment. The option price shall be payable in United States dollars upon the exercise of the option, and the exercise of any option and the delivery of the optioned shares shall be contingent upon receipt by the Company of the full purchase price paid in cash or by check.

(d) Term and Exercise of Options. No option granted hereunder shall be exercisable after the expiration of fourteen (14) years after the Date of Issuance. Subject to the terms of the Plan, any option to the extent vested may be exercised, in whole or in part, from time to time, as to one or more whole shares of Restricted Stock covered by the option, during its period of exercise.

(e) Period of Exercise of Options. Except as otherwise specifically provided herein:

(1) No option granted hereunder shall be exercisable until the first anniversary of the Date of Issuance thereof. After the first anniversary of the Date of Issuance, options may be exercised in accordance with the vesting schedule contained in Section 5;

(2) An option may only be exercised to the extent vested;

(3) An Optionee may exercise a portion of an option from the date that portion first becomes exercisable until the option expires or is otherwise terminated; and

(4) In the case of any fractional share resulting from any calculation under the Plan, the shares available for exercise shall be determined to the nearest lower number of whole shares.

(f) Taxes. The Company shall be under no obligation to deliver any shares of Restricted Stock upon an exercise of an option unless the Optionee shall have paid, or shall have made adequate provisions acceptable to the Company to pay, any and all taxes required to be withheld as a result of the exercise of an option under this Plan.

(g) Rights as a Stockholder. An Optionee shall have no rights as a stockholder with respect to any shares covered by any of said Optionee's options until the date that the Company receives payment in full for the purchase of said shares pursuant to the effective exercise of said option. No adjustment shall be made for dividends or distributions or other rights for which the record date is prior to the date such payment is received the Company, except as provided in Section 12 hereof.

(h) Compliance with Securities Exchange Act and Blue-Sky Laws. Notwithstanding anything herein to the contrary, options shall always be granted and exercised in such a manner as to conform to the provisions of Rule 16b-3, or any replacement rule, adopted pursuant to the provisions of the Securities Exchange Act of 1934 as the same now exists or may, from time to time, be amended and all applicable state securities laws.

(i) Other Provisions. The option agreements authorized under the Plan shall contain such other provisions as the Committee shall deem advisable.

Section 7. Notice of Intent to Exercise Options

Any Optionee desiring to exercise an option granted hereunder as to one or more of the shares covered thereby must, in order to so exercise the option, notify the Secretary of the Company in writing to that effect, specifying the number of shares to be purchased in a form satisfactory to the Committee.

Section 8. Transfer of Options

Neither the whole nor any part of any option shall be transferable by an Optionee or by operation of law during Optionee's lifetime. At Optionee's death an option or any part thereof shall only be transferable by Optionee's will or by the laws of descent and distribution. An option may be exercised during the lifetime of the Optionee only by the Optionee. Any option, and any and all rights granted to an Optionee thereunder to the extent not theretofore effectively exercised shall automatically terminate and expire upon any sale, transfer or hypothecation or any attempted sale, transfer or hypothecation of such option or rights, or upon the bankruptcy or insolvency of the Optionee. Notwithstanding the foregoing, an option granted to an employee may be transferred with the prior written approval of the Committee by gift, without receipt of any consideration, to a member of the Optionee's immediate family, or to a trust, partnership or entity for the benefit of the Optionee and/or such immediate family members; provided that the option shall continue to be subject to all terms and conditions of the option agreement and the Plan and the transferee shall execute any and all such documents requested by the Committee in connection with the transfer and to satisfy any requirements for an exemption for the transfer under applicable federal and state securities laws.

Section 9. Termination of Employment

No option may be exercised after the termination of the Optionee's employment with or retention as a consultant by the Company except as hereinafter provided:

(a) Death, Disability or Retirement Employees. Options granted to employees under this Plan may be exercised to the extent vested within three (3) years after the termination of the employment of the Optionee by reason of death, Disability or Retirement but in no event later than fourteen (14) years from the Date of Issuance. If a retired Optionee becomes employed on a full-time basis during the three year period following termination of employment with the Company, all options granted pursuant to this Plan shall immediately terminate and may no longer be exercised. All options granted under this Plan and not exercised by such dates shall terminate. For purposes of this Section and Section 10(b), termination date shall mean Optionee's date of death or the date the Optionee's employment is terminated due to the Optionee's Disability or Retirement.

The legal representative, if any, of the deceased Optionee's estate, otherwise the appropriate legatees or distributees of the deceased Optionee's estate, may exercise the option on behalf of such a deceased Optionee.

(b) Termination of Employment. Options granted to employees of the Company under the Plan may be exercised to the extent vested within three (3) months after a termination of employment, voluntary or involuntary, other than for death, Disability, Retirement or Cause, of the Optionee with the Company but in no event later than fourteen (14) years from the Date of Issuance. All options granted under this Plan not exercised by such date shall terminate.

(c) Termination for Cause. All options granted under this Plan shall terminate immediately upon the termination of an Optionee's employment for Cause, unless otherwise specifically agreed to in writing by the Committee.

(d) Termination of Consultancy. Options granted to Consultants to the Company under the Plan may be exercised to the extent vested within three (3) months after the Optionee's consultancy and/or employment by the Company is terminated for any reason, but in no event later than ten (10) years from the Date of Issuance. All options granted under this Plan and not exercised by such date shall terminate.

Section 10. Repurchase Rights

(a) Repurchase Rights. In the event an Optionee is no longer employed by the Company as either an employee or a Consultant for any reason, the Restricted Stock purchased by exercise of options by the Optionee shall be subject to repurchase by the Company pursuant to the terms and conditions contained herein; provided that the Company's right to repurchase such Restricted Stock shall terminate upon its Sale of the Company or a Qualified Public Offering. The repurchase price shall be the Fair Market Value of each such share as of the date of repurchase of such shares.

(b) Company Rights. The Company may elect to purchase all or a portion of the Restricted Stock by delivery of written notice (the "Repurchase Notice") to the holder or holders of the Restricted Stock. In the event the Optionee's employment is terminated due to death, Disability or Retirement, the Repurchase Notice must be delivered within ninety (90) days after the third anniversary of the termination date of the Optionee. In the event that (i) the Optionee's employment is terminated due to any reason other than death, Disability or Retirement, or (ii) the Optionee is a Consultant and their retention as a Consultant is terminated, then the Repurchase Notice must be delivered within one hundred and eighty (180) days after the last date Optionee may exercise such option pursuant to Section 9(b) or 9(d). The Repurchase Notice shall set forth the number of shares of Restricted Stock to be acquired from such holder, the aggregate consideration to be paid for such shares, and the time and place for the closing of the transaction.

(c) Investors' Rights. If for any reason the Company does not elect to purchase all of an Optionee's shares of Restricted Stock pursuant to the Company's repurchase option and the Optionee and his/her permitted transferees own 10,000 or more shares of Restricted Stock, the Investors shall be entitled to exercise the Company's repurchase option in the manner set forth above for the shares of such Restricted Stock the Company has not elected to purchase (the "Available Shares"). As soon as practicable after the Company has determined that there will be Available Shares, but in any event no later than sixty (60) days prior to expiration of the Company's period of time to serve the Repurchase Notice, the Company shall deliver written notice (the "Option Notice") to the Investors setting forth the number of Available Shares and the price for each Available Share. The Investors may elect to purchase any number of Available Shares by delivering written notice to the Company within thirty (30) days after receipt of the Option Notice from the Company. In the event the aggregate number as to which elections are made exceeds the number of Available Shares, the shares shall be allocated pro rata according to the number of shares of Underlying Common Stock held by the Investors at the time of delivery of the Supplemental Repurchase Notice (as hereinafter defined). As soon as practicable, and in any event within fifteen (15) days, after the expiration of the Option Notice period set forth above, the Company shall notify each holder of Restricted Stock subject to purchase as to the number of shares being purchased from such holder by each Investor (the "Supplemental Repurchase Notice"). At the time the Company delivers the Supplemental Repurchase Notice to

the holder(s) of Restricted Stock, the Investors shall also receive written notice from the Company setting forth the number of shares each of them is entitled to purchase, the aggregate purchase price and the time and place of the closing of the transaction. If both the Company and the Investors have exercised their rights to purchase Restricted Stock pursuant to this repurchase option, the number of shares of Restricted Stock to be purchased will be prorated among the Company and the Investors based upon the total number of shares each is to purchase.

(d) Closing. The closing of the purchase transaction(s) shall take place on the date designated by the Company in the Repurchase Notice or Supplemental Repurchase. Notice, which date shall not be more than sixty (60) days and not less than ten (10) days after the delivery of the later of either such notice to be delivered. The Company and/or the Investors will pay for the Restricted Stock to be purchased pursuant to the repurchase option by delivery of a check or checks in the aggregate amount of the total purchase price, The purchasers of such Restricted Stock will be entitled to receive customary representations and warranties from the seller regarding the sale of such Restricted Stock.

Section 11. Acceleration

The Committee may, in the case of merger, consolidation, dissolution or liquidation of the Company, accelerate the expiration date of any option for any or all of the shares covered thereby (but still giving Optionees a reasonable period of time to exercise any outstanding options prior to the accelerated expiration date) and may, in the case of merger, consolidation, dissolution or liquidation of the Company, or in any other case in which it feels it is in the Company's best interest, accelerate the date or dates on which any option or any part of any option shall be exercisable for any or all of the shares covered thereby.

Section 12. Stock Dividend-Recapitalization-Consolidation

(a) In order to prevent the dilution or enlargement of option rights in the event of any reorganization, recapitalization, stock split, stock dividend, combination of shares, merger, consolidation or other change in the nature of shares, the Committee shall make appropriate changes in the number of shares covered by this option and in the option prices.

(b) If, during the term of any option, the Common Stock of the Company shall be changed into another kind of stock of the Company or into securities of another corporation, whether through reorganization, sale, merger, consolidation, or a similar transaction, the Committee will use reasonable efforts to cause adequate provisions to be made whereby the Optionee, shall thereafter be entitled to receive, upon the due exercise of this option, the securities which the Optionee would have been entitled to receive for Common Stock acquired through exercise of this option immediately prior to the effective date of such reorganization, sale, merger, consolidation or similar transaction. If appropriate, adjustment shall be made in the per share or per unit price of the securities purchased on exercise of this option following said reorganization, sale, merger, consolidation or similar transaction.

(c) The grant of an option pursuant to the Plan shall not affect in any way the right or power of the Company, to make adjustments, reclassifications, reorganizations or changes of its

capital or business structure or to merge or to consolidate or to dissolve, liquidate or sell, or transfer all or any part of its business or assets.

Section 13. Restrictions on Transfer

(a) Transfer of Restricted Stock. An Optionee may not sell, pledge or otherwise transfer any interest in any Restricted Stock except pursuant to the provisions of Sections 14 and 15 hereof ("Exempt Transfers") and except pursuant to the provisions of this Section 13, provided that in no event may any transfer of Restricted Stock pursuant to this Section 13 be made until the fourth anniversary of the date of issuance of such Restricted Stock or for any consideration other than cash payable upon the consummation of such transfer. At least sixty (60) days prior to making any transfer other than an Exempt Transfer, the Optionee must deliver a written notice (the "Sale Notice") to the Company. The Sale Notice will disclose in reasonable detail the identity of the prospective transferee(s), the number of shares of Restricted Stock proposed to be transferred and the terms and conditions of the proposed transfer. The Optionee (and the Optionee's transferees) may not consummate any such transfer until sixty (60) days after the Sale Notice has been delivered to the Company.

(b) First Refusal Rights. The Company may elect to purchase all (but not less than all) of the shares of Restricted Stock proposed to be transferred upon the same terms and conditions as those set forth in the Sale Notice by delivering a written notice of such election to the Optionee within thirty (30) days after the receipt of the Sale Notice by the Company. If the Company has not elected to purchase all of the Restricted Stock proposed to be transferred and the Optionee and his/her permitted transferees own 10,000 or more shares of Restricted Stock, the Investors may elect to purchase all (but not less than all) of the Restricted Stock proposed to be transferred upon the same terms and conditions as those set forth in the Sale Notice by delivering a written notice of such election to the Optionee within sixty (60) days after the receipt of the Sale Notice by the Company. If more than one Investor elects to purchase such Restricted Stock, the number of shares to be purchased by the electing Investors will be allocated among them pro rata on the basis of the number of shares of the Company's Underlying Common Stock held by them. Any person who has the right to acquire Restricted Stock pursuant to this Section 13(b) will be given up to sixty (60) days after it has been determined that such person has such right to consummate the purchase and sale of such Restricted Stock. If neither the Company nor the Investors have elected to purchase all of the Restricted Stock specified in the Sale Notice, the Optionee may, subject to the provisions of Section 13(c), transfer the Restricted Stock specified in the Sale Notice at a price and on terms no more favorable to the transferee(s) thereof than specified in the Sale Notice during the sixty (60) day period immediately following the expiration of such days. Any shares of Restricted Stock not transferred within sixty (60) day period will continue to be subject to the provisions of this Section 13(b) upon subsequent transfer.

(c) Certain Permitted Transfers. The restrictions contained in this Section 13 will not apply with respect to an Optionee's transfer of shares of Restricted Stock (i) pursuant to applicable laws of descent and distribution or (ii) among such Optionee's family group; provided that in each case the restrictions contained in this Section 13 will continue to be applicable to the Restricted Stock after any such transfer and the transferees of such Restricted Stock have so agreed in writing. An Optionee's "family group" means such Optionee's spouse and descendants

(whether natural or adopted) and any trust, partnership or entity solely for the benefit of such Optionee and/or such Optionee's spouse and/or descendants.

(d) Termination of Restrictions, The restrictions on the transfer of Restricted Stock set forth in this Section 13 will continue with respect to each share of Restricted Stock until the date on which such Restricted Stock has been transferred in a transaction permitted by this Section (except in a transaction contemplated by Section 13(c)); provided in any event the restrictions on transfers set forth in this Section 13 will terminate with respect to particular shares of Restricted Stock on the first to occur of (i) the ninth anniversary of the date of issuance of the Restricted Stock, (ii) a Qualified Public Offering and (iii) a Sale of the Company.

(e) Additional Restrictions. Prior to making any transfer of any interest in Restricted Stock to any person or entity, an Optionee must use reasonable efforts to ascertain whether the proposed transferee(s) or any person or entity affiliated with the proposed transferee(s) is a competitor of the Company. If an Optionee has reason to believe that the proposed transferee is or is affiliated with or acting on behalf of such a competitor, the Optionee will not transfer any Restricted Stock to the proposed transferee.

Section 14. Additional Restrictions on Transfer

(a) Each certificate representing Restricted Stock will bear the following legend

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON__________, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER, CERTAIN REPURCHASE OPTIONS AND CERTAIN OTHER AGREEMENTS SET FORTH IN THE ULTA **3** COSMETICS & SALON, INC., RESTRICTED STOCK OPTION PLAN, A COPY OF WHICH MAY BE OBTAINED BY THE HOLDER HEREOF AT THE COMPANY'S PRINCIPAL PLACE OF BUSINESS WITHOUT CHARGE."

(b) No holder of Restricted Stock may sell, transfer or dispose of any Restricted Stock (except in a Public Offering) without first delivering to the Company an opinion of counsel reasonably acceptable in form and substance to the Company that registration under the Securities Act of 1933, as amended, or under applicable state law is not required in connection with such transfer.

(c) No holder of Restricted Stock may effect any public sale or distribution of any equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such securities, during the seven (7) days prior to and the ninety (90) days after the effectiveness of any Public Offering except as part of the Public Offering if permitted.

(d) In the event that the Common Stock issued pursuant to any option is subject to an effective registration under the Securities Act of 1933 at the time the Optionee exercises his option, such stock may, in general, be freely transferred unless the Optionee is deemed to be an “affiliate” of the Company as that term is defined in Rule 144 as promulgated by the Securities and Exchange Commission. Optionee is required to comply with the provisions of Rule 144 to the extent such Rule may be applicable to the Common Stock acquired by the Optionee upon the exercise of an option, and to refrain from reoffering, reselling or otherwise disposing of any of the option Common Stock in any manner which would violate the Securities Act of 1933 or any other applicable Federal or State securities law.

Section 15. Sale of the Company

(a) If the Board of Directors of the Company and the holders of a majority of the Preferred Stock then outstanding approve a Sale of the Company (the “Approved Sale”), the holders of Restricted Stock shall be deemed to consent to and raise no objection against the Approved Sale, and if the Approved Sale is structured as a sale of stock, the holders of Restricted Stock must sell all or the proportionate portion of their shares of Restricted Stock on the terms and conditions approved by the Board and the Investors. The holders of Restricted Stock shall take all necessary and desirable actions in connection with the consummation of the Approved Sale.

(b) The obligations of the holders of Restricted Stock with respect to an Approved Sale are subject to the satisfaction of the following conditions: (i) upon the consummation of the Approved Sale, all of the holders of the Company’s Restricted Stock will receive the same form and amount of consideration per share of the Company’s Common Stock, or if any holders are given an option as to the form and amount of consideration to be received, all holders will be given the same option; (ii) all of the holders of the Company’s Common Stock will, after taking into consideration the Conversion Price then in effect on the Company’s Preferred Stock, receive the same form and amount of consideration per share of the Company’s Preferred Stock and (iii) all holders of then exercisable rights to acquire shares of the Company’s Common Stock will be given an opportunity to either (A) exercise such rights prior to the consummation of the Approved Sale and participate in such sale as holders of the Company’s Common Stock or (B) upon the consummation of the Approved Sale, receive in exchange for such rights consideration equal to the amount determined by multiplying (1) the same amount of consideration per share of the Company’s Common Stock received by the holders of the Company’s Common Stock in connection with the Approved Sale less the exercise price (per share of the Company’s Common Stock) of such rights to acquire the Company’s Common Stock by (2) the number of shares of the Company’s Common Stock represented by such rights.

(c) If the Company or the holders of a majority of the Company’s securities enter into any negotiation or transaction for which Rule 506 (or any similar rule then in effect) promulgated by the Securities Exchange Commission may be available with respect to such negotiation or transaction (including a merger, consolidation or other reorganization), the holders of Restricted Stock in conjunction with the holders of the Company’s Common Stock must at the request of the Company, appoint a purchaser representative (as such term is defined in Rule 501) reasonably acceptable to the Company. If any holder of Restricted Stock appoints the purchaser representative designated by the Company, the Company will pay the fees of such purchaser

representative, but if any holder of Restricted Stock declines to appoint the purchaser representative designated by the Company such holder must appoint another purchaser representative (reasonably acceptable to the Company), and such holder will be responsible for the fees of the purchaser representative so appointed.

(d) Each Optionee and each other holder of Restricted Stock (if any) will bear his pro rata share (based upon the number of shares sold) of the costs of any sale of Common Stock pursuant to an Approved Sale to the extent such costs are incurred for the benefit of all holders of the Company's Common Stock and are not otherwise paid by the Company or the acquiring party. Costs incurred by any Optionee or any other holder of Common Stock on his own behalf will not be considered costs of the transaction hereunder.

(e) The provisions of this Section 15 will terminate with respect to particular shares of Restricted Stock upon the first to occur of (i) the ninth anniversary of the date of issuance of the Restricted Stock, (ii) a Qualified Public Offering and (iii) a Sale of the Company.

Section 16. Voting Stock

So long as the Investors hold any shares of the Company's Underlying Common Stock, each share of Restricted Stock must be voted as directed by the Directing Investors with respect to a proposed Sale of the Company or in connection with a proposed Public Offering. Optionee and the Company each will take all necessary or desirable actions as are requested by the Directing Investors, in order to cause all shares of Restricted Stock to be voted pursuant to such direction of the Directing Investors. Optionee will deliver to the Company upon purchase of any shares of Restricted Stock, an irrevocable proxy with respect to such shares in favor of the Directing Investors. The provisions of this Section 16 will terminate with respect to particular shares of Restricted Stock upon the first to occur of a Qualified Public Offering or the ninth anniversary of the date of issuance of the Restricted Stock.

Section 17. Amendment of the Plan

The Board of Directors may, insofar as permitted by law, from time to time, with respect to any shares of Restricted Stock at the time not subject to outstanding options, suspend or discontinue the Plan or revise or amend it in any respect whatsoever except that, without approval of the holders of a majority of the Restricted Stock of the Company, no such revision or amendment shall remove the administration of the Plan from the Committee. Notwithstanding the foregoing, this Plan may be modified by the Board of Directors to eliminate the rights of the Investors with respect to all Restricted Stock issued hereunder with the appropriate consent of the Directing Investors only. No amendment or termination of the Plan shall, without the consent of the Optionee, alter or impair any rights of the Optionee under any option previously granted. Furthermore, the Plan may not, without the approval of the holders of a majority of the equity securities of the Company, be amended in any manner which would result in a failure to comply with Section 16(b)(3) of the Securities Exchange Act of 1934 or similar statutes or rules or regulations adopted thereunder.

Section 18. Granting of Options

The granting of any option pursuant to this Plan shall be entirely in the discretion of the Committee and nothing herein contained shall be construed to give any employee or Consultant any right to participate under this Plan or to receive any option under it. The granting of an option shall impose no duty upon the Optionee to exercise such option. All options granted to employees under this Plan shall be conditioned upon the execution of, and compliance with, the Company's Policy Regarding NonCompetition, NonSolicitation and Confidential Information, as in effect from time to time, unless such condition is otherwise specifically waived by the Committee.

Neither the adoption and maintenance of the Plan nor the granting of an option pursuant to this Plan shall be deemed to constitute a contract of employment between the Company and any employee or to be a condition of the employment of any person. Nothing herein contained shall be deemed to (a) give to any employee or Consultant the right to be retained in the employ of the Company; (b) interfere with the right of the Company to discharge any employee or Consultant at any time; (c) be deemed to give to the Company the right to require an employee or Consultant to remain in its employ; or (d) interfere with an employee's or Consultant's right to terminate his employment or consultancy at any time.

Section 19. Government Regulations

This Plan and the granting and exercise of any option hereunder and the obligation of the Company to sell and deliver shares under any such option shall be subject to all applicable laws, rules and regulations, and to such approvals by any governmental agencies as may be required.

Section 20. Proceeds from Sale of Stock

Proceeds received upon the exercise of an option by any Optionee shall be for the general business purposes of the Company.

Section 21. Reporting Requirements

The Committee shall furnish each Optionee hereunder with such information relating to the exercise of any option granted hereunder as is required under the Code and applicable State and Federal Securities laws.

Section 22. Miscellaneous

(a) Severability. Whenever possible, each provision of this Plan will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Plan is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Plan will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

(b) Successors and Assigns. Except as otherwise provided herein, this Plan shall bind and inure to the benefit of and be enforceable by Optionee, the Company, the Investors and their respective successors and assigns (including subsequent holders of Restricted Stock); provided that the rights and obligations of Optionee under this Plan shall not be assignable except in connection with a permitted transfer of Restricted Stock hereunder.

(c) Choice of Law. The corporate law of the State of Delaware will govern all questions concerning the relative rights of the Company and the holders of Restricted Stock. All other questions concerning the construction, validity and interpretation of this Plan and the exhibits hereto will be governed by the internal law, and not the law of conflicts, of the State of Delaware.

(d) Third Party Beneficiaries. The parties hereto hereby acknowledge that the Investors are third party beneficiaries to this Plan. Accordingly, the provisions of this Plan applicable to the Investors are intended to enure to the benefit of and be enforceable by the Investors and their assignees.

(e) Notices. All notices required to be given under this Plan shall be deemed given as of the date of hand delivery or three days after mailing via first class mail. Notices to the Company shall be given to the Chief Financial Officer or such other officer as the Company may designate. Notices to Optionees shall be given at the last mailing address on file with the Company.

IN WITNESS WHEREOF, the Company has executed this Plan as of December 1, 1998.

ULTA SALON, COSMETICS & FRAGRANCE, INC.

By: /s/ Terry J. Hanson
Its: President & CEO

IN WITNESS WHEREOF, the Assistant Secretary of the Company hereby certifies that the Plan was approved by consent of the required number of Company Shareholders effective July 27, 1999.

/s/ Charles Weber
Assistant Secretary of the Company

Dated: July 27, 1999

**ULTA SALON, COSMETICS & FRAGRANCE, INC.
SECOND AMENDED AND RESTATED
RESTRICTED STOCK OPTION PLAN**

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AMENDMENT TO ULTA SALON, COSMETICS & FRAGRANCE, INC.
SECOND AMENDED AND RESTATED RESTRICTED STOCK OPTION PLAN

This is an amendment, dated as of July 17, 2003 (the "Amendment"), to the Ulta Salon, Cosmetics & Fragrance, Inc. (the "Company") Second Amended and Restated Restricted Stock Option Plan (the "Plan"). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Plan.

RECITALS

WHEREAS, the Board of Directors of the Company adopted the Plan on December 1, 1998;

WHEREAS, the Board of Directors of the Company pursuant to Section 17 of the Plan have approved this amendment to eliminate rights of the Investors with respect to the Restricted Stock issued under the Plan;

WHEREAS, in connection with the Amendment, the parties hereto have agreed to amend the Plan to eliminate under certain circumstances certain transfer restrictions in Section 13(a) of the Plan;

WHEREAS, the parties intend to eliminate the repurchase rights of the Company and Investors in certain circumstances;

WHEREAS, this Amendment will be effective upon the execution by the undersigned Investors who hold a majority of the Underlying Common Stock and who constitute Directing Investors as required by Section 17 of the Plan.

NOW THEREFORE, in consideration of the foregoing premises and mutual agreements set forth in the Plan and this Amendment, the parties hereto agree as follows:

1. **Amendment**.

a. The first sentence of Section 10(a) — "Repurchase Rights" of the Plan is hereby modified and amended to read in its entirety as follows:

"In the event an Optionee is no longer employed by the Company as either an employee or a Consultant for any reason, the Restricted Stock purchased by exercise of options by the Optionee shall be subject to repurchase by the Company and Investors pursuant to the terms and conditions contained herein; provided that the Company's and the Investors' right to repurchase such Restricted Stock shall terminate upon its Sale of the Company or a Qualified Public Offering or if the Restricted Stock has been purchased by the Company or the Investors pursuant to the first refusal rights contained in Section 13(b) hereof."

b. After the first sentence of Section 13(a) – "Transfer of Restricted Stock" of the Plan the following sentence is inserted:

"Notwithstanding the previous sentence, an Optionee who holds 10,000 or more shares of Restricted Stock may transfer such Restricted Stock before the fourth anniversary of the date of issuance of such Restricted Stock if such transfer is to the Company or the Investors subject to the provisions of Section 13(b) hereof."

c. Section 13(b) – "First Refusal Rights" of the Plan is hereby modified and amended to read in its entirety as follows:

"The Company may elect to purchase all (but not less than all) of the shares of Restricted Stock proposed to be transferred upon the same terms and conditions as those set forth in the Sale Notice by delivering a written notice of such election to the Optionee within thirty (30) days after the receipt of the Sale Notice by the Company. If the Company has not elected to purchase all of the Restricted Stock proposed to be transferred and the Optionee and his/her permitted transferees own 10,000 or more shares of Restricted Stock, the Investors may elect to purchase all (but not less than all) of the Restricted Stock proposed to be transferred upon the same terms and conditions as those set forth in the Sale Notice by following the procedures and requirements of Section 8(B) – "Rights of First Offer" of the Second Amended and Restated Reclassification and Sale of Shares Agreement, which is incorporated herein by reference, as such section may be amended from time to time or any successor provisions thereto."

2. **Scope of Amendment**. Except as expressly amended hereby, the Plan remains in full force and effect in accordance with its terms and this Amendment to the Plan shall not by implication or otherwise alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Plan, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

3. **Governing Law**. The Plan, as amended by this Amendment, exists under and pursuant to the Delaware General Corporation Law and this Amendment to the Plan shall be governed by and construed in accordance with the laws of the State of Delaware.

4. **Counterparts.** This Amendment to the Plan may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute but one and the same instrument.

I hereby certify that the Plan was duly adopted by the Board of Directors of Ulta Salon, Cosmetics & Fragrance, Inc. on July 17, 2003.

Executed at Romeoville, Illinois on this 17th day of July, 2003.

Name: /s/ Charles Weber
Title: Sr. Exec. Vice President & C.O.O./C.F.O

* * * * * * *

I hereby certify that the foregoing Plan was approved by the stockholders of Ulta Salon, Cosmetics & Fragrance, Inc. on July 17, 2003.

Executed at Romeoville, Illinois on this 17th day of July, 2003.

/s/ Charles Weber
Secretary

EXHIBIT 10.8

**SECOND AMENDMENT AND RESTATEMENT OF THE
ULTA SALON, COSMETICS & FRAGRANCE, INC.
(FORMERLY ULTA3 COSMETICS & SALON, INC.)
RESTRICTED STOCK PLAN**

Section 1. Administration. This Plan (the "Plan") shall be known as the "Ulta Salon, Cosmetics & Fragrance, Inc. Restricted Stock Plan." The purpose of the Plan is to compensate and incent key Employees and Non-Employee Directors of Ulta Salon, Cosmetics & Fragrance, Inc. (the "Company") commensurate with the financial success of the Company. Certain capitalized terms used herein are defined in Section 8. This Plan shall be administered by a committee (herein the "Committee") composed of at least two (2) members of the Company's Board of Directors (the "Board") as appointed by the Board from time to time, but if no Committee is appointed then the entire Board shall serve as such. Each appointed Committee member may be removed from the Committee by the Board at any time without cause. In the event the Company has issued any class of common stock required to be registered under Section 12 of the Exchange Act, the Committee shall be constituted so as to comply with the disinterested administration requirements under Rule 16b-3 of the Exchange Act. Members of the Committee shall serve at the pleasure of the Board. The Committee shall have the right and power at any time and from time to time to make an offer to sell shares of the Company's Common Stock, par value $.01 per share (which shares shall be subject to the restrictions as set forth herein), to any employee or non-employee director of the Company (hereinafter, an "Employee" or a "Non-Employee Director", respectively, each a "Participant" and collectively the "Participants"); provided that the purchase price thereof shall be not less than $.01 per share. The shares issued to Participants hereunder are referred to as "Restricted Stock". The Committee shall have the power to interpret the Plan and to adopt such Rules for the administration, interpretation and application of the Plan as are consistent therewith, to interpret, amend or revoke any such Rules. The Committee, may, with the approval of the Board, employ attorneys, consultants, accountants, appraisers or other persons. The Committee, the Company and the Board shall be entitled to rely upon the advice, opinions or valuations of any such persons. All actions taken in good faith shall be final and binding upon all Participants, other holders of Restricted Stock, the Company and all other interested persons. No members of the Committee or the Board shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or Restricted Stock and all members of the Committee and the Board shall be fully protected by the Company in respect of any such action, determination or interpretation.

Section 2. Purchase and Sale of Restricted Stock. Upon the Company's receipt from a Participant of a good check in the amount of the purchase price therefor and a dated and executed Annex I to Restricted Stock Plan substantially in the form attached hereto, with such modifications as may be approved from time to time by the Committee, the Company will issue a stock certificate in the name of such Participant representing the number of shares of Restricted Stock subject to such acceptance and will deliver to such Employee or Non-Employee Director a copy of the certificate(s) representing such shares. The date of such purchase and sale is referred to herein as the "Date of Issuance" of such shares. Until the occurrence of a Sale of the Company, all certificates evidencing such shares may be held at the Company's option by the Company for the benefit of such Participant and the other holder(s) of Restricted Stock.

Section 3. Repurchase Options.

(a) In the event a Participant no longer provides Services to the Company for any reason (the date of termination of Services being referred to as the "Termination Date"), the Restricted Stock issued to such Participant (whether then held by the Participant or one or more transferees) shall be subject to repurchase by the Company pursuant to the terms and conditions set forth in this Section 3 (the "repurchase option"); provided that the Company's right to repurchase such Restricted Stock shall terminate upon a sale of the Company or a qualified Public Offering. The repurchase price of each vested share shall be the Market Value of such share as of the date of repurchase of such shares. The repurchase price of each unvested share shall be the Original Cost.

(b) Until a share of Restricted Stock becomes a vested share, such share shall be an unvested share. Subject to Section 3(c) below, unless the Committee determines otherwise, shares of Restricted Stock issued to a Participant on a particular date of issuance will become Vested Shares in accordance with the following schedule if as of each date set forth the Participant remains in the Service of the Company or any subsidiary:

Date	Cumulative Percentage of Shares of Participant Stock Which are Vested Shares
the Date of Issuance	0%
the first anniversary of the Date of Issuance	25%
the second anniversary of the Date of Issuance	50%
the third anniversary of the Date of Issuance	75%
the fourth anniversary of the Date of Issuance	100%

(c) In the event of a Sale of the Company, all shares of Restricted Stock not having been previously vested hereunder shall become Vested Shares on the date of such Sale of the Company. If the Participant's Service to the Company is terminated by reason of the Participant's death or Disability, all shares of Restricted Stock shall become vested on such Termination Date. If the Participant's Service to the Company is terminated by reason of the Participant's Retirement, all shares of Restricted Stock which would have become Vested Shares had Participant's Service to the Company continued during the twelve (12) months following the Termination Date.

(d) The Company may elect to purchase all of a Participant's Restricted Stock by delivery of written notice (the "Repurchase Notice") to the holder or holders of such Restricted Stock within ninety (90) days after the third anniversary date of the Termination Date if the termination was due to death, Disability or Retirement, or within one hundred eighty (180) days after the Termination Date where termination was due to any reason except for death, permanent Disability or Retirement. The Repurchase Notice shall set forth the number of shares of

Restricted Stock to be acquired from such holder, the number of Vested Shares and Unvested Shares to be acquired from such holder, the aggregate consideration to be paid for such shares and the time and place for the closing of the transaction.

(e) If for any reason the Company does not elect to purchase all of the shares of Restricted Stock of a Participant pursuant to the Repurchase Option, and the Participant and his/her permitted transferees who owns ten thousand (10,000) or more shares of Restricted Stock, the Investors shall be entitled to exercise the Company's Repurchase Option in the manner set forth in Section 3(d) for the shares of such Restricted Stock the Company has not elected to purchase (the "Available Shares"). As soon as practicable after the Company has determined that there will be Available Shares, but in any event no later than sixty (60) days prior to the expiration of the Company's period of time to serve the Repurchase Notice, the Company shall deliver written notice (the "Option Notice") to the Investors setting forth the number of Available Shares and the price for each Available Share. The Investors may elect to purchase any number of Available Shares by delivering written notice to the Company within thirty (30) days after receipt of the Option Notice from the Company. In the event the aggregate number as to which elections are made exceeds the number of Available Shares, the shares shall be allocated pro rata according to the number of shares of Underlying Common Stock held by the Investors at the time of delivery of the Supplemental Repurchase Notice. As soon as practicable, and in any event within 5 days, after the expiration of the second thirty (30) day period set forth above, the Company shall notify each holder of Restricted Stock subject to purchase as to the number of shares being purchased from such holder by each Investor (the "Supplemental Repurchase Notice"). At the time the Company delivers the Supplemental Repurchase Notice to the holder(s) of Restricted Stock, the Investors shall also receive written notice from the Company setting forth the number of shares each of them is entitled to purchase, the aggregate purchase price and the time and place of the closing of the transaction. If both the Company and the Investors have exercised their rights to purchase Restricted Stock pursuant to the Repurchase Option, the number of shares of Restricted Stock to be purchased at Original Cost and at Market Value or a percentage thereof will be prorated among the Company and the Investors based upon the total number of shares each is to purchase.

(f) The closing of the purchase transaction(s) shall take place an the date designated by the Company in the Repurchase Notice or Supplemental Repurchase Notice, which date shall not be more than sixty (60) days and not less than ten (10) days after the delivery of the later of either such notice to be delivered. The Company and/or the Investors will pay for the Restricted Stock to be purchased pursuant to the Repurchase Option by delivery of a check or checks in the aggregate amount of the total purchase price. The purchasers of such Restricted Stock will be entitled to receive customary representations and warranties from the seller regarding the sale of such Restricted Stock.

Section 4. Restrictions on Transfer.

(a) Transfer of Restricted Stock. A Participant may not sell, pledge or otherwise transfer any interest in any Unvested Shares. A Participant may not sell, pledge or otherwise transfer any interest in any Vested Shares except pursuant to the provisions of Section 5 and 6 hereof ("Exempt Transfers") and except pursuant to the provisions of this Section 4; provided that in no event may any transfer of Restricted Stock pursuant to this Section 4 be made for any

consideration other than cash payable upon the consummation of such transfer. At least sixty (60) days prior to making any transfer other than an Exempt Transfer, the transferring Participant must deliver a written notice (the "Sale Notice") to the Company. The Sale Notice will disclose in reasonable detail the identity of the prospective transferee(s), the number of shares of Restricted Stock proposed to be transferred and the terms and conditions of the proposed transfer. The Participant (and the transferees of each) may not consummate any such transfer until sixty (60) days after the Sale Notice has been delivered to the Company.

(b) First Refusal Rights. The Company may elect to purchase all (but not less than all) of the shares of Restricted Stock proposed to be transferred upon the same terms and conditions as those set forth in the Sale Notice by delivering a written notice of such election to the Participant within thirty (30) days after the receipt of the Sale Notice by the Company. If the Company has not elected to purchase all of the Restricted Stock proposed to be transferred and the Participant and his/her permitted transferees own ten thousand (10,000) or more shares of Restricted Stock, the Investors may elect to purchase all (but not less than all) of the Restricted Stock proposed to be transferred upon the same terms and conditions as those set forth in the Sale Notice by delivering a written notice of such election to the Participant within sixty (60) days after the receipt of the Sale Notice by the Company. If more than one Investor elects to purchase such Restricted Stock, the number of shares to be purchased by the electing Investors will be allocated among them pro rata on the basis of the number of shares of the Company's Underlying Common Stock held by them. Any person who has the right to acquire Restricted Stock pursuant to this Section 4(b) will be given up to sixty (60) days (after it has been determined that such person has such right) to consummate the purchase and sale of such Restricted Stock. If neither the Company nor the Investors have elected to purchase all of the Restricted Stock specified in the Sale Notice, the Participant may, subject to the provisions of Section 4(c), transfer the Restricted Stock specified in the Sale Notice at a price and on terms no more favorable to the transferees) thereof than specified in the Sale Notice during the sixty (60) day period immediately following the expiration of such days. Any shares of Restricted Stock not transferred within such sixty (60) day period will continue to be subject to the provisions of this Section 4(b) upon subsequent transfer.

(c) Certain Permitted Transfers. The restrictions contained in this Section 4 will not apply with respect a Participant's transfer of shares of Restricted Stock (i) pursuant to applicable laws of descent and distribution or (ii) among such Participant's family group; provided that in each case the restrictions contained in this Section will continue to be applicable to the Restricted Stock after any such transfer and the transferees of such Restricted Stock have so agreed in writing. The "family group" of a Participant means the spouse and descendants (whether natural or adopted) of such Participant, and any trust, partnership or entity solely for the benefit of such Participant and/or such Participant's spouse and/or descendants.

(d) Termination of Restrictions. The restrictions on the transfer of Restricted Stock set forth in this Section 4 will continue with respect to each share of Restricted Stock until the date on which such Restricted Stock has been transferred in a transaction permitted by this Section (except in a transaction contemplated by Section 4(c)); provided in any event the restrictions on transfers set forth in this Section 4 will terminate with respect to particular shares of Restricted Stock on the first to occur of (i) the tenth anniversary of the Date of Issuance

thereof, (ii) a Qualified Public Offering (as to Vested Shares only) and (iii) a Sale of the Company.

(e) Additional Restrictions. Prior to making any transfer of any interest in Restricted Stock to any Person, a Participant must use reasonable efforts to ascertain whether the proposed transferees (or any Person affiliated with the proposed transferees) is a competitor of the Company. If a Participant has reason to believe that the proposed transferee is or is affiliated with or acting on behalf of such a competitor, the Participant will not transfer any Restricted Stock to the proposed transferee.

Section 5. Additional Restrictions on Transfer.

(a) Each certificate representing Restricted Stock will bear the following legend:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON__________, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER, CERTAIN REPURCHASE OPTIONS AND CERTAIN OTHER AGREEMENTS SET FORTH IN THE ULTA 3 COSMETICS & SALON, INC. RESTRICTED STOCK PLAN, A COPY OF WHICH MAY BE OBTAINED BY THE HOLDER HEREOF AT THE COMPANY'S PRINCIPAL PLACE OF BUSINESS WITHOUT CHARGE."

(b) No holder of Restricted Stock may sell, transfer or dispose of any Restricted Stock (except in a Public Offering) without first delivering to the Company an opinion of counsel reasonably acceptable in form and substance to the Company that registration under the Securities Act of 1933, as amended is not required in connection with such transfer.

(c) No holder of Restricted Stock may effect any public sale or distribution of any equity securities of the Company, or any securities convertible into or exchangeable or exercisable for such securities, during the seven days prior to and the ninety (90) days after the effectiveness of any Public Offering except as part of Public Offering if permitted.

(d) In the event that the Restricted Stock issued hereunder is subject to an effective registration under the Securities Act of 1933, such stock may, in general, be freely transferred unless the Participant is deemed to be an "affiliate" of the Company as that term is defined in Rule 144 as promulgated by the Securities and Exchange Commission. Participant is required to comply with the provisions of Rule 144 to the extent such Rule may be applicable to the Restricted Stock acquired hereunder, and to refrain from reoffering, reselling or otherwise disposing of any of the Restricted Stock in any manner which would violate the Securities Act of 1933 or any other applicable Federal or State securities law.

Section 6. Sale of the Company.

(a) If the Board and the holders of a majority of the Preferred Stock then outstanding approve a Sale of the Company (the “Approved Sale”), the holders of Restricted Stock must consent to and raise no objection against the Approved Sale, and if the Approved Sale is structured as a sale of stock, the holders of Restricted Stock must agree to sell all or the proportionate portion of their shares of Restricted Stock on the terms and conditions approved by the Board and the Directing Investors. The holders of Restricted Stock must take all necessary and desirable actions in connection with the consummation of the Approved Sale.

(b) The obligations of the holders of Restricted Stock with respect to an Approved Sale are subject to the satisfaction of the following conditions: (i) upon the consummation of the Approved Sale, all of the holders of the Company’s Common Stock will receive the same form and amount of consideration per share of the Company’s Common Stock, or if any holders are given an option as to the form and amount of consideration to be received, all holders will be given the same option, (ii) all of the holders of the Company’s Common Stock will, after taking into consideration the conversion price then in effect on the Company’s Preferred Stock, receive the same form and amount of consideration per share of the Company’s Preferred Stock and (iii) all holders of then exercisable rights to acquire shares of the Company’s Common Stock will be given an opportunity to either (A) exercise such rights prior to the consummation of the Approved Sale and participate in such sale as holders of the Company’s Common Stock or (B) upon the consummation of the Approved Sale, receive in exchange for such rights consideration equal to the amount determined by multiplying (1) the same amount of consideration per share of the Company’s Common Stock received by the holders of the Company’s Common Stock in connection with the Approved Sale less the exercise price (per share of the Company’s Common Stock) of such rights to acquire the Company’s Common Stock by (2) the number of shares of the Company’s Common Stock represented by such rights.

(c) If the Company or the holders of a majority of the Company’s securities enter into any negotiation or transaction for which Rule 506 (or any similar Rule then in effect) promulgated by the Securities Exchange Commission may be available with respect to such negotiation or transaction (including a merger, consolidation or other reorganization), the holders of Restricted Stock must, at the request of the Company, appoint a purchaser representative (as such term is defined in Rule 501) reasonably acceptable to the Company. If any holder of Restricted Stock appoints the purchaser representative designated by the Company, the Company will pay the fees of such purchaser representative, but if any holder of Restricted Stock declines to appoint the purchaser representative designated by the Company such holder must appoint another purchaser representative (reasonably acceptable to the Company), and such holder will be responsible for the fees of the purchaser representative so appointed.

(d) Each Participant and each other holder of Restricted Stock (if any) will bear his pro rata share (based upon the number of shares sold) of the costs of any sale of Restricted Stock pursuant to an Approved Sale to the extent such costs are incurred for the benefit of all holders of the Company’s Common Stock and are not otherwise paid by the Company or the acquiring party. Costs incurred by any Participant or any other holder of Restricted Stock on his own behalf will not be considered costs of the transaction hereunder.

(e) The provisions of this Section 6 will terminate with respect to particular shares of Restricted Stock upon the first to occur of (i) the tenth anniversary of the Date of Issuance thereof, (ii) a Qualified Public Offering and (iii) a Sale of the Company.

Section 7. Voting Stock. So long as the Investors hold any shares of the Company's Underlying Common Stock, each share of Restricted Stock must be voted as directed by the Directing Investors with respect to a proposed Sale of the Company or in connection with a proposed Public Offering. Participant and the Company each will take all necessary or desirable actions as are requested by the Directing Investors, in order to cause all shares of Restricted Stock to be voted pursuant to such direction of the Directing Investors. Participant will deliver to the Company upon purchase of any shares of Restricted Stock, an irrevocable proxy with respect to such shares in favor of the Directing Investors. The provisions of this Section 7 will terminate with respect to particular shares of Restricted Stock upon the first to occur of a Qualified Public Offering and the tenth anniversary of the Date of Issuance thereof.

Section 8. Definitions.

"Company's Common Stock" means Common Stock, par value $.01 per share of the Company.

"Directing Investors" means those Investors holding a majority of the Underlying Common Stock.

"Disability" means the mental or physical incapacity of the Participant such that Participant would qualify for Disability benefits under the Company's long term Disability plan, if a participant therein.

"Independent Third Party" means any person who, immediately prior to the contemplated transaction, does not own in excess of 5% of the Company's Common Stock on a fully-diluted basis, who is not controlling, controlled by or under common control with the Company or any such 5% owner of the Company's Common Stock and who is not the spouse or a descendent (by birth or adoption) of any such 5% owner of the Company's Common Stock.

"Investors" means the holders (other than Richard E. George and Terry J. Hanson) of the Preferred Stock. Any action to be taken or determination to be made under this Plan by the Investors shall be taken or made by Directing Investors.

"Market Value" of any share of Restricted Stock means (a) the closing price of the Company's Common Stock on the principal exchange on which the Common Stock is then trading, if any (or as reported on any composite index which includes such principal exchange), on the trading day previous to such date, or (b) if the Company's Common Stock is not traded on an exchange but is reported by the National Association of Securities Dealers, Inc. Automated Quotations, Inc. National Market System ("NASDAQ System") or a successor quotation system, the last sales price on the most recent trading day previous to such date, or (c) of the Common Stock is not listed on any Securities Exchange or quoted in the NASDAQ System, the Market Value will be the fair value of the Common Stock as determined in good faith by the Board.

"Original Cost" of any share of Restricted Stock will be equal to the price paid for such share on its Date of Issuance (as proportionally adjusted for all stock splits, stock dividends and other recapitalization affecting the Company's Common Stock subsequent to such Date of Issuance).

"Participant" means any Employee and Non-Employee Director who is selected by the Committee to receive shares of the Company's Common Stock pursuant to this Plan.

"Preferred Stock" means the Series I Convertible Preferred Stock, Series II Convertible Preferred Stock, Series IV Convertible Preferred Stock of the Company and such other additional convertible preferred stock as the Company may issue from time to time.

"Public Offering" means the sale, in an underwritten Public Offering registered under the Securities Act, of shares of the Company's Common Stock.

"Qualified Public Offering" means a Public Offering in which (i) the aggregate cash proceeds received by the Company for the shares sold in such offering is at least $15 million; (ii) the price per share paid by the public for the shares sold in such offering implies a total equity valuation of the Company of at least $100 million; and (iii) the shares sold in such offering are listed on the American Stock Exchange or the New York Stock Exchange or are quoted on the NASDAQ System.

"Restricted Stock" For all purposes of this Plan, Restricted Stock will continue to be Restricted Stock in the hands of any holder other than the Employee or Non-Employee Director to whom issued (except for the Company, any Investor and purchasers pursuant to an offering registered with the Securities Exchange Commission or purchasers pursuant to a Rule 144 transaction), and each such other holder of Restricted Stock will succeed to all rights and obligations attributable to such Employee or Non-Employee Director as a holder of Restricted Stock hereunder. Restricted Stock will also include shares of the Company's capital stock issued with respect to shares of Restricted Stock by way of a stock split, stock dividend or other recapitalization.

"Retirement" means the retirement of the Employee from the Company on or after attaining age 55, or as otherwise may be agreed upon by the Employee and the Company with the approval of the Committee.

"Sale of the Company" means the sale of the Company to an Independent Third Party or affiliated group of Independent Third Parties pursuant to which such party or parties (i) acquire, in one transaction or a series of related transactions, capital stock of the Company possessing the voting power to elect a majority of the Board (whether by merger, consolidation or sale or transfer of the Company's capital stock) or (ii) acquire by sale, lease, assignment, transfer or other conveyance all or substantially all of the Company's assets determined on a consolidated basis.

"Securities Act" means the Securities Act of 1933, as amended from time to time.

"Service" means the performance of service for the Company, whether as an employee or as a member of the Board.

"Subsidiary" means any corporation of which the Company owns securities having a majority of the ordinary voting power in electing the Board directly or through one or more subsidiaries.

"Underlying Common Stock" means (i) the Common Stock issued or issuable upon conversion of the Preferred Stock and (ii) any Common Stock issued or issuable with respect to the securities referred to in clause (i) above by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization. Any Person who holds Preferred Stock will be deemed to be the holder of the Underlying Common Stock obtainable upon conversion of the Preferred Stock in connection with the transfer thereof or otherwise regardless of any restriction or limitation on the conversion of the Preferred Stock. As to any particular shares of Underlying Common Stock, such shares will cease to be Underlying Common Stock when they have been (a) effectively registered under the Securities Act and disposed of in accordance with the registration Statement covering them or (b) distributed to the public through a broker, dealer or market maker pursuant to Rule 144 under the Securities Act (or any similar provision then in force).

Section 9. General Provisions

(a) Transfers in Violation of Plan Restrictions. Any transfer or attempted transfer of any Restricted Stock in violation of any provision of this Plan shall be void, and the Company shall not record such transfer on its books or treat any purported transferee of such Restricted Stock as the owner of such stock for any purposes

(b) Severability. Whenever possible, each provision of this Plan will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Plan is held to be invalid, illegal or unenforceable in any respect under any applicable law or Rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Plan will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

(c) Successors and Assigns. Except as otherwise provided herein, this Agreement shall bind and inure to the benefit of and be enforceable by the Participants, the Company, the Investors and their respective successors and assigns (including subsequent holders of Restricted Stock); provided that the rights and obligations of Participant under this Agreement shall not be assignable except in connection with a permitted transfer of Restricted Stock hereunder.

(d) Choice of Law. The corporate law of the State of Delaware will govern all questions concerning the relative rights of the Company and the holders of Restricted Stock. All other questions concerning the construction, validity and interpretation of this Agreement and the exhibits hereto will be governed by the internal law and not the law of conflicts, of the State of Delaware.

(e) Third Party Beneficiaries. The parties hereto hereby acknowledge that the Investors are third party beneficiaries to this Plan. Accordingly, the provisions of this Plan applicable to the Investors are intended to inure to the benefit of and be enforceable by the Investors and their assignees.

(f) Amendment of the Plan. The Board may, insofar as permitted by law, from time to time, with respect to any shares of Restricted Stock, suspend or discontinue the Plan or revise or amend it in any respect whatsoever except that, without approval of the holders of a majority of the Restricted Stock of the Company, no such revision or amendment shall remove the administration of the Plan from the Committee. No amendment or termination of the Plan shall, without the consent of the Participant alter or impair any rights under the Restricted Stock theretofore granted to such Participant. Notwithstanding the foregoing, this Plan may be modified by the Board to eliminate the rights of the Investors with respect to all Restricted Stock issued hereunder with the appropriate consent of the Directing Investors only. Furthermore, the Plan may not, without the approval of the holders of a majority of the equity securities of the Company, be amended in any manner which would result in a failure to comply with Section 16(b) of the Securities Exchange Act of 1934 or similar statutes or Rules or regulations adopted thereunder.

(g) Notices. All notices required to be given under this Plan shall be deemed given as of the date of hand delivery or three days after mailing via first class mail. Notices to the Company shall be given to the Chief Financial Officer or such other officer as the Company may designate. Notices to Participants shall be given at the last mailing address on file with the Company.

DATED: ____ _____, 2003

ULTA SALON, COSMETICS & FRAGRANCE, INC.

By. ______________________________

Its: ______________________________

IN WITNESSETH WHEREOF, the Assistant Secretary of the Company hereby certifies that the Plan was approved by consent of the required number of Company Shareholders effective ____ _____, 2003.

____

Assistant Secretary

Dated: ____ _____, 2003

ANNEX I TO RESTRICTED STOCK PLAN

____________________ ("Participant") hereby accepts the offer of Ulta Salon, Cosmetics & Fragrance, Inc. (the "Company") and purchases__________shares (the "Shares") of the Company's Common Stock, par value $.01, per share, pursuant to the terms and provisions of the Second Amendment and Restatement of the Company's Restricted Stock Plan (the "Plan") at a price of $__________per share. Enclosed with this acceptance is a good check in the amount of $__________, as full payment of the Shares.

Participant acknowledges that each of the Shares purchased under this acceptance is a share of Restricted Stock (as that term is defined in the Plan), subject to the various restrictions on transfer and the vesting provisions of the Plan.

(a) Participant agrees that within thirty (30) days after the date hereof, he will make an effective election with the Internal Revenue Service under Section 83 (b) of the Internal Revenue Code and the regulations promulgated thereunder.

(b) Participant represents and warrants to the Company that:

(i) the shares are, being acquired for his own account and not with a view to, or present intention of, distribution thereof in violation of the Securities Act of 1933 as amended (the "Securities Act") or any applicable state securities laws, and will not be disposed of in contravention of the Securities Act or any applicable state securities laws;

(ii) Participant is able to bear the economic risk of his investment in the Shares for an indefinite period of time because the Shares have not been registered under the Securities Act and, therefore, cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is available;

(iii) Participant has had an opportunity to ask questions and receive answers Concerning the terms and conditions of the offering of Shares to him and has had full access to such other information concerning the Company as he has requested;

(iv) this acceptance which incorporates by reference each of the terms and provisions of the Plan constitutes the legal, valid and binding obligation of Participant, enforceable in accordance with its terms; and

(v) the execution and deliver of this Agreement and the purchase of the Shares subject to the Plan, compliance with the terms of the Plan by Participant and Participant's Service to the Company (as such term is defined in the Plan) does not and will not conflict with, violate or cause a breach of any agreement, contract or instrument to which Participant is a party or any judgment, order or decree to which Participant is subject.

(c) Participant and the Company acknowledge and agree that the shares will be issued in connection with and as a part of the compensation and incentive arrangements between the Company and Participant. Participant agrees that, in addition to the provisions of any other agreement the Participant may at any time enter into with the Company relating to

noncompetition, nonsolicitation and confidentiality[1], from the date hereof and continuing for the longer of: (a) a period of one year after Participant no longer owns any shares of Restricted Stock or (b) if Participant's Service to the Company is terminated for any reason, a period of one year after the date of such termination, Participant will not purchase equity securities of any corporation, become a director, officer, agent or employee of a corporation or a member of a partnership, engage as a sole proprietor in any business, act as a consultant to or provide any form of financial assistance to, or otherwise engage directly or indirectly in any enterprise which, in the reasonable opinion of the Company, is a Competitor (as hereinafter defined); provided that the restrictions in this sentence shall not apply to (i) the acquisition of equity securities of a Competitor if such equity securities are received as consideration in a merger or sale of substantially all of the assets of a corporation in which such Participant owns equity securities, and which was not a Competitor at the time of such Participant's initial investment in such corporation, with or to a corporation that is or subsequently becomes a Competitor, but only to the extent that any such merger or sale of assets is entered into in good faith and not for the purpose of avoiding the restrictions hereof, or (ii) the ownership of less than five percent (5%) of equity securities of a publicly tendered cosmetic or beauty retailer in the United States.

"Competitor" means any business, firm or enterprise engaged in a business substantially similar to the business engaged in by the Company as of the date of this Agreement or during the Aperiod of Participant's Service to the Company. A business shall be deemed substantially similar to the Company if it has a similar business strategy and similar product mix to the Company or has the intent to develop such a business.

(d) Participant and the Company acknowledge that Participant, the Company and the Investors (as that term is defined in the Plan) will be entitled to enforce their rights under this Agreement specifically, to recover damages and costs (including reasonable attorney's fees) caused by any breach of any provision of this Agreement, to exercise all other rights existing in their favor, and agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that Participant, the Company, or the Investors may in their sole discretion apply to any court of law or equity of competent jurisdiction (without posting any bond or deposit) for specific performance and/or other injunctive relief in order to enforce or prevent any violations of the provisions of this Agreement.

(e) The provisions of this Agreement may be amended and waived only with the prior written consent of the Company, Participant and the Investors.

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[1] Note: At the time of any issuance under the Plan, the Company should verify that there is also an appropriate form of the Company's standard "Agreement Regarding Noncompetition, Nonsolicitation and Confidential Information", signed by the Participant, in the Company's files.

(f) This acceptance, together with the Plan which is incorporated herein by reference, embody the complete agreement and understanding of Participant and the Company and supersede and preempt any prior understandings, agreements or representations by either of them, written or oral, with respect to the subject matter hereof in any way.

Dated: ______________________

Participant:

____

Name: ______________________

Acceptance Acknowledged:

ULTA SALON, COSMETICS & FRAGRANCE, INC.

By ______________________

Its: ______________________

EXHIBIT 10.9

ULTA SALON, COSMETICS & FRAGRANCE, INC.

2002 EQUITY INCENTIVE PLAN (CONFORMED)

1. Purposes of the Plan. The purposes of the Ulta Salon, Cosmetics & Fragrance, Inc. 2002 Equity Incentive Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, Directors and Consultants to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Non-Qualified Stock Options, as determined by the Administrator at the time of grant.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or the Committee responsible for conducting the general administration of the Plan, as applicable, in accordance with Section 4 hereof.

(b) "Applicable Laws" means the requirements relating to the administration of stock option plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Options are granted under the Plan.

(c) "Board" means the Board of Directors of the Company.

(d) "Cause" means, as determined in the sole discretion of the Board, a Holder's (i) commission of a felony; (ii) dishonesty or misrepresentation involving the Company; (iii) serious misconduct in the performance or non-performance of Holder's responsibilities to the Company (e.g. gross negligence, willful misconduct, gross insubordination or unethical conduct); (iv) for Holder's who are Employee's, violation of any material condition of employment; or (v) for Holder's who are Employee's, voluntary termination of employment by the Holder without providing the Company with a minimum of two weeks notice, unless the giving of such notice is otherwise waived by the Company.

(e) "Code" means the Internal Revenue Code of 1986, as amended, or any successor statute or statutes thereto. Reference to any particular Code section shall include any successor section.

(f) "Committee" means a committee appointed by the Board in accordance with Section 4 hereof.

(g) "Common Stock" means the Common Stock of the Company, par value $0.01 per share.

(h) "Company" means Ulta Salon, Cosmetics & Fragrance, Inc., a Delaware corporation.

(i) “Consultant” means any consultant or adviser if: (i) the consultant or adviser renders bona fide services to the Company; (ii) the services rendered by the consultant or adviser are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company’s securities; and (iii) the consultant or adviser is a natural person.

(j) “Directing Investors” means those Investors holding a majority of the Underlying Common Stock.

(k) “Director” means a member of the Board.

(l) “Disability” means the mental or physical incapacity of the Holder such that Holder would qualify for disability benefits under the definition of disability in the Company’s long term disability plan, if a participant therein.

(m) “Employee” means any person, including an Officer or Director, who is an employee (as defined in accordance with Section 3401(c) of the Code) of the Company or any Parent or Subsidiary of the Company. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. For purposes of Incentive Stock Options, no such leave may exceed ninety (90) days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. Neither service as a Director nor payment of a director’s fee by the Company shall be sufficient, by itself, to constitute “employment” by the Company.

(n) “Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto. Reference to any particular Exchange Act section shall include any successor section.

(o) “Fair Market Value” means, as of any date, the value of a share of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including, without limitation, the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for a share of such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system for the last market trading day prior to the time of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the last sales price for a share of the Common Stock on the last market trading day prior to the day of determination; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Board.

(p) "Family Member" means, and is limited to, any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the Holder's household (other than a tenant or employee), a trust in which these persons have more than fifty percent of the beneficial interest, a foundation in which these persons (or the Holder) control the management of assets, and any other entity in which these persons (or the Holder) own more than fifty percent of the voting interests.

(q) "Holder" means a person who has been granted or awarded an Option or who holds Shares acquired pursuant to the exercise of an Option.

(r) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and which is designated as an Incentive Stock Option by the Administrator.

(s) "Independent Director" means a Director who is not an Employee of the Company.

(t) "Independent Third Party" means any person who, immediately prior to the contemplated transaction, does not own in excess of five percent (5%) of the Company's Common Stock on a fully-diluted basis, who is not controlling, controlled by or under common control with the Company or any such five percent (5%) owner of the Company's Common Stock and who is not the spouse or a descendent (by birth or adoption) of any such five percent (5%) owner of the Company's Common Stock.

(u) "Investors" means the record owners of the Company's Preferred Stock as of a date of determination.

(v) "Non-Qualified Stock Option" means an Option (or portion thereof) that is not designated as an Incentive Stock Option by the Administrator, or which is designated as an Incentive Stock Option by the Administrator but fails to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(w) "Officer" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(x) "Option" means a stock option granted pursuant to the Plan.

(y) "Option Agreement" means a written agreement between the Company and a Holder evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(z) "Parent" means any corporation, whether now or hereafter existing (other than the Company), in an unbroken chain of corporations ending with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing

more than fifty percent of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(aa) "Plan" means the Ulta Salon, Cosmetics & Fragrance, Inc. 2002 Equity Incentive Plan.

(bb) "Preferred Stock" means Series I Convertible Preferred Stock, Series II Convertible Preferred Stock, Series IV Convertible Preferred Stock of the Company and such other additional convertible preferred stock as the Company may issue from time to time.

(cc) "Public Offering" means the sale, in an underwritten public offering registered under the Securities Act of shares of the Company's Common Stock.

(dd) "Public Trading Date" means the first date upon which Common Stock of the Company is listed (or approved for listing) upon notice of issuance on any securities exchange or designated (or approved for designation) upon notice of issuance as a national market security on an interdealer quotation system.

(ee) "Qualified Public Offering" means a Public Offering in which (i) the aggregate cash proceeds received by the Company for the shares sold in such offering is at least $15 million; (ii) the price per Share paid by the public for the Shares sold in such offering implies a total equity valuation of the Company of at least $100 million; and (iii) the Shares sold in such offering are listed on the American Stock Exchange or the New York Stock Exchange or are quoted on the NASDAQ System.

(ff) "Retirement" means the retirement of the Holder from the Company on or after attaining age 55, or as otherwise may be agreed upon by the Holder and the Company with the approval of the Administrator.

(gg) "Rule 16b-3" means that certain Rule 16b-3 under the Exchange Act, as such Rule may be amended from time to time.

(hh) "Sale of the Company" means the sale of the Company to an Independent Third Party or affiliated group of Independent Third Parties pursuant to which such party or parties (i) acquire, in one transaction or a series of related transactions, capital stock of the Company possessing the voting power to elect a majority of the Company's Board (whether by merger, consolidation or sale or transfer of the Company's capital stock) or (ii) acquire by sale, lease, assignment, transfer or other conveyance all or substantially all of the Company's assets determined on a consolidated basis.

(ii) "Section 16(b)" means Section 16(b) of the Exchange Act, as such Section may be amended from time to time.

(jj) "Securities Act" means the Securities Act of 1933, as amended, or any successor statute or statutes thereto. Reference to any particular Securities Act section shall include any successor section.

(kk) "Service Provider" means an Employee, Consultant or an Independent Director.

(ll) "Share" means a share of Common Stock, as adjusted in accordance with Section 13 below.

(mm) Subsidiary" means any corporation, whether now or hereafter existing (other than the Company), in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing more than fifty percent of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(nn) "Underlying Common Stock" means (i) the Common Stock issued or issuable upon conversion of the Preferred Stock and (ii) any Common Stock issued or issuable with respect to the securities referred to in clause (i) above by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization. Any person or entity who holds Preferred Stock will be deemed to be the holder of the Underlying Common Stock obtainable upon conversion of the Preferred Stock in connection with the transfer thereof or otherwise regardless of any restriction or limitation on the conversion of the Preferred Stock. As to any particular shares of Underlying Common Stock, such shares will cease to be Underlying Common Stock when the), have been (a) effectively registered under the Securities Act and disposed of in accordance with the registration statement covering them or (b) distributed to the public through a broker, dealer or market maker pursuant to Rule 144 under the Securities Act (or any similar provision then in force)

3. Stock Subject to the Plan. Subject to the provisions of Section 13 of the Plan, the shares of stock subject to Options shall be Common Stock, initially shares of the Company's Common Stock, par value $0.01 per share. Subject to the provisions of Section 13 of the Plan, the maximum aggregate number of Shares which may be issued upon exercise of such Options is 5,686,799 Shares. Shares issued upon exercise of Options may be authorized but unissued, or reacquired Common Stock. If an Option granted under this Plan, or the Ulta Salon, Cosmetics & Fragrance, Inc. Second Amended and Restated Stock Option Plan (the "Prior Plan") expires or becomes unexercisable without having been exercised in full, the unpurchased Shares which were subject thereto shall become available for future grant or sale under this Plan (unless this Plan has terminated). Shares which are delivered by the Holder or withheld by the Company upon the exercise of an Option under the Plan, or the Prior Plan, in payment of the exercise price thereof or tax withholding thereon, may again be optioned, granted or awarded under this Plan, subject to the limitations of this Section 3. Notwithstanding the provisions of this Section 3, no Shares may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an Incentive Stock Option under Code Section 422.

4. Administration of the Plan.

(a) Administrator. Unless and until the Board delegates administration to a Committee as set forth below, the Plan shall be administered by the Board. The Board may delegate administration of the Plan to a Committee or Committees of one or more members of the Board, and the term "Committee" shall apply to any person or persons to whom such

authority has been delegated. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Notwithstanding the foregoing, however, from and after the Public Trading Date, a Committee of the Board shall administer the Plan and the Committee shall consist solely of two or more Independent Directors each of whom is both an "outside director," within the meaning of Section 162(m) of the Code, and a "non-employee director" within the meaning of Rule 16b-3. Within the scope of such authority, the Board or the Committee may (i) delegate to a committee of one or more members of the Board who are not Independent Directors the authority to grant awards under the Plan to eligible persons who are either (1) not then "covered employees," within the meaning of Section 162(m) of the Code and are not expected to be "covered employees" at the time of recognition of income resulting from such award or (2) not persons with respect to whom the Company wishes to comply with Section 162(m) of the Code and/or (ii) delegate to a committee of one or more members of the Board who are not "non-employee directors," within the meaning of Rule 16b-3, the authority to grant awards under the Plan to eligible persons who are not then subject to Section 16 of the Exchange Act. The Board may abolish the Committee at any time and revest in the Board the administration of the Plan. Appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written notice to the Board. Vacancies in the Committee may only be filled by the Board.

(b) Powers of the Administrator. Subject to the provisions of the Plan and the specific duties delegated by the Board to such Committee, and subject to the approval of any relevant authorities, the Administrator shall have the authority in its sole discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Options may from time to time be granted hereunder;

(iii) to determine the number of Shares to be covered by each such award granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions of any Option granted hereunder (such terms and conditions include, but are not limited to, the exercise price, the time or times when Options may vest or be exercised (which may be based on performance criteria), any vesting acceleration, and any restriction or limitation regarding any Option or the Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine);

(vi) to determine whether to offer to buyout a previously granted Option as provided in subsection 10(h) and to determine the terms and conditions of such offer and buyout (including whether payment is to be made in cash or Shares);

(vii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(viii) to allow Holders to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option that number of Shares having a Fair Market Value equal to the minimum amount required to be withheld based on the statutory withholding rates for federal and state tax purposes that apply to supplemental taxable income. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by Holders to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable;

(ix) to amend or terminate the Plan as provided in Section 15;

(x) to amend any outstanding Option Agreement; provided that no such amendment shall impair the rights of any Holder without the consent of the Holder; and

(xi) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan and to exercise such powers and perform such acts as the Administrator deems necessary or desirable to promote the best interests of the Company which are not in conflict with the provisions of the Plan.

(c) Effect of Administrator's Decision and Indemnification. All decisions, determinations and interpretations of the Administrator shall be final and binding on all Holders, the Company and all other interested persons. The Board and/or the Committee, with the approval of the Board, may employ attorneys, consultants, accountants, appraisers or other persons to assist in the administration of the Plan. The Board, the Committee and the Company shall be entitled to rely upon the advice, opinions or valuations of any such persons. No members of the Committee or the Board shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan, any Option and all members of the Committee and the Board shall be fully protected by the Company in respect of any such action, determination or interpretation.

5. Eligibility. Non-Qualified Stock Options may be granted to Service Providers. Incentive Stock Options may be granted only to Employees. If otherwise eligible, a Service Provider who has been granted an Option may be granted additional Options.

6. Limitations.

(a) Each Option shall be designated by the Administrator in the Option Agreement as either an Incentive Stock Option or a Non-Qualified Stock Option. However, notwithstanding such designations, to the extent that the aggregate Fair Market Value of Shares subject to a Holder's Incentive Stock Options and other incentive stock options granted by the

Company, any Parent or Subsidiary, which become exercisable for the first time during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds $100,000, such excess Options or other options shall be treated as Non-Qualified Stock Options.

For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares shall be determined as of the time of grant.

(b) Neither the Plan nor any Option shall confer upon a Holder any right with respect to continuing the Holder's employment or consulting relationship with the Company, nor shall they interfere in any way with the Holder's right or the Company's right to terminate such employment or consulting relationship at any time, with or without cause.

(c) No Service Provider shall be granted, in any calendar year, Options to purchase more than 1,000,000 Shares; *provided, however,* that the foregoing limitation shall not apply prior to the Public Trading Date and, following the Public Trading Date, the foregoing limitation shall not apply until the earliest of: (i) the first material modification of the Plan (including any increase in the number of shares reserved for issuance under the Plan in accordance with Section 3); (ii) the issuance of all of the shares of Common Stock reserved for issuance under the Plan; (iii) the expiration of the Plan; (iv) the first meeting of stockholders at which Directors of the Company are to be elected that occurs after the close of the third calendar year following the calendar year in which occurred the first registration of an equity security of the Company under Section 12 of the Exchange Act; or (v) such other date required by Section 162(m) of the Code and the rules and regulations promulgated thereunder. The foregoing limitation shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 13. For purposes of this Section 6(c), if an Option is canceled in the same calendar year it was granted (other than in connection with a transaction described in Section 13), the canceled Option will be counted against the limit set forth in this Section 6(c). For this purpose, if the exercise price of an Option is reduced, the transaction shall be treated as a cancellation of the Option and the grant of a new Option.

(d) Notwithstanding any provision in the Plan to the contrary, Options shall always be granted and exercised in such a manner as to conform to the provisions of Rule 16b-3, or any successor rule, adopted pursuant to the provisions of the Exchange Act as the same now exists or may, from time to time, be amended and all applicable state securities laws.

7. Term of Plan. The Plan shall become effective upon its initial adoption by the Board and shall continue in effect until it is terminated under Section 15 of the Plan. No Options may be issued under the Plan after the tenth (10th) anniversary of the earlier of (i) the date upon which the Plan is adopted by the Board or (ii) the date the Plan is approved by the stockholders.

8. Term of Option. The term of each Option shall be stated in the Option Agreement; *provided, however*, that the term shall be no more than ten (10) years from the date of grant thereof. In the case of an Incentive Stock Option granted to a Holder who, at the time the Option is granted, owns (or is treated as owning under Code Section 424) stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any

Parent or Subsidiary, the term of the Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

9. Option Exercise Price and Consideration.

(a) Except as provided in Section 13, the per share exercise price for the Shares to be issued upon exercise of an Option shall be such price as is determined by the Administrator, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time of grant of such Option, owns (or is treated as owning under Code Section 424) stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be no less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant.

(B) granted to any other Employee, the per Share exercise price shall be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Non-Qualified Stock Option

(A) granted to a Service Provider who, at the time of grant of such Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be no less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of the grant.

(B) granted to any other Service Provider, the per Share exercise price shall be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction.

(b) The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant). Such consideration may consist of (1) cash, (2) check, (3) with the consent of the Administrator, a full recourse promissory note bearing interest (at no less than such rate as shall then preclude the imputation of interest under the Code) and payable upon such terms as may be prescribed by the Administrator, (4) with the consent of the Administrator, other Shares which (x) in the case of Shares acquired from the Company, have been owned by the Holder for more than six (6) months on the date of surrender, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option shall be exercised, (5) with the consent of the Administrator, surrendered Shares then issuable upon exercise of the Option

having a Fair Market Value on the date of exercise equal to the aggregate exercise price of the Option or exercised portion thereof, (6) property of any kind which constitutes good and valuable consideration, (7) with the consent of the Administrator, delivery of a notice that the Holder has placed a market sell order with a broker with respect to Shares then issuable upon exercise of the Options and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price, *provided,* that payment of such proceeds is then made to the Company upon settlement of such sale, or (8) with the consent of the Administrator, any combination of the foregoing methods of payment .

10. Exercise of Option.

(a) Vesting; Fractional Exercises. Except as provided in Section 13 or unless as otherwise provided by the Administrator in the Option Agreement, Options granted hereunder shall be vested and exercisable according to the following schedule:

Date	Cumulative Percentage of Option Which is Vested
Date of grant	0%
First Anniversary of the date of grant	25%
Second Anniversary of the date of grant	50%
Third Anniversary of the date of grant	75%
Fourth Anniversary of the date of grant	100%

but in no event shall Options granted to Officers or Directors, become vested and exercisable at a rate of less than twenty percent (20%) per year over five (5) years from the date the Option is granted, subject to reasonable conditions, such as continuing to be a Service Provider. An Option may not be exercised for a fraction of a Share. Notwithstanding the vesting schedule set forth above or in the Option Agreement, a Holder shall be fully vested in all Options in the event they cease to be a Service Provider by reason of death or Disability.

(b) Deliveries upon Exercise. All or a portion of an exercisable Option shall be deemed exercised upon delivery of all of the following to the Secretary of the Company or his or her office:

(i) A written or electronic notice complying with the applicable rules established by the Administrator stating that the Option, or a portion thereof, is exercised. The notice shall be signed by the Holder or other person then entitled to exercise the Option or such portion of the Option;

(ii) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with Applicable Laws. The Administrator may, in its sole discretion, also take whatever additional actions it deems

appropriate to effect such compliance, including, without limitation, placing legends on share certificates and issuing stop transfer notices to agents and registrars; and

(iii) In the event that the Option shall be exercised pursuant to Section 10(d) by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Option.

(c) Conditions to Delivery of Share Certificates. The Company shall not be required to issue or deliver any certificate or certificates for Shares purchased upon the exercise of any Option or portion thereof prior to fulfillment of all of the following conditions:

(i) The admission of such Shares to listing on all stock exchanges on which such class of stock is then listed;

(ii) The completion of any registration or other qualification of such Shares under any state or federal law, or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body which the Administrator shall, in its sole discretion, deem necessary or advisable;

(iii) The obtaining of any approval or other clearance from any state or federal governmental agency which the Administrator shall, in its sole discretion, determine to be necessary or advisable;

(iv) The lapse of such reasonable period of time following the exercise of the Option as the Administrator may establish from time to time for reasons of administrative convenience; and

(v) The receipt by the Company of full payment for such Shares, including payment of any applicable withholding tax, which in the sole discretion of the Administrator may be in the form of consideration used by the Holder to pay for such Shares under Section 9(b).

(d) Death, Disability or Retirement of Holder.

(i) If a Holder ceases to be a Service Provider as a result of the Holder's death, Disability or Retirement, the Holder may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent the Option is vested on the date of termination; *provided*, *however*, that prior to the Public Trading Date, such period of time shall not be less than six (6) months following the date the Holder ceased to be a Service Provider in the event of Holder's death or Disability (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement).

(ii) In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the date the Holder ceased to be a Service Provider as a result of the Holder's death, Disability or Retirement.

(iii) If the Disability is not a "disability" as such term is defined in Section 22(e)(3) of the Code, in the case of an Incentive Stock Option such Incentive Stock

Option shall automatically cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Non-Qualified Stock Option from and after the day which is three (3) months and one (1) day following such termination.

(iv) If, on the date of termination, the Holder is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall immediately cease to be issuable under the Option and shall again become available for issuance under the Plan. If, after termination, the Holder or the executor or administrator of the Holder's estate or, if none, by the person(s) entitled to exercise the Option under the Holder's will or the laws of descent and distribution does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall again become available for issuance under the Plan.

(e) Termination of Relationship as a Service Provider. If a Holder ceases to be a Service Provider other than by reason of the Holder's death, Disability, Retirement or Cause, such Holder may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent that the Option is vested on the date of termination; *provided*, *however*, that prior to the Public Trading Date, such period of time shall not be less than thirty (30) days (but in no event later than the expiration of the term of the Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for three (3) months following the date the Holder ceased to be a Service Provider other than by reason of the Holder's death, Disability, Retirement or Cause. If, on the date of termination, the Holder is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option immediately cease to be issuable under the Option and shall again become available for issuance under the Plan. If, after termination, the Holder does not exercise his or her Option within the time period specified herein, the Option shall terminate, and the Shares covered by such Option shall again become available for issuance under the Plan.

(f) Termination of Relationship as a Service Provider for Cause. If a Holder ceases to be a Service Provider as a result of a termination for Cause, the Holder's Options shall terminate immediately, unless otherwise specifically agreed to in writing by the Administrator.

(g) Regulatory Extension. A Holder's Option Agreement may provide that if the exercise of the Option following the termination of the Holder's status as a Service Provider (other than upon the Holder's death or Disability) would be prohibited at any time solely because the issuance of shares would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option set forth in Section 8 or (ii) the expiration of a period of three (3) months after the termination of the Holder's status as a Service Provider during which the exercise of the Option would not be in violation of such registration requirements.

(h) Buyout Provisions. The Administrator may at any time offer to buyout for a payment in cash or Shares, an Option previously granted, based on such terms and conditions as the Administrator shall establish and communicate to the Holder at the time that such offer is made.

11. Non-Transferability of Options.

(a) Except as provided in Section 11(b) below, Options may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Holder, only by the Holder.

(b) Notwithstanding any provision in the Plan to the contrary, the Administrator, in its sole discretion, may provide that Options may be transferred to the Holder's Family Member; *provided, however,* that (i) any such transfer is without payment of any consideration whatsoever, (ii) no such transfer shall be valid unless first approved by the Administrator, acting in its sole discretion, (iii) any Option so transferred shall remain subject to the terms and conditions of the Option Agreement, and (iv) the Family Member shall execute any and all such documents requested by the Administrator in connection with the transfer and to satisfy any requirements for an exemption for the transfer under applicable federal and state securities laws.

12. Rights and Restrictions on Shares. The Shares acquired upon exercise of an Option granted under the Plan shall be subject to such terms and conditions, as the Administrator shall determine in its sole discretion, including, without limitation, the following rights and restrictions:

(a) Company's Right of First Refusal. Subject to subsection (b) below, before any Shares held by a Holder or any permitted transferee (each, a "Holder") may be sold, pledged, assigned, hypothecated, transferred, or otherwise disposed of (each, a "Transfer"), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares on the terms and conditions set forth in this Section (the "Right of First Refusal"). Such Right of First Refusal shall terminate as to all Shares upon the first to occur of (i) the ninth anniversary of the date of issuance of the Shares acquired upon exercise of the Option, (ii) a Qualified Public Offering or (iii) a Sale of the Company.

(i) Notice of Proposed Transfer. The Holder of the Shares shall deliver to the Company at least sixty (60) days prior to making a Transfer a written notice (the "Transfer Notice") stating: (A) the Holder's bona fide intention to sell or otherwise Transfer such Shares; (B) the name of each proposed purchaser or other transferee ("Proposed Transferee"); (C) the proposed sale price and (D) the number of Shares to be Transferred to each Proposed Transferee, and the Holder shall offer the Shares at the then Fair Market Value to the Company or its assignee(s).

(ii) Exercise of Right of First Refusal. During the thirty (30) days after receipt of the Transfer Notice, the Company may elect in writing to purchase all, but not less than all, of the Shares proposed to be Transferred to any one or more of the Proposed Transferees. If the Company does not elect to purchase all of the Shares proposed to be Transferred within such thirty (30) day period and the Holder and his or her permitted transferees own 10,000 or more Shares, the Investors may elect to purchase all, but not less than all, of the Shares proposed to be Transferred by following the procedures and requirements set forth in Section 8(B) – "Rights of First Offer" of the Second Amended and Restated Reclassification and

Sale of Shares Agreement,which is incorporated herein by reference, as such section may be amended from time to time or any successor provisions thereto. The purchase price will be determined in accordance with clause (iii) below.

(iii) Purchase Price. The purchase price ("Purchase Price") for the Shares repurchased under this Section shall be the then Fair Market Value.

(iv) Payment. Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within thirty (30) days after receipt of the Transfer Notice or in the manner and at the times set forth in the Transfer Notice.

(v) Holder's Right to Transfer. If all of the Shares proposed in the Transfer Notice to be transferred to a given Proposed Transferee are not purchased by the Company and/or its assignee(s) as provided in this Section, then the Holder may sell or otherwise transfer such Shares to that Proposed Transferee at the then Fair Market Value or at the sale price set forth in the Transfer Notice, provided that (A) such sale or other Transfer is consummated within one hundred twenty (120) days after the date of the Transfer Notice, (B) any such sale or other Transfer is effected in accordance with any applicable securities laws, (C) the Proposed Transferee agrees in writing that the provisions of this Section shall continue to apply to the Shares in the hands of such Proposed Transferee, and (D) prior to making any Transfer, the Holder shall use reasonable efforts to ascertain whether the Proposed Transferee(s) or any person or entity affiliated with the Proposed Transferee(s) is a competitor of the Company and if Holder has reason to believe that the Proposed Transferee is or is affiliated with or acting on behalf of such a competitor, the Holder shall not transfer any Shares to the Proposed Transferee. If the Shares described in the Transfer Notice are not Transferred to the Proposed Transferee within such 120 day period, a new Transfer Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal as provided herein before any Shares held by the Holder may be sold or otherwise Transferred.

(b) Exception for Certain Family Transfers. Notwithstanding any provision in the Plan to the contrary, the Transfer of any or all of the Shares during the Holder's lifetime to a Family Member or the Transfer on the Holder's death by will or intestacy to anyone shall be exempt from the Right of First Refusal; provided*, however,* that any Transfer by the Holder during the Holder's lifetime to the Holder's Family Member shall be without payment of any consideration whatsoever and must be approved in advance by the Administrator. In such case, the transferee or other recipient shall receive and hold the Shares so Transferred subject to the provisions of this Section 12 and the Plan, and there shall be no further Transfer of such Shares except in accordance with the terms of Section 12 and the Plan.

(c) Voting Stock. So long as the Investors hold any shares of the Company's Underlying Common Stock, each Share must be voted as directed by the Directing Investors with respect to a proposed Sale of the Company or in connection with a proposed Public Offering. The Holder and the Company each shall take all necessary or desirable actions as are requested by the Directing Investors, in order to cause all Shares to be voted pursuant to such direction of the Directing Investors. The Holder shall deliver to the Company upon purchase of

any Shares pursuant to the Plan, an irrevocable proxy with respect to such shares in favor of the Directing Investors. The provisions of this subsection (c) will terminate with respect to the Shares upon the first to occur of a Qualified Public Offering or the ninth anniversary of the date of issuance of the Shares.

13. Adjustments upon Changes in Capitalization, Merger or Asset Sale.

(a) Other than in the event of a Sale of the Company, in the event that the Administrator determines that any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), recapitalization, reclassification, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, or exchange of Common Stock or other securities of the Company, issuance of warrants or other rights to purchase Common Stock or other securities of the Company, or other similar corporate transaction or event, in the Administrator's sole discretion, affects the Common Stock such that an adjustment is determined by the Administrator to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any Option, then the Administrator shall, in such manner as it may deem equitable, adjust any or all of:

(i) the number and kind of shares of Common Stock (or other securities or property) with respect to which Options may be granted or awarded (including, but not limited to, adjustments of the limitations in Section 3 on the maximum number and kind of shares which may be issued and adjustments of the maximum number of Shares that may be purchased by any Holder in any calendar year pursuant to Section 6(c));

(ii) the number and kind of shares of Common Stock (or other securities or property) subject to outstanding Options; and

(iii) the grant or exercise price with respect to any Option.

(b) In the event of any transaction or event described in Section 13(a), the Administrator, in its sole discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Option or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Holder's request, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any Option granted under the Plan or to facilitate such transaction or event:

(i) To provide for either the purchase of any such Option for an amount of cash equal to the amount that could have been obtained upon the exercise of such Option or realization of the Holder's rights had such Option been currently exercisable or fully vested or the replacement of such Option with other rights or property selected by the Administrator in its sole discretion;

(ii) To provide that such Option shall be exercisable as to all shares covered thereby, notwithstanding anything to the contrary in the Plan or the provisions of such Option;

(iii) To provide that such Option be assumed by the successor or survivor corporation or entity, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation or entity, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(iv) To make adjustments in the number and type of shares of Common Stock (or other securities or property) subject to outstanding Options, and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding Options or Options which may be granted in the future; and

(v) To provide that immediately upon the consummation of such event, such Option shall not be exercisable and shall terminate; *provided,* that for a specified period of time prior to such event, such Option shall be exercisable as to all Shares covered thereby, and the restrictions imposed under an Option Agreement upon some or all Shares may be terminated, notwithstanding anything to the contrary in the Plan or the provisions of such Option Agreement.

(c) Subject to Section 3, the Administrator may, in its sole discretion, include such further provisions and limitations in any Option Agreement or certificate, as it may deem equitable and in the best interests of the Company.

(d) If the Company undergoes a Sale of the Company, then any surviving corporation or entity or acquiring corporation or entity, or affiliate of such corporation or entity, may assume any Options outstanding under the Plan or may substitute similar stock awards (including an award to acquire the same consideration paid to the stockholders in the transaction described in this subsection 13(d)) for those outstanding under the Plan. In the event any surviving corporation or entity or acquiring corporation or entity in a Sale of the Company, or affiliate of such corporation or entity, does not assume such Options or does not substitute similar stock awards for those outstanding under the Plan, then with respect to (i) Options held by participants in the Plan whose status as a Service Provider has not terminated prior to such event, the vesting of such Options (and, if applicable, the time during which such awards may be exercised) shall be accelerated and made fully exercisable and all restrictions thereon shall lapse at least ten (10) days prior to the closing of the Sale of the Company (and the Options terminated if not exercised prior to the closing of such Sale of the Company), and (ii) any other Options outstanding under the Plan, such Options shall be terminated if not exercised prior to the closing of the Sale of the Company.

(e) The existence of the Plan or any Option Agreement and the Options granted hereunder shall not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, warrants or rights to purchase

stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

14. Time of Granting Options. The date of grant of an Option shall, for all purposes, be the date on which the Administrator makes the determination granting such Option, or such other date as is determined by the Administrator. Notice of the determination shall be given to each Service Provider to whom an Option is so granted within a reasonable time after the date of such grant.

15. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time wholly or partially amend, alter, suspend or terminate the Plan. However, without approval of the Company's stockholders given within twelve (12) months before or after the action by the Board, no action of the Board may, except as provided in Section 13, increase the limits imposed in Section 3 on the maximum number of Shares which may be issued under the Plan or extend the term of the Plan under Section 7. Notwithstanding the foregoing, the Plan may be modified by the Board to eliminate the rights of the Investors as provided herein only with appropriate consent of the Directing Investors.

(b) Stockholder Approval. The Board shall obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Holder, unless mutually agreed otherwise between the Holder and the Administrator, which agreement must be in writing and signed by the Holder and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options granted or awarded under the Plan prior to the date of such termination.

16. Stockholder Approval. The Plan will be submitted for the approval of the Company's stockholders within twelve (12) months after the date of the Board's initial adoption of the Plan. Options may be granted or awarded prior to such stockholder approval, provided that such Options shall not be exercisable, shall not vest and the restrictions thereon shall not lapse prior to the time when the Plan is approved by the stockholders, and provided further that if such approval has not been obtained at the end of said twelve-month period, all Options previously granted or awarded under the Plan shall thereupon be canceled and become null and void.

17. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

18. <u>Reservation of Shares</u>. The Company, during the term of this Plan, shall at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

19. <u>Information to Holders and Purchasers</u>. Prior to the Public Trading Date and to the extent required by Section 260.140.46 of Title 10 of the California Code of Regulations, the Company shall provide to each Holder and to each individual who acquires Shares pursuant to the Plan, not less frequently than annually during the period such Holder or purchaser has one or more Options outstanding, and, in the case of an individual who acquires Shares pursuant to the Plan, during the period such individual owns such Shares, copies of annual financial statements. Notwithstanding the preceding sentence, the Company shall not be required to provide such statements to key employees whose duties in connection with the Company assure their access to equivalent information.

20. <u>Repurchase Provisions</u>.

(a) Prior to the Public Trading Date and a Sale of the Company, the Administrator in its sole discretion may provide that the Company may repurchase Shares acquired upon exercise of an Option upon the occurrence of certain specified events, including, without limitation, a Holder's termination as a Service Provider, divorce, bankruptcy or insolvency; *provided, however,* that any such repurchase right shall be set forth in the applicable Option Agreement or in another agreement referred to in such agreement and, *provided further*, that to the extent required by Section 260.140.41 and Section 260.140.42 of Title 10 of the California Code of Regulations, any such repurchase right set forth in an Option granted prior to the Public Trading Date to a person who is not an Officer, Director or Consultant shall be upon the following terms: (i) if the repurchase option gives the Company the right to repurchase the shares upon termination as a Service Provider at not less than the Fair Market Value of the shares to be purchased on the date of termination of status as a Service Provider, then (A) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares within ninety (90) days of termination of status as a Service Provider (or in the case of shares issued upon exercise of Options after such date of termination, within ninety (90) days after the date of the exercise) or such longer period as may be agreed to by the Administrator and the Plan participant and (B) the right terminates when the shares become publicly traded; and (ii) if the repurchase option gives the Company the right to repurchase the Shares upon termination as a Service Provider at the original purchase price for such Shares, then (A) the right to repurchase at the original purchase price shall lapse at the rate of at least twenty percent (20%) of the shares per year over five (5) years from the date the Option is granted (without respect to the date the Option was exercised or became exercisable) and (B) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares within ninety (90) days of termination of status as a Service Provider (or, in the case of shares issued upon exercise of Options, after such date of termination, within ninety (90) days after the date of the exercise) or such longer period as may be agreed to by the Company and the Plan participant.

21. <u>Investment Intent</u>. The Company may require a Plan participant, as a condition of exercising or acquiring stock under any Option, (i) to give written assurances satisfactory to the Company as to the participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is

knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Option; and (ii) to give written assurances satisfactory to the Company stating that the participant is acquiring the stock subject to the Option for the participant's own account and not with any present intention of selling or otherwise distributing the stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (A) the issuance of the shares upon the exercise or acquisition of stock under the applicable Option has been registered under a then currently effective registration statement under the Securities Act or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the stock.

22. Governing Law. The validity and enforceability of this Plan shall be governed by and construed in accordance with the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law.

* * * * * * *

I hereby certify that the Plan was duly adopted by the Board of Directors of Ulta Salon, Cosmetics & Fragrance, Inc. on or about June 17, 2002.

Executed at Romeoville, Illinois on this ___day of ___, 2002.

Name: /s/ Charles Weber
Title: ______________________________

* * * * * * *

I hereby certify that the Plan was duly adopted by the Board of Directors of Ulta Salon, Cosmetics & Fragrance, Inc. on or about June 17, 2002.

Executed at Romeoville, Illinois on this ___day of ___, 2002.

/s/ Charles Weber
Secretary

* * * * * * *

I hereby certify that the foregoing Plan was approved by the stockholders of Ulta Salon, Cosmetics & Fragrance, Inc. on or about June 17, 2002.

Executed at Romeoville, Illinois on this ___day of ___, 2002.

Name:
Title: ______________________________

* * * * * * *

I hereby certify that the foregoing Plan was approved by the stockholders of Ulta Salon, Cosmetics & Fragrance, Inc. on or about June 17, 2002.

Executed at Romeoville, Illinois on this ___day of ___, 2002.

____
Secretary

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ULTA SALON, COSMETICS & FRAGRANCE, INC.

2002 EQUITY INCENTIVE PLAN

EXHIBIT 10.10

OFFICE/SHOWROOM/WAREHOUSE LEASE

BASIC DEFINITIONS AND LEASE PROVISIONS
(Office/Showroom/Warehouse — Net Lease)

A. The following list sets out certain defined terms and certain financial and other information pertaining to the Lease:

1. "Date of Lease": June 22, 1999

2. "Landlord": 1135 Arbor Drive Investors LLC

Landlord's address: c/o Allegis Realty Investors, LLC
12001 North Central Expressway #650
Dallas, TX 75243-3735

Contact: Asset Management

Telephone: 972/458-3300

Facsimile: 972/490-9440

3. "Tenant": ULTA3 Cosmetics & Salon, Inc.

Tenant's address: 1135 Arbor Drive, Romeoville, Illinois 60446

Contact: Matt Strall

Telephone: 630/226-0020

Facsimile: 630/226-8367

4. Tenant's trade name: N/A

5. "Premises": Landlord's property and building improvements located in the Village of Romeoville, Will County, Illinois which property is described or shown on Exhibit "A", attached to the Lease. The building improvements will contain approximately 291,335 (170,117 square feet of area in the "Existing Space" as depicted on Exhibit "A" and 121,218 rentable square feet of area in the "New Space" also as depicted on Exhibit "A") square feet in rentable area (measured by calculating lengths and widths to the exterior of outside walls and to the center of interior walls, without deduction for any columns or projections necessary to the building), having an address of 1135 Arbor Drive and being described or shown on Exhibit "B", attached to the Lease. With regard to Exhibit "B", the parties agree that the exhibit is attached solely for the purpose of locating the Premises and that no representation, warranty, or covenant is to be implied by any other information shown on the exhibit. Should a party desire to measure the square footage of the building improvements, it must do so prior to the Commencement Date. If such measurement reflects a different number, then, subject to the other party's verification of the number, the parties agree to make adjustments based on such

measurement. In the event of a dispute regarding the method of calculation, the parties agree that the standards for measurement set by the Building Owners and Managers Association ("*BOMA*") shall govern and control. If no measurement is made prior to the Commencement Date, then the parties to the Lease will be deemed to have accepted the number contained herein as the square footage of rentable area of the Premises throughout the Lease Term, subject to adjustment only for any subsequent additions or deletions of space. As of the Date of Lease, Tenant is presently leasing the Existing Space from Landlord pursuant to a Net Lease Agreement dated July 12, 1995 between Tenant and Landlord's predecessor in interest, Opus North Corporation (the "*Existing Lease*"). Notwithstanding the fact that the Existing Space shall be subject to the terms and conditions of the Lease, the Existing Space shall be subject to the terms and conditions of the Existing Lease until the Commencement Date.

6. "Commencement Date": October 1, 1999, provided that if the First Phase Work (as defined in Exhibit "E" below) is not substantially completed on or before October 1, 1999 due to delays caused by Landlord, the Commencement Date shall be the date when the First Phase Work is substantially completed.

7. "Expiration Date": April 30, 2010, provided that if the Commencement Date is later than October 1, 1999, the Expiration Date shall be the day prior to the day which is ten (10) years and seven (7) months after the Commencement Date.

8. "Lease Term": Commencing on the Commencement Date and continuing for 127 months after the Commencement Date.

9. "Base Rental": The amounts set forth in the Schedule below ("*Carry-Over Rent*") plus Construction Rent (as defined in Exhibit "E" below):

Lease Period		Carry-Over Rent	Monthly Carry-
From	To	(Annual)	Over Rent
10/1/99	9/30/00	$ 680,000	$ 56,666.67
10/1/00	9/30/01	$ 680,000	$ 56,666.67
10/1/01	9/30/02	$ 680,000	$ 56,666.67
10/1/02	9/30/03	$ 740,208	$ 61,684.00
10/1/03	9/30/04	$ 765,000	$ 63,750.00
10/1/04	9/30/05	$ 765,000	$ 63,750.00
10/1/05	9/30/06	$ 783,063	$ 65,255.25
10/1/06	9/30/07	$ 790,500	$ 65,875.00
10/1/07	9/30/08	$ 790,500	$ 65,875.00
10/1/08	9/30/09	$ 808,563	$ 67,380.25
10/1/09	4/30/10	$476,000 (for a partial year)	$ 68,000.00

10. "Security Deposit": See Section 4.2 of the Lease.

11. "Permitted Use": Office, showroom, packaging and warehouse uses only and related purposes. Tenant acknowledges that the above specification of a "Permitted Use" means

only that Landlord has no objection to the specified use and does not include any representation or warranty by Landlord that such specified use complies with applicable laws and/or requires special governmental permits.

12. "Rent" or "rental": All amounts due from Tenant to Landlord under the provisions of this Lease, except Default Interest (as defined in Section 4.5 of the Lease), are deemed to be "rent" or "rental".

13. "Brokers": Nicolson Porter & List Inc.

B. If any conflict exists between any Basic Lease Information and the Lease, then the Lease shall control.

IN WITNESS WHEREOF, Landlord and Tenant have entered into and executed this Lease on the Date of the Lease written above.

LANDLORD:

1135 ARBOR DRIVE INVESTORS LLC a Delaware limited liability company

By: ALLEGIS REALTY INVESTORS LLC, A Massachusetts limited liability company, Its Manager

By: /s/ Joseph E. Gaukler
Joseph E. Gaukler
Its: Senior Vice President

TENANT:

ULTA3 COSMETICS & SALON, INC.

By: /s/ Greg Smolarek
Printed Name: Greg Smolarek
Its: Sr VP Systems and Logistics

LEASE AGREEMENT
(Office/Showroom/Warehouse — Net Lease)

This **LEASE AGREEMENT** (the "*Lease*") is entered into as of the Date of the Lease, between **AETNA LIFE INSURANCE COMPANY** ("*Landlord*") and **ULTA3 COSMETICS & SALON, INC.** ("*Tenant*").

ARTICLE 1
BASIC DEFINITIONS AND LEASE PROVISIONS

1.1 The definitions and basic provisions set forth in the Basic Definitions and Lease Provisions executed by Landlord and Tenant, and attached hereto, are incorporated herein by reference for all purposes.

ARTICLE 2
LEASE GRANT

2.1 Subject to the terms and conditions of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises for the Lease Term.

ARTICLE 3
DELIVERY OF THE PREMISES; LEASE TERM

3.1 The Lease Term shall be for the period of time specified in the Basic Definitions and Lease Provisions, beginning on the Commencement Date, as such date may be adjusted herein, and expiring on the Expiration Date. This Lease shall not be affected by any failure to deliver possession of the New Space to Tenant on the Commencement Date and Tenant shall have no claim for damages against Landlord as a result thereof, all of which claims are hereby waived and released by Tenant.

3.2 If Tenant takes possession of the New Space prior to the Commencement Date for any reason, then such possession shall be subject to all the terms and conditions of this Lease and Tenant shall pay Base Rental and other rent to Landlord on a per diem basis for each day of occupancy prior to the Commencement Date (using the estimated rate payable for Construction Rent for the first month of the Lease Term). Tenant shall not, however, be obligated to pay Base Rental and other rent to Landlord prior to the Commencement Date if such early occupancy is only for the purpose of fixturing the New Space.

3.3 By taking possession of the Premises, it shall be conclusive evidence that Tenant has inspected the Premises (and has sufficient knowledge and expertise to make such inspection or has caused the Premises to be inspected on its behalf by one or more persons with such knowledge and expertise), that Tenant has accepted the Premises as being in good and satisfactory condition, suitable for the purposes herein intended and that the same comply fully with Landlord's covenants and obligations under this Lease with respect to the construction of the Work (as defined in Exhibit "E" below), except for any punchlist items agreed to in writing by Landlord and Tenant and the performance of the Second Phase Work (as defined in Exhibit "E" below). Tenant acknowledges and agrees that Landlord has made no representation or warranty, express or implied, as to the habitability, suitability, quality, condition or fitness of

the Premises, and Tenant waives, to the extent permitted by applicable law, any defects in the Premises and any claims arising therefrom, save and except those arising from any construction or repair obligations of Landlord expressly provided for in this Lease.

3.4 Following delivery of the Second Phase Work to Tenant, Landlord shall prepare a Commencement Date Letter in the form attached hereto as Exhibit "F" setting forth the Commencement Date, Expiration Date, Base Rental (and specifically delineating Construction Rent) and confirming Tenant's acceptance of the Premises and the Second Phase Work and that Landlord has performed all of its obligations with respect to delivery of the Premises, except as to any punchlist items previously specified in writing and related to the Second Phase Work. Tenant shall execute and deliver the Commencement Date Letter to Landlord within ten (10) days after delivery by Landlord.

ARTICLE 4
RENT

4.1 Tenant promises and agrees to pay Landlord at Landlord's address set forth in this Lease, or such other address as Landlord may provide to Tenant, the Base Rental and all other rent charged under this Lease without deduction or set off, for each month of the entire Lease Term. Monthly installments of Base Rental, as may be adjusted in accordance with the provisions of the Lease, shall be due and payable, in advance, without notice or demand on or before the first day of each calendar month during the Lease Term. The Base Rental for any fractional month at the beginning or end of the Lease Term shall be prorated.

4.2 The Security Deposit in the estimated amount of $288,113 (3 months' worth of Base Rental [estimated including Construction Rent attributable to the Second Phase Work]) shall be paid to Landlord contemporaneously with the execution of this Lease. If the actual amount of 3 months' worth of Base Rental (as finally determined after the final computation of Construction Rent) varies from $288,113, the parties shall make an adjusting payment between them if the Security Deposit is cash, or the Tenant shall provide Landlord with a substitute Letter of Credit (as defined below) in the proper amount and upon receipt of such substitute Letter of Credit, Landlord shall return to Tenant the Letter of Credit it then holds. Landlord shall hold the Security Deposit without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that such deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. Upon the occurrence of any Event of Default by Tenant, Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearage of rent and any other damage, injury, expense or liability caused to Landlord by such Event of Default. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not then in default of this Lease, any remaining balance of the Security Deposit shall be returned by Landlord to Tenant upon termination of this Lease. If Landlord transfers its interest in the Premises during the Lease Term, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of the Security Deposit.

At Tenant's election, the Security Deposit may be in the form of cash or an unconditional and irrevocable letter of credit (the "*Letter of Credit*"), which Letter of Credit shall (a) be in the amount as described above, (b) be in form and substance satisfactory to Landlord, (c) name Landlord as its beneficiary, (d) expressly allow Landlord to draw upon it at any time or from time to time by delivering to the issuer written notice that either an Event of Default then exists or Landlord has not been timely provided a substitute Letter of Credit as described in the next grammatical sentence, and (e) be drawn on an FDIC-insured financial institution satisfactory to Landlord. If Landlord is not provided with a substitute Letter of Credit complying with all of the requirements hereof at least ten (10) days before the stated expiration date of the existing Letter of Credit, then Landlord shall have the right to draw under such Letter of Credit then held by Landlord and hold such funds as a Security Deposit in accordance with the terms of this Section 4.2.

Upon receipt of a paid invoice from Tenant evidencing Tenant's payment to the issuing bank of the fee for the Letter of Credit, Landlord shall reimburse Tenant annually for such fee in an amount not to exceed 2% of the amount of the Letter of Credit on an annual basis and Tenant shall be responsible for any fee above such 2% amount. Landlord may, at its sole and absolute discretion, authorize Tenant to reduce the amount of the Letter of Credit beginning October 1, 2004 through the expiration of the Lease Term to an amount equal to two months' worth of Base Rental payable as of October 1, 2004.

4.3 All amounts due from Tenant to Landlord under this Lease (including Base Rental) is herein collectively referred to as "*rent*." Tenant hereby acknowledges that late payment to Landlord of rent due hereunder will cause Landlord to incur costs and inconvenience not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any rent due from Tenant is not received by Landlord or Landlord's designated agent within ten (10) days after its due date, then Tenant shall pay to Landlord as a late charge ten percent (10%) of such overdue amount, plus any reasonable attorney's fees incurred by Landlord by reason of Tenant's failure to pay rent when due hereunder. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of Tenant's late payment. Landlord's acceptance of such late charges shall not constitute a waiver of Tenant's default with respect to such overdue amount or estop Landlord from exercising any of the other rights and remedies granted hereunder.

4.4 All payments required of Tenant under this Lease shall bear interest, beginning on the day after the due date until paid at the lesser of eighteen percent (18%) per annum or the maximum lawful rate ("*Default Interest*"). In no event, however, shall the charges permitted under this paragraph or elsewhere in this Lease, to the extent the same are considered to be interest under applicable law, exceed the maximum lawful rate of interest.

4.5 No payment by Tenant or receipt by Landlord of a lesser amount than the rent due under this Lease shall be deemed to be other than on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or to pursue any other remedy provided in this Lease or at law or in equity.

ARTICLE 5
SERVICES

5.1 Tenant shall contract with providers of water, gas, electricity, sewer and telephone utility services (collectively, "*Utilities*") to the Premises. Tenant shall pay for the Utilities used in operating all facilities serving the Premises, including, without limitation, the cost of separate meters, connections and security deposits.

5.2 Landlord shall not be liable for any loss, injury or damage to property caused by or resulting from any variation, interruption, or failure of Utilities due to any cause whatsoever, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations, improvements, or due to accident, strike, or conditions or other events shall be deemed an eviction of Tenant or relieve Tenant from any of its obligations hereunder. In no event shall Landlord be liable to Tenant for any damage to the Premises or for any loss, damage or injury to any property therein or thereon occasioned by bursting, rupture, leakage or overflow of any plumbing or other pipes (including, without limitation, water, steam, and/or refrigerant lines), sprinklers, tanks, drains, drinking fountains or washstands, or other similar cause in, above, upon or about the Premises.

ARTICLE 6
USE

6.1 Tenant shall use the Premises only for the Permitted Use. Tenant will not occupy or use the Premises, or permit any portion of the Premises to be occupied or used, for any business or purpose other than the Permitted Use or for any use or purpose which is unlawful or deemed to be disreputable in any manner, or dangerous to life, limb or property, or extrahazardous on account of fire, nor permit anything to be done which will in any way invalidate any insurance coverage on the Premises. Tenant will conduct its business and control its agents, employees and invitees in such a manner as not to create any nuisance. Tenant will not commit waste and will maintain the Premises in a clean, healthful and safe condition and will comply in all material respects with all laws, ordinances, orders, rules and regulations (state, federal, municipal, insurance and other agencies or bodies having any jurisdiction thereof) with reference to the use, condition or occupancy of the Premises, including, without limitation, all environmental, health and safety laws and the Americans with Disabilities Act. Tenant will secure at its own expense all permits and licenses required for the transaction of business from the Premises in accordance with the Permitted Use. Tenant will not display or sell merchandise outside the exterior walls and doorways of the enclosed building improvements located on the Premises and may not use such outside areas for storage. Tenant will not use any apparatus which might make undue vibrations in the building improvements located on the Premises.

6.2 Tenant will, and will cause all its employees, agents, contractors and invitees to, comply fully with all rules and regulations of the Premises adopted by Landlord from time to time. A copy of the rules and regulations for the Premises, existing on the Date of this Lease, are attached hereto as Exhibit "D". Landlord shall at all times have the right to change such rules and regulations or to promulgate other rules and regulations in such reasonable manner as may be deemed advisable for the safety, care, or cleanliness of the Premises, and for the preservation of

good order therein, all of which rules and regulations, changes and amendments will be forwarded to Tenant in writing and shall be carried out and observed by Tenant.

ARTICLE 7
SIGNAGE

7.1 Tenant shall have the right to install signs upon the exterior of the Premises only when first approved in writing by Landlord in Landlord's sole discretion and subject also to any applicable governmental laws, ordinances, regulations and other requirements. Should Landlord agree in writing to consent to signage, Tenant agrees to maintain same in good condition and repair at all times. Tenant shall remove all of its signs no later than the Expiration Date. In the event Tenant fails to remove all its signs by the Expiration Date, Landlord shall be authorized to remove the signs on Tenant's behalf and Tenant shall reimburse the cost of such removal to Landlord, at Tenant's sole expense, and Tenant hereby agrees to indemnify and hold Landlord harmless from and against any and all costs, expenses, claims and other liabilities of any type arising out of such sign removal. Tenant shall repair all damage to the Premises or other improvements caused by the installation or removal of Tenant's signs. The provisions of this Article 7 shall survive the expiration or termination of this Lease.

7.2 Tenant may erect signs on the exterior or interior of the Premises or on the landscaped area adjacent thereto, and may erect satellite dishes or other communications equipment on the roof of the Building, provided that such signs, satellite dishes or other communications equipment (a) do not cause any structural damage or other damage to the Building; (b) do not violate applicable governmental laws, ordinances, rules or regulations; (c) do not violate any existing restrictions affecting the Premises; and (d) are compatible with the architecture of the Premises and the landscaped area adjacent thereto. Tenant shall repair any damage to the Premises caused by any installation or removal performed pursuant to the terms of this Section 7.2.

ARTICLE 8
ABSOLUTE TRIPLE NET

Notwithstanding anything to the contrary, it is the intent and purpose of this Lease that it shall be an absolute triple net lease and that, in addition to payment of Base Rental, Tenant shall be responsible for payment of all operating expenses incurred with respect to the Premises, including, but not limited to those for taxes (as described in Article 23 below), insurance, repairs and maintenance and upkeep.

ARTICLE 9
ALTERATIONS

9.1 Any leasehold improvements to the Premises contemplated to be made prior to the Commencement Date shall be performed in accordance with the provisions of Exhibit "E".

9.2 Other than (i) any leasehold improvements to be made underSection 9.1 above, or (ii) any interior alteration, addition or improvement which does not impact the heating, air conditioning, ventilation, electrical, plumbing, utility or mechanical systems of any improvements located in the Premises nor impact the structural components of the Premises,

including but not limited to the foundation, bearing walls, structural steel, footings and roofs and the cost of which, in any instance, does not exceed $10,000, Tenant shall not make, or allow to be made, any alterations, additions or improvements to the Premises without the prior written approval of Landlord. All alterations, additions or improvements installed on the Premises by either party, including, without limitation, fixtures, but excluding readily movable trade fixtures and equipment, shall become the property of Landlord at the expiration of the Lease Term, unless Landlord requests their removal in accordance with Article 20 below.

9.3 Prior to commencing any construction work on the Premises, Tenant must furnish to Landlord adequate plans and specifications for the written approval of Landlord. Once approved, Tenant shall not modify the plans and specifications without, again, obtaining the written approval of Landlord. Landlord's approval of the plans and specifications shall not be deemed to be a representation by Landlord that such plans and specifications comply with applicable insurance requirements, building codes, ordinances, laws or regulations.

9.4 All construction work shall be performed only by Landlord or by contractors and subcontractors approved in writing by Landlord. If Landlord does not perform the construction work, then Tenant shall cause all of its contractors and subcontractors to procure and maintain insurance coverage against such risks and in such amounts as Landlord may reasonably require and with such companies as Landlord may reasonably approve. Landlord may also require Tenant to furnish a payment and performance bond, reasonably satisfactory to Landlord in an amount covering the cost of the construction work. Tenant agrees to indemnify Landlord and hold Landlord harmless against any loss, liability or damage resulting from any such construction work performed by Tenant or on Tenant's behalf.

9.5 All construction work by, or on behalf of, Tenant must be performed in a good and workmanlike manner in accordance with the approved plans and specifications, lien-free, and in compliance with all governmental laws and requirements. Tenant shall only utilize new materials in the construction work.

9.6 Other than as to the Work, Tenant shall not permit any mechanic's liens to be filed against the Premises for any work performed, materials furnished, or obligation incurred by or at the request of Tenant. If such a lien is filed, then Tenant shall, within ten (10) days after Landlord has delivered notice of the filing to Tenant, either pay the amount of the lien or diligently contest such lien, in which event, Tenant shall deliver to Landlord a bond or other security reasonably satisfactory to Landlord. If Tenant fails to timely take either such action, then Landlord may, at its election, pay the lien claim without inquiry as to the validity thereof, and any amounts so paid, plus Landlord's expenses and an administrative fee equal to fifteen percent (15%) of the amount paid, shall be paid by Tenant to Landlord as additional rental within ten (10) days after Landlord has delivered to Tenant an invoice therefor. No work which Landlord permits Tenant to perform in the Premises shall be deemed to be for the immediate use or benefit of Landlord so that no mechanics or other lien shall be allowed against the estate of Landlord by reason of its consent to such work.

ARTICLE 10
REPAIRS

10.1 Except as otherwise provided in this Article 10, Tenant, at its sole cost and expense, throughout the Lease Term, shall take good care of, and keep in good order, condition and repair (including, without limitation, interior repainting and refurnishing, as needed) all parts of the Premises, and shall make and perform all routine maintenance thereof and all necessary repairs thereto. When used in this Article, "*repairs*" shall include all necessary replacements, alterations, additions and betterments, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, of every nature, kind and description, including, without limitation, any repairs, replacements, alterations, additions and betterments required by any governmental law, ordinance or regulation now or hereafter enacted relating to the Premises. Such repairs and replacements will be made in a good and workmanlike manner with materials of equal or better quality to the original work, and under the supervision and with the approval of Landlord. Tenant shall enter into a service contract with a contractor approved by Landlord, providing for the service and regular maintenance (with service calls no less frequent than once each calendar quarter and otherwise meeting the specifications set forth in Exhibit "M") of the heating, venting and air conditioning system throughout the Lease Term.

10.2 If Tenant shall fail to maintain or repair the Premises, and such failure continue for a period of ten (10) days after written notice from Landlord, then Landlord shall have the right, but not the obligation, to cause such repairs to be made and the costs therefor plus an administrative fee equal to fifteen percent (15 %) of the costs shall be payable by Tenant to Landlord as additional rental on the date of the next installment of Base Rental due under the Lease. Notwithstanding the foregoing to the contrary, if an emergency exists, Landlord shall have the right, but not the obligation, to make such repairs without prior notice to Tenant if reasonable under the circumstances. Again, Tenant shall pay to Landlord the cost thereof and administrative fee as additional rental due on the date of the next installment of Base Rental.

10.3 Except as expressly provided elsewhere in this Lease, Landlord shall not be required to furnish any services or to make any repairs or alterations in, on or about the Premises or any improvements hereafter erected on the Premises. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Premises and all improvements thereon, and Tenant hereby waives any rights created by any law now or hereafter in force to make repairs to the Premises or improvements thereon at Landlord's expense.

10.4 Tenant, in executing this Lease, acknowledges that the parties have specifically negotiated and Tenant has specifically agreed to perform the repair obligations under this Lease. Without limiting the foregoing, Tenant acknowledges that the Base Rental has been determined, in part, upon Tenant's agreement to maintain and make all the repairs to the Premises required during the Lease Term. Tenant acknowledges that the benefit of the repairs performed by Tenant may inure to the benefit of Landlord after the expiration of the Lease Term and that Tenant, as a sophisticated commercial tenant, understands the full undertaking of such obligations.

10.5 Notwithstanding the foregoing, for a period of one (1) year from the date of substantial completion of (i) the First Phase Work and (ii) the Second Phase Work, as the case

may be, Landlord guarantees the First Phase Work and Second Phase Work against, and Landlord shall, at its sole cost and expense, repair or replace any defective item occasioned during said one-year period by, (a) defective workmanship and/or materials, and (b) failure of such components of the Work to comply substantially with the Plans and Specifications (as defined in Exhibit "E"). Except as expressly provided herein, performance of such applicable one-year guaranty shall be Landlord's sole and exclusive obligation with respect to defective workmanship and/or materials or such other failures as aforesaid, and Tenant's rights to enforce such applicable one-year guaranty shall be Tenant's sole and exclusive remedy against other Landlord with respect to such defective workmanship and/or materials or such failures, in limitation of any contract, warranty or other rights, whether express or implied, that Tenant may otherwise have under applicable law. From and after the expiration of such applicable one-year guaranty, Landlord agrees to cooperate with Tenant in the enforcement by Tenant, at Tenant's sole cost and expense, of any express warranties or guaranties of workmanship or materials given by contractors, subcontractors or materialmen that guarantee or warrant against defective workmanship or materials for a period of time in excess of such applicable one-year period and to cooperate with Tenant in the enforcement by Tenant, at Tenant's sole cost and expense, of any service contracts that provide service, repair or maintenance to any item incorporated in the New Space for a period of time in excess of such applicable one-year period. Further, Landlord shall assign to Tenant all warranties in connection with the Work which are given by manufacturers, contractors, subcontractors and sub-subcontractors. Such warranties shall be consistent with those then generally available from other high quality, reputable commercial contractors in the greater Chicago, Illinois vicinity.

Anything in this Lease to the contrary notwithstanding, and in addition to the one-year warranty set forth above, Landlord, to the full extent of applicable Illinois law, guarantees the Work against any latent defects in workmanship or materials in the construction thereof (which shall include, without limitation, latent defects in the structural elements or the facade of the New Space); provided, however, that the parties acknowledge and agree that with respect to any such latent defects, the provisions of 735 ILCS 5/13-214, as the same may be amended, modified and interpreted from time to time, shall govern and control the foregoing warranty. Anything in this Lease to the contrary notwithstanding, Tenant has not waived, and does not hereby waive, any rights it may have under common law with respect to any latent defects with respect to the construction of the Work.

Anything in this Section 10.5 or elsewhere in this Lease to the contrary notwithstanding, in the event that at any time during the Lease Term Tenant incurs reasonable costs and expenses for the repair or replacement of the roof of the Existing Space or of the roof of the New Space, respectively, which costs and expenses, in each case (a) are not paid or reimbursed under the roof manufacturer's warranty (Tenant being obligated to use all commercially reasonable efforts to obtain such payment or reimbursement), (b) are not caused by fire or other casualty, and (c) are not caused by any act or neglect of Tenant, or any of its employees, agents, invitees, contractors, subcontractors or sub-subcontractors (other than Landlord and Landlord's contractors, subcontractors or sub-subcontractors), then Landlord shall reimburse Tenant for such costs and expenses in accordance with this grammatical paragraph. In the event that such costs and expenses are incurred prior to January 31, 2001 (with respect to the roof of the Existing Space), or prior to September 30, 2004 (with respect to the roof of the New Space), then Landlord shall reimburse Tenant for all of such costs and expenses. In the event that such costs and expenses are

incurred after January 31, 2001 (with respect to the roof of the Existing Space), or after September 30, 2004 (with respect to the roof of the New Space), in both instances, including, without limitation, any Renewal Terms (as defined in Exhibit "J" below), then Landlord shall reimburse Tenant for such costs and expenses, to the extent (if at all) that the same exceed the difference between (y) Fifty Thousand and 00/100ths Dollars ($50,000.00), which $50,000.00 deductible amount shall apply separately with respect to each of the Existing Space roof and the New Space roof, and (z) any such costs or expenses theretofore incurred by Tenant and not previously reimbursed by Landlord hereunder. Landlord's reimbursement hereunder shall be made within thirty (30) days after Tenant's presentation to Landlord of reasonable documentation evidencing the costs and expenses incurred by Tenant and the satisfaction of the other conditions set forth above.

10.6 (a) Anything in this Lease to the contrary notwithstanding, if, during the last eighteen (18) months of the then-current Lease Term, Tenant is required to make any repair or replacement pursuant to Section 10.1 hereof, which repair or replacement under generally accepted accounting principles is not fully chargeable to a current account in the year in which the expenditure is incurred and, therefore, must be capitalized, the cost of such repair or replacement shall be shared between Landlord and Tenant as provided in this Section 10.6. Any such repair or replacement is hereinafter referred to as an "*Eligible Repair or Replacement*" and that portion of the cost of such Eligible Repair or Replacement in excess of $5,000.00 is hereinafter referred to as the "*Eligible Cost*". Tenant shall pay, in the first instance, the entire cost of an Eligible Repair or Replacement, and Landlord shall reimburse Tenant, in accordance with this Section 10.6, for that portion of the Eligible Cost which equals the difference between (i) the amount of the Eligible Cost, and (ii) the product of (A) the Eligible Cost, and (B) a fraction, the numerator of which is the number of months from the commencement of the subject Eligible Repair or Replacement through the end of the then current term, and the denominator of which is the useful life, expressed in months, of the subject Eligible Repair or Replacement assigned to it for federal income tax purposes (pursuant to Section 168 of the Internal Revenue Code of 1986, as amended, and the rules and regulations from time to time promulgated thereunder). Such amount to be reimbursed by Landlord, as calculated in accordance with the preceding sentence, is hereinafter referred to as the "*Tenant Reimbursement*." In the event Tenant thereafter exercises its option with respect to a Renewal Term, then the amount of the Tenant Reimbursement shall be recalculated to reflect the number of months from the commencement of the subject Eligible Repair or Replacement through the end of the applicable Renewal Term ("*Recalculated Reimbursement*"). In the event that, because of Tenant's exercise of its option for a Renewal Term, Tenant shall have been reimbursed hereunder for amounts in excess of the Recalculated Reimbursement, then Tenant shall pay the entire amount of such excess to Landlord within sixty (60) days after Tenant's exercise with respect to such Renewal Term.

(b) In the event that at any time during the last six (6) months of the then-current Lease Term, Tenant intends to undertake an Eligible Repair or Replacement, Tenant shall give written notice thereof to Landlord, which notice shall include a summary of the nature and cost of such Eligible Repair or Replacement. Landlord shall be required to consider such repair or replacement in good faith and, within twenty (20) days after such notice (or such lesser time as stated in such notice, in the event of an emergency), either approve or disapprove the expenditure or propose a reasonable alternative thereto. In the event that Landlord fails to respond to Tenant

with an approval, disapproval or an alternative proposal within such twenty (20) day (or shorter) period, such Eligible Repair or Replacement shall be deemed disapproved. In the event that within such twenty (20) day (or shorter) period, Landlord either disapproves or proposes an alternative to the proposed repair or replacement and Tenant determines that such disapproval or alternative proposal is not reasonable, Tenant may undertake the proposed repair or replacement at its sole expense, without waiving its right to contest the reasonableness of Landlord's position hereunder.

(c) For purposes of this Section 10.6, Landlord's "reasonableness" in disapproving or proposing an alternative to a proposed repair or replacement shall be determined in light of a reasonably prudent owner of similar commercial real estate in the same general vicinity of the Premises.

ARTICLE 11
ASSIGNMENT AND SUBLETTING

11.1 **Restriction on Transfer.** Tenant shall not sublet the Premises, or any portion thereof, nor assign, mortgage, pledge, transfer or otherwise encumber or dispose of this Lease, or any interest therein, or in any manner assign, mortgage, pledge, transfer or otherwise encumber or dispose of its interest or estate in the Premises, or any portion thereof, without obtaining Landlord's prior written consent in each and every instance, which consent shall not be unreasonably withheld or delayed, provided the following conditions are complied with:

(a) Any assignment of this Lease shall transfer to the assignee all of Tenant's right, title and interest in this Lease and all of Tenant's estate or interest in the Premises.

(b) At the time of any assignment or subletting, and at the time when Tenant requests Landlord's written consent thereto, this Lease must be in full force and effect, without any Event of Default.

(c) In the case of an assignment, any such assignee shall assume, by written, recordable instrument, in form and content reasonably satisfactory to Landlord, the due performance of all of Tenant's obligations under this Lease, including any accrued obligations at the time of the effective date of the assignment, and such assumption agreement shall state that the same is made by the assignee for the express benefit of Landlord as a third party beneficiary thereof. A copy of the assignment and assumption agreement, both in form and content reasonably satisfactory to Landlord, fully executed and acknowledged by assignee, together with a certified copy of a properly executed corporate resolution (if the assignee be a corporation) authorizing the execution and delivery of such assumption agreement, shall be sent to Landlord ten (10) days prior to the effective date of such assignment.

(d) In the case of a subletting, a copy of any sublease fully executed and acknowledged by Tenant and the sublessee shall be mailed to Landlord ten (10) days prior to the effective date of such subletting, which sublease shall be in form and content reasonably acceptable to Landlord.

(e) Such assignment or subletting shall be subject to all the provisions, terms, covenants and conditions of this Lease and Tenant-assignor (and the guarantor or guarantors of

this Lease, if any) and the assignee or assignees shall continue to be and remain liable under this Lease, as it may be amended from time to time without notice to any assignor of Tenant's interest or to any guarantor.

(f) Each sublease permitted under this Section 11.1 shall contain provisions to the effect that (i) such sublease is only for actual use and occupancy by the sublessee; (ii) such sublease is subject and subordinate to all of the terms, covenants and conditions of this Lease and to all of the rights of Landlord thereunder; and (iii) in the event this Lease shall terminate before the expiration of such sublease, the sublessee thereunder will, at Landlord's option, attorn to Landlord and waive any rights the sublessee may have to terminate the sublease or to surrender possession thereunder, as a result of the termination of this Lease. A sublease need not be for all of the Premises.

(g) Tenant agrees to pay on behalf of Landlord any and all costs of Landlord, including reasonable attorneys' fees paid or payable to outside counsel, occasioned by such assignment or subletting; provided, however, that such attorneys' fees shall not exceed $5,000.00 in each instance.

Anything in this Section 11.1 or Section 11.3 hereof to the contrary notwithstanding, Tenant may sublet or assign its interest in this Lease, without Landlord's consent, if such subletting or assignment is to an affiliate of Tenant and if such subletting or assignment does not release Tenant (or guarantor, if any) from any of its obligations under this Lease. An "*affiliate*" for purposes of this Section 11.1 and Section 11.3 hereof shall mean (i) a wholly-owned subsidiary of Tenant, (ii) Tenant's parent, (iii) an entity succeeding to all or a substantial part of the business of Tenant, (iv) an entity resulting from a merger or consolidation with Tenant, or (v) an entity which directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, Tenant. The term "*control*" (including, without limitation, the terms "controlling", "controlled by" and "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise).

11.2 **Restriction From Further Assignment.** Notwithstanding anything contained in this Lease to the contrary and notwithstanding any consent by Landlord to any sublease of the Premises, or any portion thereof, or to any assignment of this Lease or of Tenant's interest or estate in the Premises, no sublessee shall assign its sublease nor further sublease the Premises, or any portion thereof, and no assignee shall further assign its interest in this Lease or its interest or estate in the Premises, or any portion thereof, nor sublease the Premises, or any portion thereof, without Landlord's prior written consent in each and every instance which consent shall not be unreasonably withheld or unduly delayed. No such assignment or subleasing shall relieve Tenant from any of Tenant's obligations in this Lease contained.

11.3 **Landlord's Termination Rights.** Should Tenant desire to assign this Lease, or its interest or estate in the Premises, or sublet the Premises, or any portion thereof, it shall give written notice of its intention to do so to Landlord sixty (60) days or more before the effective date of such proposed assignment or subletting and, unless such assignment or subletting is to an affiliate of Tenant in accordance with Section 11.1 hereof, Landlord may, at any time within

thirty (30) days after the receipt of such notice from Tenant, cancel this Lease by giving Tenant written notice of its intention to do so, in which event such cancellation shall become effective upon the date specified by Landlord, but not less than thirty (30) nor more than ninety (90) days after its receipt by Tenant, with the same force and effect as if said cancellation date were the Expiration Date, or the expiration date of any extension or renewal thereof. In the event of any such termination by Landlord, Tenant shall not be obligated to pay Landlord's costs pursuant to Section 11.1(g) hereof. Landlord may enter into a direct lease with the proposed sublessee of assignee or with any other persons as Landlord may desire without obligation or liability to Tenant, its assignees, sublessees or their respective successors, assigns, agents or brokers.

11.4 **Tenant's Failure to Comply.** Tenant's failure to comply with all of the foregoing provisions and conditions of this Article 11 shall (whether or not Landlord's consent is required under this Article), at Landlord's option, render any purported assignment or subletting null and void and of no force and effect.

11.5 **Sharing of Excess Rent.** If Landlord consents to Tenant assigning its interest under this Lease or subletting all or any portion of the Premises, Tenant shall pay to Landlord (in addition to rent and all other amounts payable by Tenant under this Lease) 50% of the rents and other considerations payable by such assignee or subtenant in excess of the rent otherwise payable by Tenant from time to time under this Lease, and net of Tenant's direct out-of-pocket expenses in connection with such assignment or subletting. For the purposes of this computation, the additional amount payable by Tenant shall be determined by application of the rental rate per square foot for the Premises or any portion thereof sublet. Said additional amount shall be paid to Landlord immediately upon receipt by Tenant of such rent or other considerations from the assignee or subtenant.

ARTICLE 12
INSURANCE; WAIVERS; SUBROGATION; INDEMNITY

12.1 Tenant shall at its expense procure and maintain throughout the Lease Term the following insurance policies: (i) commercial general liability insurance in amounts of not less than $5,000,000 per occurrence, combined single limit, or such other amounts as Landlord may from time to time reasonably require, insuring Tenant, Landlord and Landlord's agents against all liability for injury to or death of a person or persons or damage to property arising from the use and occupancy of the Premises, (ii) contractual liability insurance coverage sufficient to cover Tenant's indemnity obligations hereunder, (iii) casualty insurance, including "all risks" and fire and extended coverage insurance covering loss by fire, and other hazards, including, but not limited to, windstorm, hail, explosion, vandalism, riot and civil commotion, damage from vehicles, smoke, water, and flood, if the Premises are in a designated flood or flood insurance area, and earthquake, if the Premises are in an earthquake prone area, and such other similar or dissimilar hazards customarily insured against in the vicinity of the Premises and covering the full replacement cost of the Premises and Tenant's leasehold improvements, personal property and other property (including the property of others), located in or on the Premises, (iv) workman's compensation insurance, containing a waiver of subrogation endorsement reasonably acceptable to Landlord, (v) comprehensive automobile liability insurance, insuring Tenant, Landlord and Landlord's agents, (vi) business interruption insurance, and (vii) such other insurance and in such amounts as Landlord may reasonably require from time to time. The term

"*full replacement cost*", as used above, shall mean the cost of replacing the improvements without deduction for depreciation or wear and tear, and it shall include a reasonable sum for architectural, engineering, legal, administrative and supervisory fees connected with any restoration. In the event there is a sprinkler system and/or a boiler or pressure pipes on the Premises, then Tenant shall also procure sprinkler leakage insurance and/or boiler and pressure vessel insurance at Tenant's expense. Tenant's insurance shall provide primary coverage to Landlord when any policy issued to Landlord provides duplicate or similar coverage, and in such circumstance, Landlord's policy will be excess over Tenant's policy. Tenant shall furnish certificates of insurance and such other evidence satisfactory to Landlord of the maintenance of all insurance coverages required hereunder prior to the Commencement Date, and Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least thirty (30) days before cancellation or a material change of any such insurance. All such insurance policies shall name Landlord as additional insured or loss payee, as applicable, and otherwise shall be in form, and issued by companies, reasonably satisfactory to Landlord and with deductibles reasonably satisfactory to Landlord. Tenant's failure to maintain any insurance hereunder shall constitute an Event of Default without any written notice required of Landlord and, in such event, Landlord shall have the right, but not the obligation, to purchase any insurance that has lapsed. Should Landlord elect to purchase insurance on behalf of Tenant, then Tenant shall reimburse to Landlord the cost of such insurance and an administrative fee of fifteen percent (15%) of the amount of the premium within ten (10) days of the date of the notice from Landlord seeking the reimbursement. The policy limits of any insurance required to be carried by Tenant shall not limit the liability of Tenant under this Lease.

12.2 Landlord shall not be liable to Tenant or those claiming by, through, or under Tenant for any injury to or death of any person or persons or the damage to or theft, destruction, loss, or loss of use of any property or inconvenience (a "*Loss*") caused by casualty, theft, fire, third parties, or any other matter (including Losses arising through repair or alteration of any part of the Premises, or failure to make repairs, or from any other cause), except the negligence or misconduct of Landlord or its employees and agents. Notwithstanding the foregoing to the contrary, Landlord and Tenant waive any claim each might have against the other for any damage to or theft, destruction, loss, or loss of use of any property, to the extent the same is covered under any insurance policy that covers the Premises, Landlord's or Tenant's fixtures, personal property, leasehold improvements, or business, or, in the case of Tenant's waiver, is required to be insured against under the terms of this Lease, and, to the extent allowed by law, regardless that the negligence or fault of the other party caused such loss. This waiver shall not apply to the portion of any damage which is not reimbursed by the damaged party's insurance by reason of the deductible in such party's insurance coverage, or apply to any coinsurance penalty which Landlord or Tenant might sustain. Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party.

12.3 Subject to the waiver provisions of Section 12.2 above, Tenant shall defend, indemnify, and hold harmless Landlord and its employees and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, and expenses (including attorneys' fees) for any Loss arising from an occurrence on the Premises or caused by or resulting from the condition of the Premises, or from the acts or omissions of Tenant or Tenant's

employees, agents, contractors or invitees, or from Tenant's failure to perform any of its obligations under this Lease.

12.4 Tenant shall not use, and shall not permit any subtenant, licensee, concessionaire, employee, agent or invitee (hereinafter collectively "*Tenant's Representatives*") to use, any portion of the Premises for the placement, storage, manufacture, disposal or handling of any hazardous materials (hereinafter defined) unless Tenant complies with all applicable environmental laws (federal, state or local), including, but not limited to those for obtaining proper permits. In the event Tenant or Tenant's Representatives desire to use or place hazardous materials on the Premises it shall notify Landlord in writing thirty (30) days prior to such proposed use or placement, and provide the names of the hazardous materials, procedures to insure compliance with the applicable environmental law and such other information as Landlord may reasonably request.

In the event Tenant or Tenant's Representatives places, releases or discovers any hazardous materials on the Premises in violation of applicable environmental laws, Tenant shall immediately notify Landlord of such fact in writing within twenty-four (24) hours of the placement, release or discovery. Tenant shall not attempt any removal, abatement or remediation of those hazardous materials on the Premises in violation of applicable environmental laws, without obtaining the additional written consent of Landlord, which consent may be specifically conditioned on Landlord's right to approve the scope, timing and techniques of any such work and the appointment of all contractors, engineers, inspectors and consultants in connection with any such work. Tenant shall be responsible for the cost of any removal, abatement and remediation work of any hazardous materials placed, stored, manufactured, disposed of or handled by Tenant or Tenant's Representatives on the Premises and for the cost of any removal, abatement or remediation of any hazardous materials which might be disturbed or released as a result of any remodeling or construction in the Premises by Tenant or Tenant's Representatives. Such costs shall include, without limitation, the cost of any supervision by Landlord, its employees or agents, in connection with such work. Tenant shall comply with all environmental laws in connection with any such removal.

Tenant shall indemnify Landlord, its shareholders, directors, officers, employees and agents and hold them harmless, from and against any loss, damage (including, without limitation, a loss in value of the Premises or damages due to restrictions on marketing contaminated space), cost, liability or expense (including reasonable attorneys' fees and expenses and court costs) arising out of the placement, storage, use, manufacture, disposal, handling, removal, abatement or remediation of any hazardous materials by Tenant or Tenant's Representatives on the Premises, or any removal, abatement or remediation of any hazardous materials required hereunder to be performed or paid for by Tenant, with respect to any portion of the Premises, or arising out of any breach by Tenant of its obligations under this paragraph.

The term "*hazardous materials*" as used herein shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos or polychlorinated biphenyls;

(iv) any substance the presence of which on the Premises is prohibited or regulated by any federal, state or local law, regulation, code or rule; and (v) any other substance which requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal.

12.5 The indemnification provisions contained in this Article 12 shall survive the termination of this Lease.

ARTICLE 13

FIRE AND CASUALTY

13.1 Tenant covenants and agrees that in case of damage to or destruction of the Premises by fire or otherwise, Tenant at its sole cost and expense, shall promptly restore, repair, replace and rebuild the same ("*Restoration*") as nearly as possible to the condition that the same were in immediately prior to such damage or destruction with such changes or alterations as may be reasonably acceptable to Tenant or required by law, except that Tenant shall not be obligated to rebuild any of the Flammable Storage Room, Mezzanine or Elevator (all as defined in Exhibit "E" attached hereto and collectively referred to herein as "*Tenant's Construction Items*"). Tenant shall forthwith give Landlord written notice of such damage or destruction upon the occurrence thereof and specify in such notice, in reasonable detail, the extent thereof. The Restoration shall be carried on and completed in accordance with the provisions and conditions of this Lease. All insurance proceeds shall be held by Landlord and Tenant as co-trustee. If the insurance monies in the hands of Landlord and Tenant as co-trustees shall be deemed to be insufficient by Landlord to pay the entire costs of the Restoration, Tenant, at its election, shall either pay any deficiency to Landlord promptly upon demand or provide other reasonable security to the Landlord for the deficiency and pay Landlord the portions of the deficiency from time to time as expended by Landlord and invoiced to Tenant.

13.2 All insurance monies recovered by Landlord or Tenant shall be held by Landlord and Tenant as co-trustees on account of such damage or destruction and shall be applied to the payment of the costs of the Restoration and shall be paid out from time to time as the restoration progresses, in accordance with requirements reasonably imposed by Landlord or any mortgagee of record. Tenant shall furnish Landlord at the time of any such payment with lien releases and evidence reasonably satisfactory to Landlord that there are no unpaid bills in respect to any work, labor, services or materials performed, furnished or supplied in connection with such Restoration.

13.3 No destruction of or damage to the Premises, or any portion thereof, by fire, casualty or otherwise shall permit Tenant to surrender this Lease or shall relieve Tenant from its liability to pay to Landlord the Base Rental and additional rent payable under this Lease or from any of its other obligations under this Lease, and Tenant waives any rights now or hereafter conferred upon Tenant by present or future law or otherwise to quit or surrender this Lease or the Premises, or any portion thereof, to Landlord or to any suspension, diminution, abatement or reduction of rent on account of any such damage or destruction.

13.4 In the event the damage or destruction occurs during the last nine (9) months of the Lease Term, then, notwithstanding the provisions of Sections 13.1 and 13.2 above, Tenant

shall not be obligated to complete such Restoration so long as Tenant assigns to Landlord all insurance proceeds necessary (including the amount of any deductibles and any other amounts necessary) for Landlord to complete such Restoration, except that Tenant may retain any proceeds attributable to the Tenant's Construction Items.

ARTICLE 14
CONDEMNATION

14.1 If all of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this Lease shall terminate and the rent shall be abated during the unexpired portion of the Lease Term, effective on the date physical possession is taken by the condemning authority, and Tenant shall have no claim against Landlord for the value of any unexpired Lease Term.

14.2 In the event a portion but not all of the Premises shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, by private sale in lieu thereof and the partial taking or condemnation shall render the Premises unsuitable for continued operation, then Landlord shall have the option, in its sole discretion, of terminating this Lease or, at Landlord's sole risk and expense, restoring and reconstructing the Premises to the extent necessary to make the same reasonably tenantable. Should Landlord not elect to terminate this Lease, then Landlord shall restore the Premises and this Lease shall continue in full force and effect with the rent payable during the unexpired portion of this Lease being adjusted to such an extent as may be fair and reasonable under the circumstances, and Tenant shall have no claim against Landlord for the value of any interrupted portion of this Lease.

14.3 Landlord shall be entitled to receive all of the compensation awarded upon a condemnation (or the proceeds of a private sale in lieu thereof) of all or any part of the Premises, including any award for the value of any unexpired Lease Term, and Tenant hereby assigns to Landlord and expressly waives all claim to any such compensation, except that Tenant shall be entitled to any proceeds attributable to the Tenant's Construction Items. However, Tenant reserves for itself any separate award made for relocation cost or loss of any of Tenant's trade fixtures, provided no such award shall diminish the amount that would otherwise be awarded to Landlord.

ARTICLE 15
SUBORDINATION, ATTORNMENT, ESTOPPEL

15.1 This Lease shall be subordinate to any deed of trust, mortgage, or other security instrument (a "*Mortgage*"), or any ground lease, master lease, or primary lease (a "*Primary Lease*"), that now or hereafter covers all or any part of the Premises (the mortgagee under any Mortgage or the lessor under any Primary Lease is referred to herein as "*Landlord's Mortgagee*"), including any modifications, renewals or extensions of such Mortgage or Primary Lease. Notwithstanding the foregoing, Tenant agrees that any such Landlord's Mortgagee shall have the right at any time to subordinate such Mortgage or Primary Lease to this Lease on such terms and subject to such conditions as Landlord's Mortgagee may reasonably deem appropriate

in its discretion. Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the Landlord's Mortgagee as Landlord may reasonably request. In the event that Tenant should fail to execute any subordination or other agreement required by this Section, promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney in fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest.

15.2 Tenant shall attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

15.3 Tenant shall not seek to enforce any remedy it may have for any default on the part of the Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail, to any Landlord's Mortgagee whose address has been given to Tenant, and affording such Landlord's Mortgagee a reasonable opportunity to perform Landlord's obligations hereunder.

15.4 Tenant agrees that, within ten (10) days of written request by Landlord, it will execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

ARTICLE 16
EVENTS OF DEFAULT

16.1 The following shall be deemed to be Events of Default by Tenant under this Lease:

(a) Tenant shall fail to pay any installment of Base Rental or any other rent or monetary sum when due under the provisions of this Lease, but in the case of the first two (2) such failures in any twelve (12) consecutive months, an Event of Default shall not be deemed to have occurred until this failure continues for five (5) days after written notice from Landlord.

(b) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of a monetary sum, and such failure shall not be cured within ten (10) days after written notice thereof to Tenant; provided that, if any such default cannot reasonably be remedied by Tenant within ten (10) days after such written notice, then Tenant shall have such additional time that shall be reasonably necessary to remedy such default (but in no event longer than ninety (90) days) so long as during such time Tenant is continuously and diligently pursuing the remedy necessary to cure such default.

(c) Tenant or any guarantor of Tenant's obligations under this Lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(d) Tenant or any guarantor of Tenant's obligations under this Lease shall file a petition under any state or federal bankruptcy or other insolvency statutes or Tenant or any guarantor of Tenant's obligations under this Lease shall be adjudged bankrupt or insolvent in proceeding filed against Tenant or guarantor thereunder and such adjudication shall not be vacated or set aside within ninety (90) days.

(e) A receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any guarantor of the obligations of Tenant under this Lease and such receivership shall not be terminated or stayed within forty-five (45) days.

(f) Tenant shall desert or vacate any substantial portion of the Premises; provided that, Tenant vacating the Premises shall not constitute an Event of Default if, prior to vacating the Premises, Tenant has made arrangements reasonably satisfactory to Landlord to (i) insure that Tenant's insurance for the Premises will not be voided or canceled with respect to the Premises as a result of such vacancy, (ii) insure that the Premises are secured and not subject to vandalism, and (iii) insure that the Premises will be properly maintained after such vacation. During such vacation, Tenant shall inspect the Premises at least once each month and report monthly in writing to Landlord on the condition of the Premises.

ARTICLE 17
REMEDIES

17.1 Upon the occurrence of an Event of Default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, except if required by applicable law:

(a) Terminate this Lease in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or damages, enter upon and take possession and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof without being liable for prosecution or any claim for damages therefor, and Tenant agrees to pay to Landlord, as hereinafter set forth in Section 17.2, on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.

(b) Terminate Tenant's right to possession of the Premises, but not this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or damages, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof without being liable for prosecution or any claim for damages therefor and Tenant agrees to pay to Landlord, as hereinafter set forth in Section 17.2, on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.

(c) Enter upon the Premises, without terminating this Lease or Tenant's right to possession and without being liable for prosecution or any claim for damages therefor, and do

whatever Tenant is obligated to do under the provisions of this Lease, and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, plus an administrative fee equal to fifteen percent (15%) of any expenses incurred by Landlord, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant for such action.

(d) Not to re-enter the Premises or terminate this Lease, but to allow Tenant to remain in possession of the Premises, and bring suit against Tenant to collect the monthly rents and other charges provided in this Lease as they accrue. Landlord shall have a right to allow such deficiencies of monthly rents and other charges provided in this Lease to accumulate and to bring an action on several or all of the accrued deficiencies at one time. Any such suit shall not prejudice in any way the right of Landlord to bring a similar action for any subsequent deficiency or deficiencies.

Tenant agrees that any re-entry into the Premises under the provisions of subsection (a) or (b) of this Section shall not be deemed a termination of this Lease or an acceptance of the surrender thereof, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease. Tenant also agrees that any notice pursuant to an action for forcible detainer or eviction shall not be deemed to be a termination of this Lease unless Landlord shall have also notified Tenant in writing that it has so elected to terminate this Lease. Any election of the remedy provided in subsection (b) of this Section shall not preclude the subsequent election by Landlord of the remedy under subsection (a) of this Section.

Should Landlord elect to re-enter the Premises under the provisions of subsection (a) or (b), Landlord shall make commercially reasonable efforts to relet the Premises. Nothing herein, however, shall prohibit Landlord from using its business judgment in respect to the releasing of the Premises. In this regard, Landlord shall not be required to relet the Premises for a rental rate less than the fair market rental rate for the Premises.

17.2 Should Landlord at any time terminate this Lease or Tenant's right to possession for an Event of Default, Landlord shall recover from Tenant, and Tenant shall be liable and pay to Landlord, as damages a sum equal to the following:

(i) the unpaid monthly rents and other charges provided in this Lease and which accrued prior to the date of termination;

(ii) an amount equal to the following:

(A) Until Landlord is able, through reasonable efforts, to relet the Premises under terms satisfactory to Landlord, in its sole discretion, Tenant shall pay to Landlord on or before the first day of each calendar month, the monthly rentals and other charges provided in this Lease. If and after the Premises have been relet by Landlord, Tenant shall pay to Landlord on the twentieth (20th) day of each calendar month the difference between the monthly rentals and other charges provided in this Lease for such calendar month and that actually collected by Landlord for such month. If it is necessary for Landlord to bring suit in order to collect any deficiency, Landlord shall have a right to allow such deficiencies to

accumulate and to bring an action on several or all of the accrued deficiencies at one time. Any such suit shall not prejudice in any way the right of Landlord to bring a similar action for any subsequent deficiency or deficiencies. Any amount collected by Landlord from subsequent tenants for any calendar month in excess of the monthly rentals and other charges provided in this Lease, shall be credited to Tenant, first, in reduction of Tenant's liability for any calendar month for which the amount collected by Landlord will be less than the monthly rentals and other charges provided in this Lease and, then, against Tenant's liability for any other damages of Landlord hereunder, and Tenant shall have no right to any excess other than the above-described credits; and

(B) When Landlord desires, Landlord may demand a final settlement, in which event, Landlord shall have a right to, and Tenant hereby agrees to pay, the difference between (1) the total monthly rents and other charges provided in this Lease for the remainder of the Lease Term, and (2) the fair rental value of the Premises for such period (determined as of the time of the final settlement) such difference discounted to present value using the prime rate published in The Wall Street Journal for the region in which the Premises is located on the date of the final settlement; and

(iii) all other damages which Landlord may demonstrate it incurred, including, without limitation, any and all costs of retaking the Premises, costs of maintaining and preserving the Premises after such retaking, and costs of reletting the Premises, such as costs to repair or remodel the Premises and to pay leasing commissions.

If Landlord elects to exercise the remedy prescribed in Section 17.2(ii)(A) above, this election shall not prejudice Landlord's right at any time thereafter to cancel said election in favor of the remedy prescribed in Section 17.2(ii)(B) above.

As used in this Article 17, the phrase "the monthly rentals and other charges provided in this Lease" shall mean the monthly amount of Base Rental plus one twelfth (1/12th) the annual amount of Operating Expenses. If Landlord demands a final settlement, then Landlord shall have the right to estimate Operating Expenses for the remainder of the Lease Tenn.

Any past due monthly rents and other charges provided in this Lease shall bear interest at the Default Interest Rate.

17.3 **Intentionally omitted.**

17.4 Should Landlord re-enter and take possession of the Premises, Landlord may, to the extent permitted by law, with respect to any and all furniture, fixtures, equipment and other personal property located on the Premises, exercise one or more of the following rights: (i) sell the personal property pursuant to any lien retained by Landlord; (ii) remove the personal property from the Premises (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) and place same in storage and, in such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal and storage and shall indemnify and hold Landlord harmless from all loss, damage, cost, expense and

liability in connection with such removal and storage; or (iii) dispose of any of the personal property. Should Landlord elect to dispose of any of the personal property, whether or not such personal property was first placed in storage, Landlord shall give Tenant written notice at Tenant's last known address advising Tenant that Landlord will dispose of the personal property unless Tenant retrieves same within five (5) days from the date of the notice and pays to Landlord any costs incurred for storage and/or removal. Landlord shall also have the right to relinquish possession of all or any portion of such personal property to any person claiming to be entitled to possession thereof who presents to Landlord a copy of any instrument represented to Landlord by such person to grant such person the right to take possession of such personal property, without the necessity on the part of Landlord to inquire into the authenticity of the copy of the instrument or of Tenant's or Tenant's predecessor's signature thereon and without the necessity of Landlord's making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which such person purports to act; and Tenant agrees to indemnify and hold Landlord harmless from all cost, expense, loss, damage and liability incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment of other personal property to the person. The rights of Landlord herein stated shall be in addition to any and all other rights which Landlord has or may hereafter have a law or in equity, and Tenant stipulates and agrees that the rights herein granted Landlord are commercially reasonable. Tenant knowingly and irrevocably waives any claims it may have against Landlord arising from Landlord's removal and storage of Tenant's personal property in accordance with the provisions of this paragraph.

17.5 No re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention shall be given to Tenant. Notwithstanding any such re-entry or taking possession of the Premises, Landlord may at any time thereafter elect to terminate this Lease by reason of the Event of Default. Pursuit of any of the remedies set forth in this Article 17 shall not preclude pursuit of any of the other remedies in this Article 17 or any others provided in this Lease or any other remedies provided by law or in equity. The specific remedies to which Landlord may resort under this Lease are cumulative and are not intended to be exclusive of any other remedies to which Landlord may be lawfully entitled in case of an Event of Default under this Lease. In addition to any other remedies provided in this Lease, Landlord shall be entitled to seek injunctive relief to restrain any violation or threatened violation of the covenants, conditions or provisions of this lease or to compel specific performance. The pursuit of any remedy provided in this Lease shall not constitute a forfeiture or waiver of any rent due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of rent following an Event of Default hereunder shall not be construed as Landlord's waiver of such Event of Default unless such waiver is expressly stated in writing signed by Landlord. No waiver by Landlord of any violation or breach of the terms, provisions, and covenants of this Lease shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants of this Lease. No consent by Landlord to any act of Tenant under this Lease shall be deemed to waive or render unnecessary consent to any subsequent or similar act. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any other violation or Event of Default.

17.6 Landlord and Tenant hereby irrevocably waive, to the extent permitted by law, any right to trial by jury in any lawsuit, action, proceeding, or counterclaim brought by either party hereto against the other on any matter arising out of or connected with this Lease, the acts or omissions of Landlord or Tenant in connection with this Lease, or Tenant's occupancy and use of the Premises.

17.7 Tenant shall not for any reason withhold or reduce Tenant's required payments of rent and other charges provided in this Lease, it being agreed that the obligations of Landlord under this Lease are independent of Tenant's obligations except as may be otherwise expressly provided. The immediately preceding sentence shall not be deemed to deny Tenant the pursuit of all rights granted it under this Lease or at law; however, at the direction of Landlord, Tenant's claims in this regard shall be litigated in proceedings different from any litigation involving rent claims or other claims by Landlord against Tenant (i.e., each party may proceed to a separate judgment without consideration, counterclaim or offset as to the claims asserted by the other party); provided that, Tenant may override such direction of Landlord and litigate rent claims in the same proceedings as claims made by Landlord against Tenant so long as Tenant timely escrows all rent payments it believes it is not obligated to make to Landlord under this Lease with the subject court during the pendency of such proceeding.

17.8 In the event of any default described in Section 16.1(d) of this Lease, any assumption and assignment must conform with the requirements of the Bankruptcy Code which provides, in part, that the Landlord must be provided with adequate assurance of the following: (i) that the proposed assignee has sources to pay monthly rents and any other charges due under this Lease; (ii) that the financial condition and operating performance of any proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of Tenant and its guarantors, if any, as of the date of execution of this Lease; and (iii) that any assumption or assignment is subject to all of the provisions of this Lease (including, but not limited to, restrictions as to use) and will not breach any such provision contained in any other lease, financing agreement or other agreement relating to the Premises.

(a) In order to provide Landlord with the assurance contemplated by the Bankruptcy Code, Tenant must fulfill the following obligations, in addition to any other reasonable obligations that Landlord may require, before any assumption of this Lease is effective: (i) all defaults under subsection (a) of Section 16.1 of this Lease must be cured within ten (10) days after the date of assumption; (ii) all other defaults under Section 16.1 of this Lease other than under subsection (d) of Section 16.1 must be cured within ten (10) days after the date of assumption; (iii) all actual monetary losses incurred by Landlord (including, but not limited to, reasonable attorneys' fees) must be paid to Landlord within ten (10) days after the date of assumption; and (iv) Landlord must receive within ten (10) days after the date of assumption an additional Security Deposit in the amount of six (6) months Base Rental (using the Base Rental in effect for the first full month immediately following the assumption) and an advance prepayment of Base Rental in the amount of three (3) months Base Rental (using the Base Rental in effect for the first full month immediately following the assumption), both sums to be held by Landlord in accordance with the other provisions of this Lease, including, without limitation, Section 4.2, and deemed to be rent under this Lease for the purposes of the Bankruptcy Code as amended and from time to time in effect.

(b) In the event this Lease is assumed in accordance with the requirements of the Bankruptcy Code and this Lease, and is subsequently assigned, then, in addition to any other reasonable obligations that Landlord may require and in order to provide Landlord with the assurances contemplated by the Bankruptcy Code, Landlord shall be provided with the following: (i) a financial statement of the proposed assignee prepared in accordance with generally accepted accounting principles consistently applied, though on a cash basis, which reveals a net worth in an amount sufficient, in Landlord's reasonable judgment, to assure the future performance by the proposed assignee of Tenant's obligations under this Lease; or (ii) a written guaranty by one or more guarantors with financial ability sufficient to assure the future performance of Tenant's obligations under this lease, such guaranty to be in form and content satisfactory to Landlord and to cover the performance of all of Tenant's obligations under this Lease.

17.9 The liability of Tenant to Landlord for any default by Tenant under the terms of this Lease shall be limited to Landlord's actual direct, but not consequential nor punitive damages therefor, except that any claims by Landlord against Tenant under Article 12 above or Article 20 below shall not be subject to such limitation and in such instances, Landlord may pursue consequential and/or punitive damages against Tenant.

ARTICLE 18
LANDLORD'S DEFAULT

18.1 Landlord shall be in default under this Lease if Landlord has not begun and pursued with reasonable diligence the cure of any failure of Landlord to meet its obligations under this Lease within thirty (30) days of the receipt by Landlord of written notice from Tenant of the alleged failure to perform. Tenant hereby waives any right to terminate or rescind this Lease as a result of Landlord's default as to any covenant or agreement contained in this Lease or as a result of the breach of any promise or inducement hereof, whether in this Lease or elsewhere and Tenant hereby agrees that Tenant's sole remedies for default hereunder and for breach of any promise or inducement shall be limited to a suit for damages and/or injunctive relief. In addition, Tenant hereby covenants that, prior to the exercise of any such remedies, it will give the mortgagees holding mortgages on the project notice and a reasonable time to cure any default by Landlord.

18.2 The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be limited to Tenant's actual direct, but not consequential nor punitive, damages therefor. Tenant agrees to look solely to the estate and interest of Landlord in the Premises for the collection of any judgment or other judicial process requiring the payment of money by Landlord in the event of a default or breach by Landlord with respect to this Lease, and no other assets of Landlord shall be subject to levy of execution or other procedures for the satisfaction of Tenant's rights. This section shall not be deemed to limit or deny any remedies which Tenant may have in the event of default by Landlord hereunder which do not involve the personal liability of Landlord.

ARTICLE 19
LANDLORD'S CONTRACTUAL LIEN

19.1 Landlord shall have, at all times, a valid security interest in and upon the present and future receivables of Tenant and all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant presently or which may hereafter be situated on the Premises, and all proceeds therefrom, and such property shall not be removed therefrom without the consent of Landlord until all arrearage in rent as well as any and all other sums of money then due to Landlord hereunder shall first have been paid and discharged and all the covenants, agreements and conditions hereof have been fully complied with and performed by Tenant. This contractual lien is in addition to any and all other liens and rights of Landlord to bring a suit for distraint of Tenant's personal property or otherwise and is given to secure payment of all rent and other sums of money becoming due under the Lease from Tenant and to secure payment of any damages or loss which Landlord may suffer by reason of the breach by Tenant of any covenant, agreement or condition contained herein and shall survive any termination of this Lease by reason of a default of Tenant. Upon the occurrence of any Event of Default by Tenant, Landlord may, in addition to any other remedies provided herein, enter upon the Premises and take possession of any and all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant situated on the Premises, without liability for trespass or conversion, store same (on or off the Premises or Project) and sell the same at public or private sale, with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale the Landlord or its assigns may purchase unless otherwise prohibited by law. Without intending to exclude any other manner of giving Tenant reasonable notice, the requirement of reasonable notice shall be met if such notice is given in the manner prescribed in this Lease at least five (5) days before the time of sale unless otherwise required by law. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and other expenses), shall be applied as a credit against the indebtedness secured by the security interest granted in this section. Any surplus shall be paid to Tenant or as otherwise required by law; and the Tenant shall pay any deficiencies forthwith. Upon request by Landlord, Tenant agrees to execute and deliver to Landlord within ten (10) days of such request a financing statement in form sufficient to perfect the security interest of Landlord in the aforementioned property and proceeds thereof under the provisions of the Uniform Commercial Code in force in the State of Illinois. Landlord may also file a copy of this Lease to perfect its interest in the personal property of Tenant described above.

ARTICLE 20
SURRENDER OF PREMISES; HOLDING OVER

20.1 No act by Landlord shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless the same is made in writing and signed by Landlord. At the expiration or termination of this Lease, Tenant shall deliver to Landlord the Premises "broom-clean" and with all improvements located thereon in good repair and condition, reasonable wear and tear and condemnation and fire or other casualty damage not caused by Tenant excepted, and shall deliver to Landlord all keys to the Premises. Provided that Tenant has performed all of its obligations hereunder, Tenant may remove all

unattached trade fixtures, furniture, and personal property placed in the Premises by Tenant (but Tenant shall not remove any such item which was paid for, in whole or in part, by Landlord). Additionally, Tenant shall remove such alterations, additions, improvements, trade fixtures, equipment, wiring, and furniture as Landlord may request, including without limitation, the Tenant's Construction Items and the office area to be constructed as part of the Work in the Existing Space. Tenant shall repair all damage caused by such removal. All items not so removed shall be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord at any time, thereafter, without notice to Tenant and without any obligation to account for such items. If Landlord incurs any cost in the storage or removal of any such items, Tenant shall pay to Landlord on demand any and all such charges. The provisions of this paragraph shall survive the expiration or termination of this Lease.

20.2 If Tenant, or any party under Tenant claiming rights to this Lease, fails to vacate the Premises at the end of the Lease Term, then such possession shall be an unlawful detainer (Landlord reserving the right to seek an eviction or removal), no tenancy shall be created, and Tenant shall pay each day during any holdover period a daily Base Rental equal to the greater of (a) one thirtieth (1/30th) of two hundred percent (200%) of the monthly Base Rental payable during the last month of the Lease Term, or (b) the prevailing rental rate for similar space in the Premises, plus, Tenant shall pay any additional rental due under the other provisions of this Lease during any such holdover period. In addition to payment of rent, Tenant shall pay to Landlord all other damages to which Landlord may be entitled as a result of Tenant's holding over.

ARTICLE 21
RIGHT OF ACCESS

21.1 Landlord or Landlord's representatives shall have the right to enter into and upon the Premises at any and all reasonable times upon prior reasonable notice to Tenant except in the event of an emergency (i) to inspect, clean or make repairs or alterations or additions to the Premises as Landlord may deem necessary (but without any obligation to do so, except as expressly provided elsewhere in this Lease), or (ii) to show the Premises to prospective tenants, purchasers or lenders; and Tenant shall not be entitled to any abatement or reduction of rent by reason thereof, nor shall any such entry be deemed to be an actual or constructive eviction, provided that in exercising its rights under this Article 21, to the extent commercially reasonable under the circumstances, Landlord shall minimize interference with Tenant's operations from the Premises.

ARTICLE 22
MISCELLANEOUS

22.1 **Attorneys' Fees.** In case it should be necessary or proper for one party to bring an action under this Lease against the other, then the party which does not prevail agrees in each and any such case to pay to the party which prevails its reasonable attorneys' fees.

22.2 **Personal Property Taxes.** Tenant shall be liable for all taxes levied or assessed against personal property, furniture, or fixtures placed by Tenant in the Premises. If any taxes for

which Tenant is liable are levied or assessed against Landlord or Landlord's property and Landlord elects to pay the same, or if the assessed value of Landlord's property is increased by inclusion of such personal property, furniture or fixtures and Landlord elects to pay the taxes based on such increase, then Tenant shall pay to Landlord, upon demand, that part of such taxes for which Tenant is primarily liable hereunder.

22.3 **Name.** Tenant shall not, without the written consent of Landlord, use the name of the Premises for any purpose other than as the address of the business to be conducted by Tenant in the Premises. In no event shall Tenant acquire any rights in or to such name and Landlord reserves the right from time to time and at any time to change the name of the Premises.

22.4 **Financial Statements.** Prior to the execution of this Lease, Tenant has delivered financial statements to Landlord, prepared by a certified public accountant and certified to be true and correct in all material aspects. Tenant further agrees to deliver to Landlord its most current financial statements at the time, from time to time, within ten (10) days of Landlord's written request, but in no event shall Tenant be obligated to deliver such financial statements to Landlord more often than once every twelve (12) calendar months except when an Event of Default exists. Each such financial statement certified to be true and correct in all material aspects by an authorized person on behalf of Tenant.

22.5 **Brokerage.** Landlord and Tenant each warrant to the other that it has not dealt with any broker or agent in connection with the negotiation or execution of this Lease, other than the person(s) listed in the Basic Definitions and Lease Provisions of this Lease (the "*Broker(s)*"). Except for any Broker(s) who shall be compensated in accordance with the provisions of a separate agreement, Landlord and Tenant each agree to indemnify the other against all costs, expenses, attorneys' fees, and other liability for commissions or other compensation claimed by any other broker or agent claiming the same by, through, or under the indemnifying party.

22.6 **Quiet Enjoyment.** Provided Tenant has performed all of the terms and conditions of this Lease to be performed by Tenant, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through, or under Landlord, subject to the terms and conditions of this Lease.

22.7 **Force Majeure.** Whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party. The foregoing shall not excuse, however, the timely payment of rent by Tenant under the provisions of this Lease.

22.8 **Notices.** All notices and other communications given by one party to the other under the provisions of this Lease shall be in writing, addressed to the party at the address provided in the Basic Definitions and Lease Provisions, and shall be by one of the following: (i) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, (ii) hand delivered by courier to the intended address, or (iii) sent by prepaid telegram, cable, facsimile transmission, or telex followed by a confirmatory letter. Notice sent by certified mail

shall be effective three (3) days after being deposited in the United States Mail; all other notices shall be effective upon delivery to the address of the addressee. The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.

22.9 **Joint and Several Liability.** If there is more than one Tenant, then the obligations hereunder imposed upon Tenant shall be joint and several. If there is a guarantor of Tenant's obligations hereunder, then the obligations hereunder imposed upon Tenant shall be the joint and several obligations of Tenant and such guarantor, and Landlord need not first proceed against Tenant before proceeding against such guarantor nor shall any such guarantor be released from its guaranty for any reason whatsoever.

22.10 **Severability.** If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Lease shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Lease a clause of provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

22.11 **Amendments; Construction and Binding Effect.** This Lease may not be amended except by instrument in writing signed by Landlord and Tenant. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord, and no custom or practice which may evolve between the parties in the administration of the terms thereof shall waive or diminish the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms hereof. The terms and conditions contained in this Lease shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. This Lease is for the sole benefit of Landlord and Tenant, and, other than Landlord's Mortgagee or a successor thereto, no third party shall be deemed a beneficiary hereof.

22.12 **Captions.** The captions contained in this Lease are for convenience of reference only, and do not limit or enlarge the terms and conditions of this Lease.

22.13 **Intentionally Omitted.**

22.14 **Time of Essence.** Except as otherwise expressly provided in this Lease, time is of the essence.

22.15 **Governing Law; Venue.** The laws of the state in which the Premises is located shall govern the interpretation, validity, performance and enforcement of this Lease. Venue for any action under this Lease shall be the county in which rentals are due.

22.16 **Authority.** If Tenant is a corporation or partnership, the person executing this Lease on behalf of Tenant hereby represents and warrants that (i) he is duly authorized and empowered to execute this Lease on behalf of Tenant, (ii) Tenant has full right and authority to enter into this Lease, and (iii) upon full execution, this Lease constitutes a valid and binding obligation of Tenant.

22.17 **Approval.** Any approval of Landlord required under the provisions of this Lease must be in writing or it shall not be deemed to be effective and, if not in writing, then in the

making of proof thereof, Landlord shall be presumed not to have given its approval. Unless specified to the contrary herein, Landlord's consent to any action of Tenant described herein shall not be unreasonably withheld.

22.18 **No Merger.** There shall be no merger of the leasehold estate hereby created with the fee estate in the Premises or any part thereof if the same person acquires or holds, directly or indirectly, this Lease or any interest in this Lease and the fee estate in the Premises or any interest in such fee estate.

22.19 **No Partnership.** Nothing in this Lease shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

22.20 **No Offer.** The submission of this Lease by Landlord to Tenant for examination shall not be construed as an offer to lease or a reservation of an option to lease. Further, it is the intention of the parties that Landlord shall not be bound and Tenant shall not have any rights under this Lease unless and until Landlord executes a copy of this Lease and delivers it to Tenant.

22.21 **Exhibits.** All exhibits and attachments attached hereto are incorporated herein by this reference.***[Check all boxes which apply. Boxes not checked are of exhibits that do not apply.]***

Exhibit A — Legal Description	☑
Exhibit B — Outline of Premises	☑
Exhibit C — Operating Expense Reimbursement	☐
Exhibit D — Premises Rules and Regulations	☑
Exhibit E — Work Letter	☑
Exhibit F — Commencement Date Letter	☑
Exhibit G — Financing Statement	☐
Exhibit H — Parking	☐
Exhibit I — Signage	☐
Exhibit J — Renewal Option	☑
Exhibit K — Right of First Refusal	☐
Exhibit L — Guaranty of Lease	☐
Exhibit M — HVAC Maintenance Specifications	☑

22.22 **Entire Agreement.** This Lease, including all exhibits attached hereto, constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in this Lease, no representations, warranties, or agreements have been made by Landlord, Landlord's agent or Tenant, anyone of the foregoing to the other with respect to this Lease or the obligations to Landlord or Tenant in connection therewith.

ARTICLE 23
PAYMENT OF TAXES

23.1 **Payment of Impositions.** Tenant covenants and agrees to pay during the Lease Term before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes, special assessments, water rates and charges, sewer rates and charges, including any sum or sums payable for present or future sewer or water capacity, charges for public utilities, street lighting, excise levies, licenses, permits, inspection fees, other governmental charges, and all other charges or burdens of whatsoever kind and nature (including costs, fees, and expenses of complying with all encumbrances affecting the Premises) incurred in the use, occupancy, ownership, operation, leasing or possession of the Premises, without particularizing by any known name or by whatever name hereafter called, and whether any of the foregoing be general or special, ordinary or extraordinary, foreseen or unforeseen (all of which are sometimes herein referred to as "*Impositions*"), which at any time during the Lease Term may have been or may be assessed, levied, confirmed, imposed upon, or become a lien on the Premises, or any portion thereof, or any appurtenance thereto, rents or income therefrom, and such easements or rights as may now or hereafter be appurtenant or appertain to the use of the Premises. Tenant shall pay all special (or similar) assessments for public improvements or benefits which, during the Lease Term shall be laid, assessed, levied or imposed upon or become payable or become a lien upon the Premises, or any portion thereof; provided, however, that if by law any special assessment is payable (without default) or, at the option of Landlord, may be paid (without default) in installments (whether or not interest shall accrue on the unpaid balance of such special assessment), Tenant may pay the same, together with any interest accrued on the unpaid balance of such special assessment in installments as the same respectively become payable and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and the interest thereon. Landlord shall pay all installments of special assessments (including interest accrued on the unpaid balance) which are payable prior to the Commencement Date (with respect to the New Space only; Tenant acknowledging that it is already so obligated with respect to the Existing Space under the Existing Lease) and after the termination date of the Lease Term (with respect to the entire Premises). Tenant shall pay all Impositions whether heretofore or hereafter levied or assessed upon the Demised Premises, or any portion thereof, which are due and payable during the Lease Term. Landlord shall pay all Impositions which are payable prior to the Commencement Date (with respect to the New Space only; Tenant acknowledging that it is already so obligated with respect to the Existing Space under the Existing Lease) and after the expiration date of the Lease Term (with respect to the entire Premises). Notwithstanding any other provision of this Section 23.1 to the contrary, in no event shall Tenant be obligated to pay Impositions with respect to the last calendar year of the Lease Term, unless such Impositions comes due during the Lease Term, it being hereby acknowledged and agreed by Landlord and Tenant that Tenant is obligated to pay Impositions coming due during the first year of the Lease Term hereof, even though such Impositions relate to the year prior to the Commencement Date. However, Impositions payable during the first and last calendar years of the term of this Lease shall not be prorated. The terms of this Section 23.1 do not alter the terms of the Existing Lease as to the Existing Space.

23.2 **Tenant's Right to Contest Impositions.** Tenant shall have the right at its own expense to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, but only after payment of such Imposition, unless

such payment, or a payment thereof under protest, would operate as a bar to such contest or interfere materially with the prosecution thereof. In this latter event, notwithstanding the provisions of Section 23.1 hereof, Tenant may postpone or defer payment of such Imposition if (a) neither the Premises nor any portion thereof would, by reason of such postponement or deferment, be in danger of being forfeited or lost, and (b) Tenant shall have deposited with Landlord cash or other security reasonably acceptable to Landlord in the amount of the Imposition so contested and unpaid, together with all interest and penalties which may accrue in Landlord's reasonable judgment in connection therewith, and all charges that may or might be assessed against or become a charge on the Premises, or any portion thereof, during the pendency of such proceedings. If, during the continuance of such proceedings, Landlord shall, from time to time, reasonably deem the amount deposited, as aforesaid, insufficient, Tenant shall, within five (5) business days' prior written notice from Landlord, make additional deposits of such additional sums of money or such other security as Landlord may reasonably request in such written notice. Upon failure of Tenant to make such additional deposits, the amount theretofore deposited may be applied by Landlord to the payment, removal and discharge of such Imposition, and the interest, fines and penalties in connection therewith, and any costs, fees (including reasonable attorneys' fees) and other liability (including costs incurred by Landlord) accruing in any such proceedings. Upon the termination of any such proceedings, Tenant shall pay the amount of such Imposition or part thereof, if any, as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, including reasonable attorneys' fees, interest, penalties, fines and other liability in connection therewith, and upon such payment Landlord shall return all amounts or other security deposited with it with respect to the contest of such Imposition, as aforesaid, or, at the written direction of Tenant, Landlord shall make such payment out of the funds on deposit with Landlord and the balance, if any, shall be returned to Tenant. Tenant shall be entitled to the refund of any Imposition, penalty, fine and interest thereon received by Landlord which have been paid by Tenant or which have been paid by Landlord but for which Landlord has been previously reimbursed in full by Tenant. Landlord shall not be required to join in any proceedings referred to in this Section 23.2 unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord, in which event Landlord shall join in such proceedings or permit the same to be brought in Landlord's name upon compliance with such conditions as Landlord may reasonably require. Landlord shall not ultimately be subject to any liability for the payment of any fees, including reasonable attorneys' fees, costs and expenses in connection with such proceedings. Tenant agrees to pay all such fees (including reasonable attorneys' fees), costs and expenses or, on demand, to make reimbursement to Landlord for such payment. During the time when any certificate of deposit is on deposit with Landlord, and prior to the time when the same is returned to Tenant or applied against the payment, removal or discharge of Impositions, as above provided, Tenant shall be entitled to receive all interest paid thereon, if any. Cash deposits shall not bear interest.

Landlord shall use its commercially reasonable efforts either (a) to cause all real estate tax bills and all real estate tax assessment notices to be sent directly to Tenant, or (b) to provide copies of all such bills and notices to Tenant in reasonably sufficient time for Tenant to contest the same if it so chooses.

23.3 **Levies and Other Taxes.** If, at any time during the Lease Term, any method of taxation shall be such that there shall be levied, assessed or imposed on Landlord, or on the Basic Rental or other rent, or on the Premises or on the value of the Premises, or any portion thereof, a capital levy, sales or use tax, gross receipts tax or other tax on the rents received therefrom, or a franchise tax, or an assessment, levy or charge measured by or based in whole or in part upon such rents or value, Tenant covenants to pay and discharge the same, it being the intention of the parties hereto that the rent to be paid hereunder shall be paid to Landlord absolutely net without deduction or charge of any nature whatsoever foreseeable or unforeseeable, ordinary or extraordinary, or of any nature, kind or description, except as in this Lease otherwise expressly provided. Nothing in this Lease contained shall require Tenant to pay any municipal, state or federal net income or excess profits taxes assessed against Landlord, or any municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes of Landlord, or corporation franchise taxes imposed upon any owner of the fee of the Premises.

23.4 **Evidence of Payment.** Tenant covenants to furnish Landlord, within thirty (30) days after the date upon which any Imposition or other tax, assessment, levy or charge is payable by Tenant, official receipts of the appropriate taxing authority, or other appropriate proof satisfactory to Landlord, evidencing the payment of the same. The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition or other tax, assessment, levy or charge may be relied upon by Landlord as sufficient evidence that such Imposition or other tax, assessment, levy or charge is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

23.5 **Escrow for Taxes and Assessments.** At Landlord's written demand after any monetary Event of Default and for as long as such Event of Default is uncured, Tenant shall pay to Landlord the known or estimated yearly Impositions payable with respect to the Premises in monthly payments equal to one-twelfth of the known or estimated yearly Impositions next payable with respect to the Premises. From time to time Landlord may re-estimate the amount of the Impositions, and in such event Landlord shall notify Tenant, in writing, of such re-estimate and fix future monthly installments for the remaining period prior to the next tax and assessment due date in an amount sufficient to pay the re-estimated amount over the balance of such period after giving credit for payments made by Tenant on the previous estimate. If the total monthly payments made by Tenant pursuant to this Section 23.5 shall exceed the amount of payments necessary for said Impositions, such excess shall be credited on subsequent monthly payments of the same nature; but if the total of such monthly payments so made under this Section shall be insufficient to pay such Impositions when due, then Tenant shall pay to Landlord such amount as may be necessary to make up the deficiency. Payment by Tenant of Impositions under this Section shall be considered as performance of such obligation under the provisions of Section 23.1 hereof.

23.6 **Landlord's Right to Contest Impositions.** In addition to the right of Tenant under Section 23.2 to contest the amount or validity of Impositions, Landlord shall also have the right, but not the obligation, to contest the amount or validity, in whole or in part, of any Impositions not contested by Tenant, by appropriate proceedings conducted in the name of Landlord or in the name of Landlord and Tenant. If Landlord elects to contest the amount or validity, in whole or in part, of any Impositions, such contests by Landlord shall be at Landlord's expense; provided, however, that if the amounts payable by Tenant for Impositions are reduced

(or if a proposed increase in such amounts is avoided or reduced) by reason of Landlord's contest of Impositions, Tenant shall reimburse Landlord for costs incurred by Landlord in contesting Impositions, but such reimbursements shall not be in excess of the amount saved by Tenant by reason of Landlord's actions in contesting such Impositions.

ARTICLE 24
TERMINATION OF EXISTING LEASE

Notwithstanding anything contained in the Existing Lease to the contrary, upon the Commencement Date, Landlord and Tenant hereby agree to terminate the Existing Lease (except Section 20.6 therein) and mutually release each other from all claims, liabilities, obligations and responsibilities arising thereunder, which termination and release shall be effective from and after the Commencement Date of this Lease; provided, however, that Tenant's obligations to pay all Basic Rent, Additional Rent and any other rent (as defined in the Existing Lease and due and payable or accruing under the Existing Lease) up to and including the Commencement Date shall survive the termination of the Existing Lease and shall become present liabilities and obligations under this Lease. Nothing set forth in this Lease shall act as a termination of, or limit in any way, Tenant's rights under Section 20.6 of the Existing Lease.

ARTICLE 25
RIGHT OF NOTICE OF SALE

In the event that, at any time during Lease Term, Landlord intends to sell the Premises, contemporaneously with Landlord's public announcement of such intended sale, Landlord shall notify Tenant, in writing, of such intention.

EXECUTED to be effective on the day and date first written above.

LANDLORD:

1135 ARBOR DRIVE INVESTORS LLC, a
Delaware limited liability company

By: ALLEGIS REALTY INVESTORS LLC, a
Massachusetts limited liability company Its Manager

By: /s/ Joseph E. Gaukler
Joseph E. Gaukler
Its: Senior Vice President

TENANT:

ULTA3 COSMETICS & SALON, INC.

By: /s/ Greg Smolarek
Printed Name: Greg Smolarek
Its: Sr VP Systems and Logistics

EXHIBIT “A”

LEGAL DESCRIPTION

Lot 2 in Windham Lakes resubdivision number 10, part of the north half of Section 29, Township 37 North, Range 10 East of the Third Principal Meridian in Will County, Illinois, per Document Number R95-057606.

OUTLINE OF PREMISES

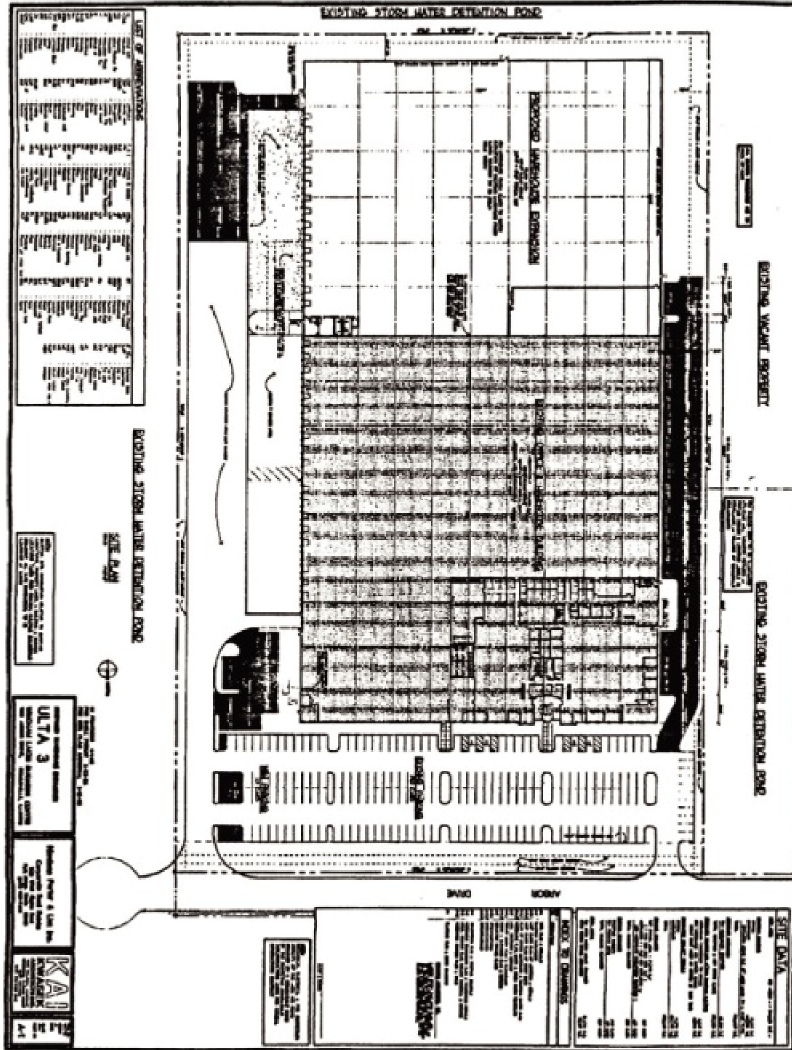

EXHIBIT “D”

RULES AND REGULATIONS

This Exhibit is attached to and made a part of the Lease by and between Aetna Life Insurance Company (“Landlord”) and ULTA3 Cosmetics & Salon, Inc. (“Tenant”).

A. The following rules and regulations shall apply to the Premises:

1. Sidewalks and other similar outside areas shall not be obstructed by Tenant or used by Tenant for purposes other than ingress and egress to and from its Premises. No rubbish, litter, trash, or material of any nature shall be placed, emptied, or thrown in those areas. At no time shall Tenant permit Tenant’s employees to loiter in outside areas in or about the Premises.

2. Plumbing, fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or deposited therein. Damage resulting to any such fixtures or appliances from misuse by Tenant or its agents, employees or invitees, shall be paid by Tenant.

3. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors or exterior parts of the Premises without the prior written consent of Landlord.

4. Intentionally omitted.

5. Tenant assumes all risks of and shall be liable for all damage to articles moved and injury to persons resulting from such activity. If any equipment, property and personnel are damaged or injured as a result of acts in connection with this activity, then Tenant shall be solely liable for any and all damage or loss resulting therefrom.

6. Intentionally omitted.

7. No birds or animals (except seeing-eye dogs) shall be brought into or kept in, on or about the Premises. No portion of the Premises shall at any time be used or occupied as sleeping or lodging quarters or for any immoral or illegal purposes or for any purpose which would tend to injure the reputation of the Premises or impair the value of the Premises.

8. Tenant shall not commit waste and shall keep the Premises neat and clean. All trash and debris must be placed in receptacles provided therefor.

9. Tenant shall not make or permit any improper, objectionable or unpleasant noises or odors to emanate from the Premises to adjacent property or otherwise interfere in any way with other persons on adjacent property, shall not solicit business or distribute, or cause to be distributed, in any outside portion of the Premises any handbills, promotional materials or other advertising, and shall not conduct or permit any other activities in the Premises that might constitute a nuisance.

10. No machinery of any kind (other than normal office/showroom/warehouse equipment) shall be operated by Tenant on its Premises without Landlord's prior written reasonable consent.

11. Intentionally omitted.

12. Landlord will not be responsible for lost or stolen personal property, money or jewelry from the Premises regardless of whether such loss occurs when the area is locked against entry or not.

13. Intentionally omitted.

14. Tenant will refer to Landlord for Landlord's supervision, approval and control all contractors, contractor representatives, and installation technicians rendering any service to Tenant, before performance of any contractual service. Such supervisory action by Landlord shall not render Landlord responsible for any work performed for Tenant. This provision shall apply to all work performed in the Premises, including, without limitation, the installation of telephones, computer wiring, cabling, electrical devices, attachments and installations of any nature. Tenant shall be solely responsible for complying with all applicable laws, codes and ordinances pursuant to which such work shall be performed.

15. Landlord may from time to time (without any obligation to do so or liability for not doing so) adopt appropriate systems and procedures for the security or safety of the Premises, its occupants, entry and use, or its contents and Tenant, its employees, contractors, agents and invitees shall comply therewith.

16. At no time shall Tenant permit or shall Tenant's agents, employees, contractors, guests, or invitees smoke in any common area of the Premises, unless such common area has been declared a designated smoking area.

17. Tenant accepts any and all liability for damages and injuries to persons and property resulting from the serving and sales of alcoholic beverages from the Premises. Nothing contained herein shall be construed as the consent of Landlord to permit the serving or sale of alcoholic beverages on the Premises.

B. The Landlord reserves the right to rescind any of these rules and make such other and further rules and regulations as in the judgment of Landlord shall from time to time be needed for the safety, protection, care and cleanliness of the Premises, the operation thereof, the preservation of good order therein, and the protection and comfort of its tenants, their agents, employees and invitees, which rules when made and notice thereof given to Tenant shall be binding upon it in like manner as if originally herein prescribed.

EXHIBIT "E"

WORK LETTER

This Exhibit is attached to made a part of the Lease by and between Aetna Life Insurance Company ("Landlord") and ULTA3 Cosmetics & Salon, Inc. ("Tenant").

A. Definitions. Each term used in this Work Letter shall have the meaning hereinafter set forth:

1. "Architect" shall mean Kwasek Architects, Inc.

2. "Construction Costs" shall mean all costs incurred in the construction of the Work in accordance with the Plans and Specifications, as modified from time to time in accordance with the provisions of this Work Letter. Such costs shall include all hard costs and soft costs to complete the Work including, but not limited to, infrastructure costs, impact fees, site preparation costs; architectural and engineering fees; legal fees; testing; labor and materials to construct the Work and related infrastructure and improvements; permit fees, sales taxes and fees payable to contractors; project landscaping, including related design fees and permits; water, gas and electrical hookup fees and related miscellaneous costs; any builder's risk insurance maintained by Landlord prior to Tenant maintaining builder's risk insurance; property tax assessed during construction period (beginning upon acquisition and ending on substantial completion); reasonable general and administrative and employer out-of-pocket expenses incurred in managing the pre-construction and construction process; brokerage commissions; Landlord's average cost of coverage for liability insurance attributable to the New Space during the period ending on substantial completion; services for verification of compliance with city ordinances and other laws; and imputed interest at 9.00 percent per year on actual cost expenditures (imputed interest accrues on actual cost as and when incurred up to substantial completion).

3. "Contractor" shall mean Krusinski Construction Company.

4. "Plans and Specifications" shall mean the final plans and specifications for the construction of the Work, which Plans and Specifications are described onExhibit "E"-1 attached hereto.

5. "Tenant Delay" shall mean any delay in the construction of the First Phase Work caused by Tenant for any reason whatsoever. In the event of a Tenant Delay, the Commencement Date shall be accelerated one (1) day for every day of Tenant Delay.

6. "Work" shall mean the construction of all leasehold improvements in the Premises in accordance with the Plans and Specifications, which leasehold improvements shall consist of both the "First Phase Work" (which is all of the Work except for the expansion of the office in the Premises) and the "Second Phase Work" (which is only the expansion of the office in the Premises).

7. "Construction Rent" means (i) for the first six (6) months of the Lease Term, 5.5% of the Construction Costs for the First Phase Work, (ii) for the second six (6) months

of the first (1st) Lease Year of the Lease Term, 5.5% of the Construction Costs for both the First Phase Work and the Second Phase Work, (iii) for the second (2nd) Lease Year, an amount equal to 103% of 11% of the Construction Costs for all of the Work, and (iv) for every twelve (12) month period of the Lease Term thereafter (except that with respect to the last seven (7) months of the Lease Term, Construction Rent will be prorated accordingly), an amount equal to 103% of the Construction Rent for the prior twelve (12) month period. Construction Rent for the first twelve (12) month period shall be determined in accordance with Paragraph E below. Prior to the date Landlord has determined actual Construction Rent in accordance with Paragraph E below, Tenant shall pay Construction Rent based upon the estimates set forth in the Budget described below.

8. "Budget" Attached to this Exhibit as Exhibit "E"-2 is a proforma budget (the "*Budget*") of Construction Costs to perform the Work, showing the line item categories to be included in Construction Costs, and a calculation of Construction Rent based upon the Budget. Tenant acknowledges that the Budget is an estimate and that Construction Costs may vary from the amounts set forth in the Budget.

B. Construction of Work. Landlord shall cause the Work to be constructed substantially in accordance with the Plans and Specifications. Tenant acknowledges that Landlord is presently performing the First Phase Work and that Landlord shall construct the Second Phase Work pursuant to a schedule which will enable the Landlord to substantially complete the Second Phase Work, subject to unavoidable delays (as defined below), on or before April 1, 2000. Tenant shall cooperate at all stages to promote the efficient and expeditious completion of the Work. Either the Landlord or the Contractor, as appropriate, shall apply for a building permit, and the Contractor shall commence construction of the subject phase of the Work immediately upon receipt of the permit and proceed with all due diligence until substantial completion. Each phase of the Work shall be deemed to be "substantially complete" upon (i) Landlord's obtaining a certificate of occupancy or its equivalent from the appropriate governmental authority and (ii) such phase of the Work is sufficiently complete in accordance with the Plans and Specifications so that Tenant may occupy the Premises, or the new office space, as the case may be, subject to any punchlist items.

1. Unavoidable Delays. Tenant and Landlord acknowledge that there may be unavoidable delays in the construction of the Work. The term "*unavoidable delays*" shall mean events beyond the control of Landlord or the Contractor, including, without limitation, acts of God, war, civil commotion, strikes, fire, flood, earthquake or other casualty, governmental regulation or restriction and adverse weather conditions or continued possession by prior tenants or occupants.

2. Changes. If Tenant requests a change, alteration or addition to the Plans and Specifications, Tenant shall submit same in writing to Landlord and to the Architect. If Landlord approves such change, Landlord shall obtain from the Contractor and provide Tenant with an estimate of the cost of such change. Tenant shall notify Landlord within five (5) business days if Tenant elects to proceed with the change, in which event, Landlord shall incorporate the change into the Plans and Specifications (any approved change is referred to herein as a "*Change Order*"). The incremental greater cost of implementing such Change Order shall not be included in the Construction Costs but instead shall be paid directly by Tenant to Landlord within thirty

(30) days after Landlord invoices Tenant for the Change Order. If Landlord disapproves of such change, it shall immediately notify Tenant in writing specifying the reasons for such disapproval and the construction shall proceed in accordance with the Plans and Specifications. Any delay in construction time (determined in accordance with the next sentence) caused by such changes (whether approved or not) shall constitute a Tenant Delay. The Architect, in his sole discretion, shall determine whether such change necessitates a delay in construction and the length of such delay.

3. Governmental Regulations. Tenant shall be solely responsible for causing the design and construction of the Work to conform to any and all requirements of applicable building, plumbing, electrical and fire codes and the requirements of any authority having jurisdiction over the Work, as such codes and requirements may from time to time be amended or supplemented.

4. Entry by Tenant. During the course of construction of the First Phase Work, Tenant may enter the New Space for purposes of inspecting the First Phase Work, installing trade fixtures, erecting signs, stocking merchandise and such other work as may be necessary or desirable to prepare to occupy and conduct its business from the New Space, provided that (i) Tenant assumes the risk of injury to person and damage to its property, (ii) any entry shall be subject to the provisions of the Lease, except that the Lease Term shall not commence and rent shall not be due, and (iii) Tenant shall not unreasonably interfere with the construction of the Work on the Premises. Tenant shall also provide evidence of insurance prior to any such entry. If such entry shall interfere with the construction of the First Phase Work, then Tenant shall immediately leave upon the request of Landlord.

C. Delivery of the Premises. Subject to unavoidable delays, the First Phase Work is estimated to be substantially completed for delivery of the Premises to Tenant by the Commencement Date. If an unavoidable delay will prevent the substantial completion of the First Phase Work prior to the scheduled Commencement Date, then Landlord will notify Tenant in writing. Upon substantial completion of the First Phase Work, Landlord will notify Tenant in writing and afford Tenant an opportunity to inspect the Premises prior to delivery. At the inspection, Landlord and Tenant will prepare and agree upon a punchlist of any items that remain to be completed.

If the First Phase Work is substantially completed to permit delivery of the Premises prior to the Commencement Date, Landlord shall notify Tenant in writing and, should Tenant elects to take occupancy early, then Tenant may inspect the Premises and prepare, with Landlord, a punchlist prior to delivery.

D. Limitation. This Exhibit shall not be deemed applicable to any additional space added to the original Premises or, in the event of a renewal of the Lease Term, to the original Premises, itself, during the renewal term, unless expressly so provided in the Lease or any amendment thereto.

E. Determination of Construction Rent. Base Rental shall be equal to the sum of Carry-Over Rent (as defined in the Basic Definitions and Lease Provisions) plus Construction Rent. Landlord shall calculate Construction Rent after Landlord has closed out the First Phase

Work and Second Phase Work and finally determined the applicable Construction Costs. Thereafter, Tenant shall pay Landlord Construction Rent based on the actual Construction Costs. Upon each such calculation, Landlord shall give notice to Tenant of the difference, if any, between actual Construction Rent and estimated Construction Rent (including reasonable back-up documentation evidencing the difference), and if actual Construction Rent is (i) higher than estimated Construction Rent, including any overruns to the Budget, Tenant shall pay any shortfall to Landlord within ten (10) days after demand, and (ii) less than estimated Construction Rent, Landlord shall promptly credit such overage against Base Rental next due and owing.

F. Other Construction Items. At the same time as performing the First Phase Work, Landlord shall construct, at Tenant's sole cost and expense and in addition to the Work, a flammable storage room (the "*Flammable Storage Room*") in the Premises, which Flammable Storage Room is depicted on the Plans and Specifications. Tenant may, by providing written notice to Landlord on or prior to February 1, 2000, elect to cause Landlord to construct, at Tenant's sole cost and expense, any or all of a mezzanine in the Premises which will tolerate a 150-pound floor load (the "*Mezzanine*") and an elevator to serve the Mezzanine (the "*Elevator*"). The Plans and Specifications also depict the Mezzanine and the Elevator. With respect to any of the improvements described above in this paragraph, Tenant shall reimburse Landlord from time to time for all of Landlord's costs and expenses is causing such improvement to be performed within thirty (30) days after receiving an invoice from Landlord for the same. If Tenant fails to provide such written notice to Landlord on or prior to February 1, 2000, Tenant shall be deemed to have waived its right to require Landlord to construct the Mezzanine or the Elevator.

G. Property Insurance On The Work. Tenant shall purchase and maintain in force all risk property or builder's risk insurance for the construction of the Work. Such insurance shall be written in an amount at least equal to the initial "Contract Sum" of $3,600,000 as well as any subsequent modifications of that sum, of which Tenant will be advised by Landlord. The insurance shall apply on a replacement cost basis. If the insurance obtained is builder's risk insurance, coverage shall be written on a completed value form. The insurance shall name as insureds Landlord; Contractor, Krusinski Construction Company, and all subcontractors and sub-subcontractors performing any portion of the Work as additional insureds to the extent of their interests. The insurance policy shall contain a provision that the insurance will not be canceled or allowed to expire without at least thirty (30) days prior written notice being given to Landlord and Contractor. The insurance shall cover the entire Work at the project site at 1135 Arbor Drive, Romeoville, Illinois; portions of the Work located away from the site but intended for use at the site; and also portions of the Work in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation. This property insurance shall be written to cover all risks of physical loss excepts those specifically excluded in the policy and shall insure at least the perils of fire, lightning, explosion, wind storm or hail, smoke, aircraft or vehicles, riot or civil commotion, theft, vandalism, malicious mischief, and collapse. The policy shall have a deductible not to exceed $5,000. Pursuant to the terms of its construction contract with Landlord, Contractor is responsible for payments of any deductible amount. Landlord and Tenant waive all rights against each other and against the Contractor, subcontractor, sub-subcontractors for recovery for damages caused by fire or other perils to the extent covered by the property insurance purchased pursuant to the requirements of this paragraph. Prior to the commencement

of any Work, Tenant shall furnish a certificate of insurance evidencing compliance with the aforementioned terms. At the request of either the Landlord or the Contractor, Tenant will furnish a complete copy of the property insurance policy being provided hereunder.

EXHIBIT “El”

PLANS & SPECIFICATIONS

Original Facility Design & Construction by OPUS Architects & Engineers
Plans Dated 8/30/95 Issued for Construction/Permit

Expansion of Facility Design by Julius Kwasek
Site Plan Submitted for Permit dated 3/10/99

EXHIBIT E-2

CONSTRUCTION BUDGET

Updated: 5/17/99

Warehouse Office & Expansion to be paid for by Landlord

Flammables Room, Office Expansion Mezzanine & Elevator to be paid for by Tenant

Description		Cost	
Warehouse Expansion	$	3,116,059	
HVAC		83,500	
Fire Alarm Allowance		30,000	
Contingency		50,000	
Office Expansion		363,130	
Subtotal	$	3,642,689	
Architect — Bases Building		56,750	
Architect — Office Expansion		21,000	
Civil Engineering (Includes Topology)		11,198	
Soil Borings		2,750	
Surveys (3)		5,000	
Legal (Lease Related)		15,000	
Construction Interest		78,348	
Construction Supervision Visits		8,000	
Commission		220,000	
Development Fee Management Firm		109,281	
Development Fee Landlord		125,000	
Subtotal	$	652,327	
Total	**$**	**4,295,016**	**By Landlord**
Flammables Storage Room		253,724	
Office Expansion Mezzanine & Elevator		205,012	
Total	**$**	**458,736**	**By Tenant**
Grand Total	**$**	**4,753,752**	

EXHIBIT E-2

ULTA3 EXPANSION RENTAL STREAM CALCULATION

Updated: 5/27/99 17:15

Expansion: Assumes 10 year 7 month lease term for 121,218 SF (including 6,612 SF additional office)

Term: **10/1/99-4/30/10**

Building Expansion w/ Soft Costs — $3,931,886
Costs Capped at 11% with 3% annual escalations — $432,507.42 1st year

Office Expansion
Complete April 1, 2000 — $363,130
Costs Capped at 11% with 3% annual escalations — $39,944.30 1st year

Lease Period		Base Building Expansion 121,218 SF		Office Expansion 6,612 SF		Total Expansion Rent	
From	To	Annual Rent (Payable Monthly)	Rent/SF Annualized	Annual Rent (Payable Monthly)	Rent/SF Annualized	Annual Rent (Payable Monthly)	Rent/SF Annualized
10/1/99	3/31/00	$ 216,253.71	$ 3.57	$ 0.00		$ 216,253.71	$ 3.57
4/1/00	9/30/00	$ 216,253.71	$ 3.57	$ 19,972.15	$ 6.04	$ 236,225.86	$ 3.90
10/1/00	9/30/01	$ 445,482.65	$ 3.68	$ 40,543.46	$ 6.13	$ 486,026.11	$ 4.01
10/1/01	9/30/02	$ 458,847.13	$ 3.79	$ 41,759.77	$ 6.32	$ 500,606.90	$ 4.13
10/1/02	9/30/03	$ 472,612.54	$ 3.90	$ 43,012.56	$ 6.51	$ 515,625.10	$ 4.25
10/1/03	9/30/04	$ 486,790.92	$ 4.02	$ 44,302.94	$ 6.70	$ 531,093.86	$ 4.38
10/1/04	9/30/05	$ 501,394.64	$ 4.14	$ 45,632.03	$ 6.90	$ 547,026.67	$ 4.51
10/1/05	9/30/06	$ 516,436.48	$ 4.26	$ 47,000.99	$ 7.11	$ 563,437.47	$ 4.65
10/1/06	9/30/07	$ 531,929.58	$ 4.39	$ 48,411.02	$ 7.32	$ 580,340.60	$ 4.79
10/1/07	9/30/08	$ 547,887.46	$ 4.52	$ 49,863.35	$ 7.54	$ 597,750.81	$ 4.93
10/1/08	9/30/09	$ 564,324.09	$ 4.66	$ 51,359.25	$ 7.77	$ 615,683.34	$ 5.08
10/1/09	**4/30/10**	$ 339,064.72	$ 4.80	$ 30,858.35	$ 8.00	$ 369,923.07	$ 5.23

EXHIBIT E-2

ULTA3 COMBINED RENTAL STREAM CALCULATION

Updated: 5/27/99 17:15

Expansion: Assumes 10 year 7 month lease term for 121,218 SF (including 6,612 SF additional office)

Term: **10/1/99-4/30/10**

Building Expansion w/ Soft Costs — $3,931,886

Costs Capped at 11% with 3% annual escalations — $432,507.42 1st year

Office Expansion

Complete April 1, 2000 — $363,130

Costs Capped at 11% with 3% annual escalations — $39,944.30 1st year

Lease Period		**Existing Building 170,000 SF**		**Expansion 121,218 SF**		**Total Combined Rent 291,218 SF**	
From	To	Annual Rent (Payable Monthly)	Rent/SF Annualized	Annual Rent (Payable Monthly)	Rent/SF Annualized	Annual Rent (Payable Monthly)	Rent/SF Annualized
10/1/99	3/31/00	$ 340,000.00	$ 4.00	$ 216,253.71	$ 3.57	$ 556,253.71	$ 3.82
4/1/00	9/30/00	$ 340,000.00	$ 4.00	$ 236,225.86	$ 3.90	$ 576,225.86	$ 3.96
10/1/00	9/30/01	$ 680,000.00	$ 4.00	$ 486,026.11	$ 4.01	$ 1,166,026.11	$ 4.00
10/1/01	9/30/02	$ 680,000.00	$ 4.00	$ 500,606.90	$ 4.13	$ 1,180,606.90	$ 4.05
10/1/02	9/30/03	$ 739,500.00	$ 4.35	$ 515,625.10	$ 4.25	$ 1,255,125.10	$ 4.31
10/1/03	9/30/04	$ 765,000.00	$ 4.50	$ 531,093.86	$ 4.38	$ 1,296,093.86	$ 4.45
10/1/04	9/30/05	$ 765,000.00	$ 4.50	$ 547,026.67	$ 4.51	$ 1,312,026.67	$ 4.51
10/1/05	9/30/06	$ 783,700.00	$ 4.61	$ 563,437.47	$ 4.65	$ 1,347,137.47	$ 4.63
10/1/06	9/30/07	$ 790,500.00	$ 4.65	$ 580,340.60	$ 4.79	$ 1,370,840.60	$ 4.71
10/1/07	9/30/08	$ 790,500.00	$ 4.65	$ 597,750.81	$ 4.93	$ 1,388,250.81	$ 4.77
10/1/08	9/30/09	$ 809,200.00	$ 4.76	$ 615,683.34	$ 5.08	$ 1,424,883.34	$ 4.89
10/1/09	**4/30/10**	$ 476,000.00	$ 4.80	$ 369,923.07	$ 5.23	$ 845,923.07	$ 4.98

EXHIBIT "F"

COMMENCEMENT DATE LETTER

This Exhibit is attached to and made a part of the Lease by and between Aetna Life Insurance Company ("Landlord") and ULTA3 Cosmetics & Salon, Inc. ("Tenant").

1. The Lease Term commenced on [October 1, 1999].

2. The Lease Term will expire on [April 30, 2010], unless renewed or extended.

3. Tenant acknowledges that the Work has been completed in accordance with the Plans and Specifications and accepts such Work, subject to any punch list items being completed.

4. Tenant, further, acknowledges that all obligations of Landlord to Tenant in connection with the Work and all other conditions precedent to the commencement of the Lease Term have occurred and that the Lease is in full force and effect.

5. There are no existing defenses or offsets which, as of the date hereof, Tenant has against the enforcement of the Lease by Landlord.

6. Base Rental for the Lease Term is as follows:

[INSERT SCHEDULE BASED ON FINAL CONSTRUCTION RENT CALCULATIONS]

EXECUTED on the day of , 2000.

LANDLORD:

AETNA LIFE INSURANCE COMPANY

By: ______________________
Printed Name: ______________________
Title: ______________________

ATTEST:

____
(Title)

TENANT:

ULTA3 COSMETICS & SALON, INC.

By: /s/ Greg Smolarek
Printed Name: Greg Smolarek
Title: SR VP Systems and Logistics

EXHIBIT "J"

RENEWAL OPTION

This Exhibit is attached to and made a part of the Lease by and between Aetna Life Insurance Company ("Landlord") and ULTA3 Cosmetics & Salon, Inc. ("Tenant").

1. Tenant, but not any assignee or sublessee of Tenant, is hereby granted two (2) options of five (5) years each to renew this Lease (each a "*Renewal Term*" and collectively, the "*Renewal Terms*"). Provided Tenant is not in default at the time of exercise of the option or, again on commencement of the Renewal Term at issue, Tenant may exercise each option upon written notice to Landlord given no earlier than fifteen (15) months and no later than twelve (12) months before the expiration of the then current term. If Tenant fails to exercise the option within the time frame set forth in the preceding sentence, then Tenant shall be deemed to have elected not to exercise the option and this renewal option and all other unexercised renewal options contained herein shall be deemed to have terminated; time being of the essence in the exercise of such option. Each Renewal Term will be on the same terms and conditions as those contained in the Lease except as follows:

(a) there shall be no further rights to renew after the exercise of the last of the renewal option(s) granted in this Exhibit;

(b) any tenant improvement allowances, rental concessions or the like granted by Landlord to Tenant in the initial Lease Term shall not be applicable in such Renewal Term; and

(c) the rental for such Renewal Term shall be the greater of (i) the fair market rental rate (the "*Fair Market Rent*") for the Premises based on the then-prevailing market rental rate for properties of equivalent quality, size, utility and location, taking into account a lease for a lease term of that of the Renewal Term and with a tenant of the credit standing of Tenant (as Fair Market Rent shall be determined below in this Exhibit "J"), or (ii) the Base Rental in effect at the expiration of the initial Lease Term or first Renewal Term, as the case may be.

2. Landlord shall notify Tenant of its determination of the Fair Market Rent for the subject Renewal Term, and Tenant shall advise Landlord of any objection within 10 days of receipt of Landlord's notice. Failure to respond within the 10-day period shall constitute Tenant's acceptance of such Fair Market Rent. If Tenant objects, Landlord and Tenant shall commence negotiations to attempt to agree upon the Fair Market Rent within 30 days of Landlord's receipt of Tenant's notice. If the parties cannot agree, each acting in good faith but without any obligation to agree, then the Lease Term shall not be extended and shall terminate on its scheduled termination date and Tenant shall have no further right hereunder or any remedy by reason of the parties' failure to agree unless Tenant or Landlord invokes the arbitration procedure provided below to determine the Fair Market Rent.

3. Arbitration to determine the Fair Market Rent shall be in accordance with the Real Estate Valuation Arbitration Rules of the American Arbitration Association. Unless otherwise required by state law, arbitration shall be conducted in the metropolitan area where the Premises is located by a single arbitrator unaffiliated with either party. Either party may elect to

arbitrate by sending written notice to the other party and the Regional Office of the American Arbitration Association within 5 days after the 30-day negotiating period provided in Paragraph 2, invoking the binding arbitration provisions of this Paragraph. Landlord and Tenant shall each submit to the arbitrator their respective proposal of Fair Market Rent. The arbitrator must choose between the Landlord's proposal and the Tenant's proposal and may not compromise between the two or select some other amount. Notwithstanding any other provision herein, the Fair Market Rent determined by the arbitrator shall not be less than, and the arbitrator shall have no authority to determine a Fair Market Rent less than, the Base Rental in effect as of the scheduled expiration of the initial Lease Term or First Renewal Term, as the case may be. The cost of the arbitration shall be paid by Landlord if the Fair Market Rent is that proposed by Landlord and by Tenant if the Fair Market Rent is that proposed by Tenant; and shall be borne equally otherwise. If the arbitrator has not determined the Fair Market Rent as of the end of the Lease Term, or first Renewal Term, as the case may be, Tenant shall pay 105 percent of the Base Rental in effect under the Lease as of the end of the Lease Term or first Renewal Term, as the case may be, until the Fair Market Rent is determined as provided herein. Upon such determination, Landlord and Tenant shall make the appropriate adjustments to the payments between them.

4. The parties consent to the jurisdiction of any appropriate court to enforce the arbitration provisions of this Exhibit "J" and to enter judgment upon the decision of the arbitrator.

5. If the Lease is extended for a Renewal Term, then Landlord shall prepare and Tenant shall execute an amendment to the Lease confirming the extension of the Lease Term and the other provisions applicable thereto.

6. If Tenant exercises its right to extend the term of the Lease for a Renewal Term pursuant to this Exhibit "J", the term "*Lease Term*" as used in the Lease, shall be construed to include, when practicable, the Extension Term.

EXHIBIT “M”

HVAC MAINTENANCE SPECIFICATIONS

Tenant shall enter into a service contract with a contractor reasonably approved by Landlord, providing for the service and regular maintenance (with service calls no less frequent than once each calendar quarter and otherwise meeting the specifications set for in this Exhibit “M”) of the hot water heating, venting and air conditioning system throughout the Lease Term. The service contract must include all services suggested by the equipment manufacturer in its operations/maintenance manual and must become effective within thirty (30) days of the date Tenant takes possession of the Premises. Tenant shall provide Landlord with an executed copy of the aforementioned service contract within ten (10) days of execution.

Maintenance Specifications to be contained in service contract:

1. Service calls no less frequent than once per calender quarter.

2. Detail of services to be performed and the frequency of each service (i.e., once per calendar year, once per calendar quarter, etc.).

EXHIBIT 10.11

THE OFFICES AT WINDHAM LAKES
ROMEOVILLE, ILLINOIS

LEASE

BETWEEN

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a New Jersey corporation,
Landlord

AND

ULTA SALON, COSMETICS & FRAGRANCE, INC.,
a Delaware corporation
Tenant

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EXHIBITS

Exhibit A — Plan of the Premises
Exhibit B — Legal Description of the Land
Exhibit C — Form of Tenant Estoppel Letter

THE OFFICES AT WINDHAM LAKES
LEASE

THIS LEASE ("Lease") is entered into as of the 11th day of September, 2002, by and between **THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**, a New Jersey corporation, whose address is Two Prudential Plaza, 180 North Stetson Street, Suite 3275, Chicago, Illinois 60601 (together with its successors and assigns, "Landlord") and **ULTA SALON, COSMETICS & FRAGRANCE, INC.**, a Delaware corporation (together with its permitted successors and assigns, "Tenant").

1. FUNDAMENTAL LEASE TERMS. Certain fundamental lease terms (the "Fundamental Lease Terms") are set forth below in this Section 1:

1.1	**Building and Address**:	The Offices at Windham Lakes 1295 Windham Parkway Romeoville, Illinois 60446
1.2	**Tenant** :	ULTA SALON, COSMETICS & FRAGRANCE, INC., a Delaware corporation
1.3	**Tenant's Current Address** :	1135 Arbor Drive Romeoville, Illinois 60446
1.4	**Landlord**:	The Prudential Insurance Company of America, a New Jersey corporation
1.5	**Landlord's Address**:	Two Prudential Plaza 180 North Stetson Street, Suite 3275 Chicago, Illinois 60601
1.6	**Premises**:	(a) Approximately 12,532 square feet of office space located in the Building, as shown on the plan attached hereto and made a part hereof as **Exhibit A**. (b) All trade fixtures, furniture, equipment and other personal property located in such office space as of the date of this Lease (the "Personal Property").

1.7	**Term:**	Twenty five (25) calendar months commencing on the Commencement Date, provided that if the Commencement Date is not the first (1st) day of a calendar month, the Term shall end twenty five (25) calendar months after the last day of the calendar month in which the Commencement Date occurs.
1.8	**Commencement Date:**	January 1, 2003
1.9	**Base Rent:**	

	Annual	Monthly
1st Lease Year	$ 131,586.00	$ 10,965.50
2nd Lease Year	$ 137,852.00	$ 11,487.67
3rd Lease Year	$ 137,852.00	$ 11,487.67

1.10	**Security Deposit:**	$10,965.50
1.11	**Broker:**	CB Richard Ellis and GVA Williams

2. AGREEMENT TO LEASE. Landlord hereby leases to Tenant, and Tenant hereby accepts and leases from Landlord the Premises in the Building located on the real estate legally described on **Exhibit B** attached hereto and made a part hereof (the "Land") for the Term. The Land, the Building and all other improvements now or hereafter located on the Land are collectively referred to herein as the "Property."

3. RENT. Tenant shall pay Rent (as defined below) to:

PDC Properties, Inc.
23350 Network Place
Chicago, Illinois 60673-1227

or to such other person or at such other place as Landlord may designate, without offsets or deductions of any kind whatsoever, at the times and in the manner hereinafter set forth. As used herein "Rent" shall mean Base Rent (as defined below), Additional Rent (as defined below) and all other amounts to be paid by Tenant to Landlord under this Lease. Tenant's covenant to pay Rent shall be independent of every other covenant in this Lease.

4. BASE RENT. The Base Rent payable for each Lease Year (as defined below) set forth in Section 1.9 shall be paid in twelve (12) equal monthly installments, paid in advance not later than the first (1st) day of each month. If the Commencement Date is other than the first (1st) day of a month, then the installment of Base Rent for such initial month shall be prorated on a per diem basis for such fractional period. Base Rent for the first full calendar month for which Base Rent shall be due shall be paid on or before the Commencement Date. As used herein, "Lease Year" shall mean each consecutive twelve (12) month period beginning with the Commencement Date, except that if the

Commencement Date is other than the first (1st) day of a calendar month, then the first (1st) Lease Year shall be the period from the Commencement Date through the date twelve (12) months after the last day of the calendar month in which the Commencement Date occurs, and each subsequent Lease Year shall be the period of twelve (12) months following the last day of the prior Lease Year.

5. ADDITIONAL RENT. In addition to paying the Base Rent specified in Section 4 hereof, Tenant shall pay as "Additional Rent" the amounts determined as set forth below in this Section 5.

5.1 **Definitions**. As used in this Lease, the following terms shall have the following meanings:

(a) "Calendar Year" shall mean the twelve (12) month period January through December of any year (or portion thereof) falling within the Term.

(b) "Tenant's Proportionate Share" shall be 26.39%, a percentage determined by dividing 12,532 square feet, the rentable area contained in the Premises, by 47,487 square feet, the rentable area contained in the Building. The parties acknowledge and agree that a variety of methods and standards exist for measuring the rentable area of a building or a portion thereof, and that individuals, including experts in this area, may reach different conclusions on the rentable area of a building or a portion thereof, even though such parties have based their conclusions on the same measurement methods or standards. Accordingly, in order to eliminate any ambiguity or uncertainty the parties hereby agree that the rentable areas of the Premises and the Building and such figures, and Tenant's Proportionate Share shall not be contested by either party. Tenant's Proportionate Share shall only be revised upon an actual change in the physical dimensions of the Premises or upon an actual reconfiguration, addition or modification to the rentable area of space leased or available for lease at the Building during the Term, each of which as Landlord may reasonably redetermine from time to time. If the Building or any development of which it is a part, shall contain non-office uses, Landlord shall have the right to determine in accordance with sound accounting and management principles, Tenant's Proportionate Share of Taxes and Tenant's Proportionate Share of Operating Expenses for only the office portion of the Building or of such development, in which event, Tenant's Proportionate Share shall be based on the ratio of the rentable area of the Premises to the rentable area of such office portion. Similarly, if the Building shall contain tenants who do not participate in all or certain categories of Taxes or Operating Expenses on a prorata basis, Landlord may exclude the amount of Taxes or Operating Expenses, or such categories of the same, as the case may be, attributable to such tenants, and exclude the rentable area of their premises, in computing Tenant's Proportionate Share. If the Building shall be part of or shall include a complex, development or group of buildings or structures collectively

owned or managed by Landlord or its affiliates or collectively managed by Landlord's managing agent, Landlord may allocate Taxes and Operating Expenses within such complex, development or group, and between such buildings and structures and the parcels on which they are located, in accordance with sound accounting and management principles. In the alternative, Landlord shall have the right to determine, in accordance with sound accounting and management principles, Tenant's Proportionate Share of Taxes and Tenant's Proportionate Share of Operating Expenses based upon the totals of each of the same for all such buildings and structures, the land constituting parcels on which the same are located, and all related facilities, including common areas and easements, corridors, lobbies, side-walks, elevators, loading areas, parking facilities and driveways and other appurtenances and public areas, in which event Tenant's Proportionate Share shall be based on the ratio of the rentable area of the Premises to the rentable area of all such buildings.

(c) "Taxes" shall mean all real estate and personal property taxes and assessments and similar governmental charges, special or otherwise, direct or indirect, ordinary or extraordinary (including, without limitation, real estate taxes, general and special assessments, transit taxes, water and sewer rents, taxes based upon the receipt of rent including gross receipts or sales taxes applicable to the receipt of rent or service or value added taxes, *ad valorem* taxes for Landlord's personal property, and taxes levied or assessed by special taxing districts now or hereafter created) levied or assessed for any Calendar Year (without regard to any different fiscal year used by such government or municipal authority) upon or with respect to the Property or Landlord's personal property used in connection with the Property that Landlord shall actually pay because of or in connection with the ownership, leasing and operation of the Property. Should any political subdivision or governmental authority having jurisdiction over the Property, impose a tax, assessment, charge or fee which Landlord shall be required to pay, either by way of substitution for such real estate taxes and *ad valorem* personal property taxes, or in addition to such real estate taxes and *ad valorem* personal property taxes, or impose an income or franchise tax or a tax on rents which may be in addition to or in substitution for a tax levied against the Property and/or Landlord's personal property used in connection with the Property, such taxes, assessments, fees or charges shall be deemed to constitute Taxes hereunder. "Taxes" shall also include all reasonable fees and costs incurred by Landlord in connection with protesting, reducing or limiting the increase in any Taxes, regardless of whether any reduction or limitation is obtained. "Taxes" shall not include inheritance, income, transfer or franchise taxes paid by Landlord to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Property), other than as described above, and shall not include any taxes to be paid by Tenant under the terms of this Lease. In determining the amount of Taxes for any Calendar Year, the amount of special assessments to be included shall be

limited to the amount of the installment (plus any interest payable thereon) of such special assessment which would have been required to have been paid during such year if Landlord had elected to have such special assessment paid over the maximum period of time permitted by law. Except as provided in the immediately preceding sentence, all references to Taxes "for" a particular year shall be deemed to refer to Taxes levied, assessed or otherwise imposed for such year without regard to when such Taxes are payable.

(d) "Operating Expenses" shall mean for any Calendar Year those costs or expenses of every kind and nature paid or incurred by or on behalf of Landlord for owning, managing, operating, maintaining, repairing and restoring the Property and Landlord's personal property used in connection with the Property including, without limitation: (i) dues and other amounts payable to the Windham Lakes Business Park Association, and payments under any other easement, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs in any planned development; (ii) utilities for the Property, including but not limited to electricity, power, gas, steam, oil or other fuel, water, sewer, lighting, heating, air conditioning and ventilating, to the extent not separately metered, (iii) the cost of fire monitoring, security and security device systems for the Building, if any; (iv) the cost of maintaining and repairing the Building and other improvements in the Property, and all systems, equipment and components thereof, including but not limited to: (A) sewer, water, mechanical, electrical, sprinkler and other utility systems and equipment, (B) heating, ventilating and air conditioning systems and equipment, (C) the roof and structural components of the Building, (D) parking lots, driveways and sidewalks, (E) exterior lighting systems and equipment; (F) window cleaning, (G) trash removal, (H) cleaning of walks, parking facilities and building walls, (I) removal of ice and snow, (J) replacement of wall and floor coverings, ceiling tiles and fixtures in lobbies, corridors, restrooms and other common or public areas or facilities, (K) maintenance and replacement of shrubs, trees, grass, sod and other landscaped items, (L) irrigation systems, (M) drainage facilities, (N) fences, curbs, and walkways, (O) re-paving and re-striping parking facilities, and (P) painting of Building exteriors; (v) insurance (including but not limited to, fire, extended coverage, all risk, rent loss, liability, worker's compensation, and any other insurance carried by Landlord and applicable to the Property and not carried by tenants under any provision of their lease); (vi) deductibles paid by Landlord under the insurance policies described above; (vii) uninsured losses; (viii) management agreements (including the cost of any management fee actually paid thereunder and the fair rental value of any office space provided thereunder, up to customary and reasonable amounts); (ix) supplies, tools, equipment and materials used in the operation, repair and maintenance of the Property; (x) the cost of wages, salaries and benefits of all persons at the level of property manager and below, engaged in the operation,

management, maintenance and repair of the Property; (xi) accounting, legal, inspection, consulting, concierge and other services; (xii) permits, licenses and certificates necessary to operate, manage and lease the Property; (xiii) any rental (or installment purchase or financing agreements) with respect to equipment used in the operation, repair or maintenance of the Property; and (xiv) any other expense or charge which would be considered as an expense of owning, managing, operating, maintaining, repairing or restoring the Property or Landlord's personal property used in connection therewith. Notwithstanding anything herein to the contrary, Operating Expenses shall not include: costs or other items included within the meaning of the term "Taxes"; costs of tenant alterations to tenant space; marketing costs; costs of capital improvements to the Property, except for the cost of resurfacing the Parking Areas (as hereinafter defined), driveways and sidewalks on the Property and except as provided below; depreciation charges; interest and principal payments on mortgages; real estate brokerage and leasing commissions; and any other expenditures for which Landlord has been reimbursed (other than pursuant to rent escalation or tax and operating expense reimbursement provisions in leases). Notwithstanding the foregoing, the cost of any capital improvements to the Property made after the date of this Lease that are primarily intended to reduce Operating Expenses or that are required under any laws, statutes, codes, ordinances, or governmental rules, regulations or requirements, or judicial or administrative rules, orders or decrees (collectively, "Laws") that were not applicable to the Property at the time it was constructed, amortized over such reasonable periods as Landlord shall determine, together with interest on the unamortized cost of any such improvements (at the prevailing construction loan rate available to Landlord on the date the cost of such improvements was incurred) shall be included in Operating Expenses. The cost of any capital improvements made in connection with resurfacing the Parking Areas, driveways and sidewalks in their entirety on the Property shall also be amortized; with interest, as provided in the immediately preceding sentence, and included in Operating Expenses. In the event the Property is not fully occupied during any Calendar Year, the variable Operating Expenses for that year may be adjusted by Landlord to reflect the Operating Expenses as though the Property were fully occupied; provided, however, that in no event shall the payments made by all tenants of the Property to Landlord for Operating Expenses exceed the actual Operating Expenses paid or incurred by Landlord in any Calendar Year.

5.2 **<u>Tax Amount</u>**. Tenant shall pay to Landlord as Rent, in addition to the Base Rent and the Operating Expense Amount (as defined below), an amount (the 'Tax Amount") equal to Tenant's Proportionate Share multiplied by the amount of Taxes for each Calendar Year. Tenant shall pay to Landlord the Tax Amount with respect to each Calendar Year in monthly installments, at the same time and place as Base Rent is to be paid, in an amount estimated from time to time by Landlord by a written notice to Tenant (the 'Estimated Tax Payments"). Landlord shall deliver to Tenant as soon as practical

after the close of each Calendar Year (including the Calendar Year in which this Lease terminates) a statement showing the amount of the Taxes for such Calendar Year and the Tax Amount. Tenant hereby acknowledges that Landlord will not be able to deliver such statement until Landlord receives the real estate tax bills for each Calendar Year, which bills are currently received six (6) to nine (9) months after the end of each Calendar Year. If the Estimated Tax Payments paid by Tenant during any Calendar Year are less than the Tax Amount for such Calendar Year, Tenant shall pay any deficiency to Landlord as shown by such statement within fifteen (15) days after receipt of such statement. If the Estimated Tax Payments paid by Tenant during any Calendar Year exceed the Tax Amount due from Tenant for such Calendar Year, such excess shall be credited against payments of Rent next due hereunder. If no such payments are next due, such excess shall be refunded by Landlord. Landlord's failure to deliver an annual statement of the Taxes for any Calendar Year shall not constitute a waiver or release of, or relieve Tenant from, its obligations under this Subsection. If Taxes for any period during the Term or any extension thereof, shall be increased after payment thereof by Landlord, for any reason including without limitation error or reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord upon demand Tenant's Proportionate Share of such increased Taxes. Tenant shall pay increased Taxes whether Taxes are increased as a result of increases in the assessment or valuation of the Property (whether based on a sale, change in ownership or refinancing of the Property or otherwise), increases in the tax rates, reduction or elimination of any rollbacks or other deductions available under current law, scheduled reductions of any tax abatement, as a result of the elimination, invalidity or withdrawal of any tax abatement, or for any other cause whatsoever. Notwithstanding the foregoing, Tenant shall pay prior to delinquency all taxes, charges or other governmental impositions assessed against or levied upon Tenant's fixtures, furnishings, equipment and personal property located in the Premises, and any Alterations. Whenever possible, Tenant shall cause all such items to be assessed and billed separately from the property of Landlord. In the event any such items shall be assessed and billed with the property of Landlord, Tenant shall pay Landlord its share of such taxes, charges or other governmental impositions within thirty (30) days after Landlord delivers a statement and a copy of the assessment or other documentation, showing the amount of such impositions applicable to Tenant's property. Tenant shall pay any rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the Rent or services herein or otherwise respecting this Lease.

5.3 Operating Expense Amount. Tenant shall pay to Landlord as Rent, in addition to the Base Rent and the Tax Amount, an amount (the "Operating Expense Amount") equal to Tenant's Proportionate Share multiplied by the amount of Operating Expenses for each Calendar Year. Tenant shall pay to Landlord the Operating Expense Amount with respect to each Calendar Year in monthly installments, at the same time and place as Base Rent is to be paid, in an amount estimated from time to time by Landlord by a written notice to Tenant (the 'Estimated Operating Expense Payments"). Landlord shall deliver to Tenant as soon as practical after the close of each Calendar Year (including the Calendar Year in which this Lease terminates) a statement showing the amount of the Operating Expenses for such Calendar Year and the Operating Expense Amount. If the Estimated Operating Expense Payments paid by Tenant during any Calendar Year are less than the Operating Expense Amount for such Calendar Year, Tenant shall pay any

deficiency to Landlord as shown by such statement within fifteen (15) days after receipt of such statement. If the Estimated Operating Expense Payments paid by Tenant during any Calendar Year exceed the Operating Expense Amount due from Tenant for such Calendar Year, such excess shall be credited against payments of Rent next due hereunder. If no such payments are next due, such excess shall be refunded by Landlord. Landlord's failure to deliver an annual statement of the Operating Expenses for any Calendar Year shall not constitute a waiver or release of, or relieve Tenant from, its obligations under this Subsection.

5.4 **Survival**. Without limiting any other obligations of Tenant which shall survive the expiration of the Term or a termination of Tenant's right of possession, the obligations of Tenant to pay the Additional Rent provided for in this Section 5 shall survive the expiration of the Term or a termination of Tenant's right of possession.

6. SERVICES.

6.1 <u>Services Furnished bv Landlord</u>. As long as Tenant is not in default under this Lease, Landlord shall furnish the following services:

(a) Repairs and maintenance (and if necessary, replacements) of air conditioning and heating units providing service to the Premises. Notwithstanding anything contained herein to the contrary, if any repairs, maintenance or replacements are necessitated by the act or neglect of Tenant, its agents, servants or employees, then the cost thereof shall be billed directly to Tenant, and Tenant shall pay Landlord therefor within fifteen (15) days after receiving such bill. Landlord shall not otherwise be responsible for the operation of air conditioning and heating units serving the Premises or the costs thereof, the parties acknowledging that the use and operation of such units shall be within the sole control of Tenant. Landlord shall not be responsible for inadequate air-conditioning or ventilation to the extent the same occurs because Tenant uses any item of equipment consuming more than 500 watts at rated capacity without providing adequate air-conditioning and ventilation therefor.

(b) Domestic Water for drinking, lavatory and toilet purposes at those points of supply provided for nonexclusive general use of other tenants at the Property. In the event that Tenant uses or requires a materially greater amount of water or refuse disposal service than the usual and ordinary office use of either of such services, then Landlord may bill Tenant for the additional cost of such increased use and for the cost of determining the amount of such increased use, and Tenant shall pay Landlord for such costs as Rent within fifteen (15) days after receiving such bill. If as of the Commencement Date, water service is not separately metered for the Premises, Landlord reserves the right to install separate meters for the Premises at Tenant's cost.

(c) Exterior window washing of all windows in the Premises, weather permitting, at intervals to be reasonably determined by Landlord.

(d) Refuse disposal service in common with other tenants.

6.2 Utilities. Landlord shall arrange with the public utility companies and/or municipality providing the Building with electricity and natural gas service for the supply of such services to the Premises. Such services shall be separately metered to the Premises, and Tenant shall pay for the cost of any meter required in connection therewith. Tenant shall pay the public utility companies and/or municipality directly for any services provided and separately metered to the Premises. Tenant shall bear the cost of maintaining light fixtures and replacing bulbs, tubes, ballasts and similar items in the Premises.

6.3 No Other Services. Landlord shall not be obligated to provide any services other than those expressly set forth above in this Section. Landlord does not warrant that any of the services described in this Section 6 will be free from interruptions caused by repairs, improvements or alterations of equipment, or by war, insurrection, civil commotion, acts of God or governmental action, strikes, lockouts, picketing, whether legal or illegal, accidents, inability of Landlord to obtain fuel or supplies, or any other cause or causes beyond Landlord's reasonable control. None of such interruptions shall be deemed an eviction (constructive or actual) or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for damages or abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of loss of profits, business interruption or other consequential damages.

7. SECURITY DEPOSIT. As additional security for the full and prompt performance by Tenant of all its obligations hereunder, Tenant has upon execution of this Lease paid to Landlord the amount set forth in Section 1.10 hereof (the "Security Deposit"), which amount may be applied by Landlord for the purpose of curing any default by Tenant under this Lease. Landlord shall be permitted to commingle the Security Deposit with Landlord's general funds. Landlord shall not be required to pay any interest on the Security Deposit. If any portion of the Security Deposit is applied to cure a default by Tenant, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be a breach of this Lease. If Tenant has not defaulted hereunder or if Landlord has not applied the full amount of the Security Deposit to said default, then the Security Deposit, or any portion thereof not so applied by Landlord, shall be applied to the Base Rent due for the month of January 2004. The Security Deposit is not an advance payment of Rent or an account of Rent (except as set forth herein), or any part or settlement thereof, or a measure of Landlord's damages. The use or application of the Security Deposit or any portion thereof shall not prevent Landlord from exercising any other right or remedy provided hereunder or under any Laws and shall not be construed as liquidated damages. In the event Landlord transfers all or any part of its interest in the Building or this Lease, Landlord shall have the right to transfer the Security Deposit to the transferee. Upon such transfer, Landlord shall

thereby be released by Tenant from all liability or obligation for the return of the Security Deposit.

8. USE. Tenant shall use and occupy the Premises for general office purposes and for no other purpose, unless otherwise expressly agreed in writing by Landlord. Notwithstanding the foregoing, Tenant shall not use or occupy the Premises, or permit the Premises to be used or occupied contrary to or in violation of any Laws or any covenant, condition or restriction of record, or in any manner that would: (i) cause structural injury to the Premises or the Building; (ii) invalidate any insurance policy affecting the Premises or the Building; (iii) increase the amount of premiums for any insurance policy affecting the Premises or the Building; (iv) affect any certificate of occupancy affecting the Premises or the Building; (v) or may be dangerous to persons or property; (vi) create a nuisance, or disturb any other occupant of the Building; or (vii) injure the reputation of the Property or of Landlord.

9. CONDITION OF PREMISES. Tenant's taking possession of the Premises shall be conclusive evidence as against Tenant that the Premises were in good, clean and sanitary order, repair and condition satisfactory to Tenant and at such time free from defects. No promise of Landlord to alter, remodel or improve the Premises or the Building and no representation respecting the condition of the Premises or the Building has been made by Landlord to Tenant other than as may be expressly set forth in this Lease.

10. EARLY POSSESSION. Landlord acknowledges and agrees that Tenant may take possession of all or any part of the Premises prior to the Commencement Date in order to undertake improvements to the Premises at its sole cost and expense and in accordance with the provisions of this Lease (including but not limited to Section 12) or to undertake Tenant's business operations at the Premises. If Tenant does so take possession of all or any part of the Premises prior to the Commencement Date, all of the covenants and conditions of this Lease shall be binding upon the parties hereto the same as if the Commencement Date had been fixed as of the date when Tenant took such possession, except that Tenant shall not be responsible for the payment of Base Rent or Additional Rent for any period prior to the Commencement Date. Notwithstanding the foregoing, Tenant shall be responsible for the payment of all costs and expenses relating to utility services being provided to the Premises after Landlord has delivered possession of all or any part of the Premises to Tenant.

11. ASSIGNMENT AND SUBLETTING.

11.1 Prohibitions. Tenant shall not, without the prior written consent of Landlord, undertake any of the following (collectively, a "Transfer"): (a) assign, convey or mortgage this Lease or any interest hereunder; (b) permit any assignment of, or lien upon this Lease or Tenant's interest herein by operation of law or otherwise; (c) sublet the Premises or any part thereof; or (d) permit the use of the Premises by any parties other than Tenant, its agents and employees. Any Transfer attempted to be made without complying with this Section 11 shall at Landlord's option be null, void and of no effect and shall constitute a default under this Lease. Neither a Transfer to any party (including

but not limited to any affiliates or subsidiaries), nor Landlord's consent to any other Transfer, nor Landlord's election to accept any assignee, sublessee or transferee as Tenant hereunder shall release the original Tenant from any covenant or obligation under this Lease. Landlord's consent to any Transfer shall not constitute a waiver of Landlord's right to consent to any future Transfer.

11.2 **Notice to Landlord**. Tenant shall give Landlord written notice of any proposed Transfer (including, without limitation, a proposed Transfer to an affiliate or subsidiary) at least forty-five (45) days prior to the effective date of such proposed Transfer. Such written notice shall include: (a) the name and address of the proposed assignee, sublessee or transferee (a "Transferee"), and whether the proposed Transferee is an Affiliate (as defined below), (b) the proposed effective date (which shall not be less than 45 nor more than 180 days after Tenant's notice), (c) the portion of the Premises subject to the proposed Transfer (the "Subject Space"), (d) except if Tenant makes a Transfer to an Affiliate, the terms of the proposed Transfer and the consideration therefor, (e) except if Tenant makes a Transfer to an Affiliate, a copy of all documentation pertaining to the proposed Transfer, (f) except if Tenant makes a Transfer to an Affiliate, current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, (g) except if Tenant makes a Transfer to an Affiliate, any other reasonable information to enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space, and (h) except if Tenant makes a Transfer to an Affiliate, such other information as Landlord may reasonably require. The term "Affiliate" in this Lease shall mean an entity that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with Tenant. For purposes of this definition, the term "control" shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

11.3 **Approval**. Landlord will not unreasonably withhold or delay its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in Tenant's notice. The parties hereby agree that it shall be reasonable under this Lease and under any applicable Laws for Landlord to withhold consent to any proposed Transfer where one or more of the following applies (without limitation as to other reasonable grounds for withholding consent): (i) the proposed Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Property, or would be a significantly less prestigious occupant of the Property than Tenant, (ii) the proposed Transferee intends to use the Subject Space for purposes which are not permitted under this Lease, (iii) the proposed Subject Space is not regular in shape with appropriate means of ingress and egress suitable for normal renting purposes, (iv) the proposed Transferee is either a governmental authority (or agency or instrumentality thereof) or a current tenant or occupant of the Property, (v) the proposed Transferee does not have a reasonable financial condition in relation to the obligations to be assumed in connection with the Transfer, (vi) an uncured event of default under this Lease shall exist at the time Tenant requests consent to the proposed Transfer, or (vii) any such transfer will cause a violation of ERISA (as defined below) or other applicable state statutes regulating investments by or fiduciary obligations with respect to "governmental plans."

Notwithstanding the foregoing, Tenant shall have the right to make a Transfer of this Lease to an Affiliate without Landlord's prior consent; provided that such Transfer shall otherwise be subject to the terms and conditions of Section 11.2 and Section 11.4.

11.4 **Terms of Consent**. If Landlord consents to a Transfer, or if Tenant makes a Transfer to an Affiliate: (a) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (b) such consent (if required) shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (c) no Transferee shall succeed to any rights provided in this Lease or any amendment hereto to extend the Term of this Lease, expand the Premises, or lease additional space, any such rights being deemed personal to the original Tenant and its Affiliates, (d) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant from liability under this Lease, (e) except if Tenant makes a Transfer to an Affiliate, Tenant shall deliver to Landlord promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, and (f) except if Tenant makes a Transfer to an Affiliate, Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any profits Tenant has derived and shall derive from such Transfer. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the profits derived by Tenant from any Transfer shall be found understated, Tenant shall within thirty (30) days after demand pay the deficiency, and if understated by more than 2%, Tenant shall pay Landlord's costs of such audit. Any sublease hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any sublease, Landlord shall have the right to: (i) treat such sublease as canceled and repossess the Subject Space by any lawful means, or (ii) require that such subtenant attorn to and recognize Landlord as its landlord under any such sublease. In the event of default, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured.

11.5 **Sharing of Profits**. Without limitation of any other provision hereof, should Tenant propose to Transfer to any Transferee other than an Affiliate, Landlord may condition its consent to the Transfer on the condition that fifty percent (50%) of the profit derived by Tenant from the Transfer be paid by Tenant to Landlord as Rent. For purposes of Subsections 11.4 and 11.5, "profits" shall mean the amount of any and all consideration received by Tenant in connection with such Transfer, minus the amount of Base Rent and Additional Rent to be paid by Tenant under this Lease for the portion of the Term and the Subject Space, minus all reasonable, out-of-pocket costs actually incurred by Tenant in connection with such Transfer (including leasing commissions, advertising expenses, costs of alterations or improvements to the Premises approved by Landlord in accordance with this Lease, and attorney's fees).

11.6 Transfer of Ownership Interests in Tenant. For purposes of this Lease, the term "Transfer" shall also include any one of the following events if and only if Tenant does not maintain substantially the same (or better) net worth and remain in substantially the same (or better) financial condition upon and after such event: (a) the direct or indirect sale or other transfer of an aggregate of 50% or more of the voting or ownership interests of Tenant, (b) the sale, mortgage, hypothecation or pledge of an aggregate of 50% or more of Tenant's net assets, or (c) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of a majority of the partners or the dissolution of the partnership. Notwithstanding anything to the contrary in this Lease, any transfer of ownership interests in Tenant shall not be permitted hereunder, shall at Landlord's option be null, void and of no effect and shall constitute a default under this Lease if such transfer would cause any of the representations and warranties made by Tenant in Section 26.2 below to be inaccurate or incorrect at any time. Tenant shall indemnify, defend and hold the Landlord Parties (as defined below) harmless from all claims, causes of action, liabilities, losses, costs, damages, liens and expenses related to any transfer of ownership interests in Tenant that may cause any of the representations and warranties made by Tenant in Section 26.2 below to be inaccurate or incorrect at any time. Notwithstanding anything in this Lease to the contrary, a transfer of the shares or other interests of Tenant or an Affiliate of Tenant whose outstanding voting stock is listed on a national stock exchange regulated by the U.S. Securities and Exchange Commission shall not be deemed to be a Transfer.

11.7 Recapture. Notwithstanding anything to the contrary contained in this Article, Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after receipt of Tenant's notice of any proposed Transfer, to recapture the Subject Space. Such recapture notice shall cancel and terminate this Lease with respect to the Subject Space as of the date stated in Tenant's notice as the effective date of the proposed Transfer (or at Landlord's option, shall cause the Transfer to be made to Landlord or its agent, in which case the parties shall execute the Transfer documentation promptly thereafter). If this Lease shall be cancelled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises (both as reasonably determined by Landlord), this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same.

11.8 Landlord's Costs. Tenant shall pay to Landlord as Rent hereunder, all costs and expenses (including, without limitation, reasonable attorneys' fees) paid or incurred by Landlord in connection with any proposed assignment or subletting hereunder, regardless of whether Landlord exercises its recapture option pursuant to Subsection 11.7 hereof or withholds or grants its consent to such assignment or subletting in accordance with the terms and conditions of this Section 11.

12. REPAIRS AND ALTERATIONS.

12.1 Tenant's Repair Obligations. Tenant shall, at its own expense, keep and maintain the Premises in good and sanitary condition, working order and repair during

the Term. Tenant shall promptly and adequately repair all damage to the Premises and restore, replace or repair all damaged or broken glass, carpet, wallcovering, doors, fixtures, equipment, improvements and appurtenances; provided, however, that Tenant shall not be obligated to repair or replace the roof or any structural defects in the Premises, or the heating and air conditioning systems servicing the Premises, except to the extent that such repair or replacement are necessitated by the act or neglect of Tenant, its agents, servants or employees. In the event that any such repairs, maintenance or replacements are required, Tenant shall promptly arrange for the same either through Landlord for such reasonable charges as Landlord may from time to time establish, or such contractors as Landlord generally uses at the Property or such other contractors as Landlord shall first approve in writing, and in a first class, workmanlike manner approved by Landlord in advance in writing. If Tenant does not fulfill its obligations under this Subsection 12.1, Landlord may, but need not, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof, plus an additional fifteen percent (15%) to cover Landlord's overhead and related expenses, immediately upon written demand therefor. Landlord may enter the Premises at all reasonable times to make such repairs and replacements and any other repairs, alterations, improvements and additions to the Premises or to the Building or to any equipment or system located in the Building. Notwithstanding anything contained herein to the contrary, if any damage to the Premises or the Property or to any equipment or system thereon (including but not limited to the roof of the Building or any heating, air conditioning and ventilation systems serving the Premises) or appurtenance thereto results from any act, omission or neglect of Tenant or of Tenant's contractors, agents or employees, Landlord may but is not obligated to, at Landlord's option, repair such damage, and Tenant shall reimburse Landlord immediately upon written demand for the total cost of such repairs, plus an additional fifteen percent (15%) to cover Landlord's overhead and related expenses.

12.2 **Prohibition on Alterations**. Tenant shall not, without the prior written consent of Landlord, make any alterations, improvements, decorations or additions (collectively, "Alterations") to the Premises. Landlord may, in its sole discretion, withhold its consent to any Alteration which: (i) affects the roof or structural components of the Building; (ii) affects any heating, ventilating, air conditioning, utility or mechanical systems or equipment in the Building; (iii) is visible from outside of the Premises; (iv) costs more than $10,000.00 to complete (including all labor and material costs); or (iv) requires a building permit to perform. Except as provided in the immediately preceding sentence, Landlord shall not unreasonably withhold its consent to any Alterations. Landlord's consent to any Alterations (including, without limitation, Landlord's approval of Tenant's plans, specifications or working drawings therefor), shall impose no responsibility or liability on Landlord with respect to the completeness, or design sufficiency thereof or the compliance thereof with all applicable Laws.

12.3 **Performance of Alterations**. The work necessary to make any Alterations shall be done by employees of or contractors employed by Landlord or, with Landlord's prior written consent, by contractors and subcontractors arranged for by Tenant and approved by Landlord. If Alterations are, with Landlord's consent, performed by contractors employed by Tenant, Tenant shall deliver to Landlord, for its review and approval prior to commencing any such Alterations, copies of all contracts and subcontracts related to

such Alterations, and plans, working drawings and specifications necessary to perform such work. Landlord's review of Tenant's plans, specifications or working drawings shall impose no responsibility or liability on Landlord, and shall not constitute a representation, warranty or guarantee by Landlord, with respect to the completeness, design, sufficiency or compliance thereof with any Laws. In addition, Alterations shall be performed subject to all conditions that Landlord may impose upon Tenant and its contractors and subcontractors, including without limitation: furnishing Landlord with bonds and other security for the payment of all costs to be incurred in connection with such Alterations; insuring against liabilities which may arise out of such Alterations, as determined by Landlord; obtaining necessary licenses and permits; contractor and subcontractor lien waivers; affidavits listing all contractors, subcontractors and suppliers; use of union labor (if Landlord uses union labor); affidavits from engineers acceptable to Landlord stating that the Alterations will not adversely affect the systems and equipment or the structure of the Building; and requirements as to the manner and times in which such Alterations shall be done. All Alterations performed by Tenant or its contractors shall be done in a first-class, workmanlike manner using only new and good grades of materials and shall comply with all insurance requirements and all Laws. Tenant shall permit Landlord to supervise all Alterations, and Landlord may charge a supervising fee not to exceed: (a) ten percent (10%) of the total cost of the Alterations, including without limitation, all labor and material costs, if Tenant's employees or contractors perform the Alterations, or (b) fifteen percent (15%) of the total cost of the Alterations, including, without limitation, all labor and material costs, if Landlord's employees or contractors perform the Alterations. Tenant shall promptly pay to Landlord and/or to Tenant's contractors, as the case may be, when due, the cost of all work and of all decorating required in connection with any Alterations, and all supervising fees, and if payment is made directly to Tenant's contractors, upon completion of the Alterations, Tenant shall deliver to Landlord evidence of payment and full and final waivers of all liens for labor, services or materials. Except to the extent caused by Landlord's gross negligence or willful misconduct, Tenant shall indemnify, defend and hold Landlord and its owners and their respective officers, shareholders, directors, partners, agents and employees (collectively, the "Landlord Parties") harmless from all claims, causes of action, liabilities, losses, costs, damages, liens and expenses related to any Alterations, whether performed by or under the direction of Landlord, and whether performed in compliance with this Section 12 or any other conditions imposed by Landlord.

13. CERTAIN RIGHTS RESERVED BY LANDLORD. Except to the extent expressly limited herein, Landlord reserves full rights to control the Property, including but not limited to the following rights, exercisable without notice (except as expressly provided below in this Section) and without liability to Tenant for damage or injury to property, person or business, and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for set-off or abatement of Rent:

(a) To change the name or street address of the Building or the Property;

(b) To install, affix and maintain any and all signs on the exterior of the Building, and to prescribe the location and style of the identification sign

(including ground mounted sign with panels, if any), logo and/or lettering for the Premises occupied by the Tenant;

(c) To designate and/or approve, prior to installation, all types of window shades, blinds, drapes, awnings, window ventilators and other similar equipment, and to control all internal lighting that may be visible from the exterior of the Premises;

(d) To show the Premises to prospective tenants at reasonable hours during the last twelve (12) months of the Term and, if vacated during such year, to prepare the Premises for re-occupancy, and to show the Premises to current and prospective insurers, brokers, purchasers and lenders of the Building at reasonable hours upon reasonable prior verbal notice at any time during the Term;

(e) To retain at all times, and to use in appropriate instances, keys to all doors within and into the Premises. No locks shall be changed without the prior written consent of Landlord;

(f) To decorate or maintain or to make repairs, alterations, additions or improvements, whether structural or otherwise, in and about the Property or the Building, or any part of any thereof, and for such purposes to enter upon the Premises upon reasonable prior verbal notice (except in an emergency, in which case no notice shall be necessary), and, during the continuance of any such work, to take into and upon or through the Premises all materials required to make such decorations, repairs, maintenance, alterations or improvements, to erect scaffolding and other structures as may be reasonably required, to close roads, drives, doors, entryways, public space and corridors in the Property or the Building on a temporary basis, and to interrupt or suspend temporarily Building services and facilities, all without abatement of Rent or affecting any of Tenant’s obligations hereunder, so long as the Premises are reasonably accessible;

(g) To have and retain a paramount title to the Premises free and clear of any act of Tenant purporting to burden or encumber it;

(h) To grant to anyone the exclusive right to conduct any business or render any service in or to the Property, provided such exclusive right shall not operate to exclude Tenant from the use expressly permitted herein;

(i) To approve the location of fixtures, equipment and other articles of personal property in and about the Premises and the Building so as not to exceed the legal live load;

(j) To prohibit the placing of vending or dispensing machines of any kind in or about the Premises, except for vending or dispensing machines for the sole use of Tenant and its employees;

(k) To issue rules and regulations, from time to time, governing the use of the Parking Areas (as defined below); and

(l) To limit or prevent access to the Property or otherwise take such action or preventative measures deemed necessary by Landlord for the safety of tenants or other occupants of the Property or the protection of the Property and other property located thereon or therein, in case of fire, invasion, insurrection, riot, civil disorder, public excitement or other dangerous condition, or threat thereof.

14. COVENANT AGAINST LIENS. Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen to be placed against the Property, the Building or the Premises in connection with any work or Alterations on or respecting the Premises not performed by or at the request of Landlord, and Tenant shall indemnify and hold Landlord harmless from and against any claims, liabilities, judgments, or costs (including attorneys' fees) arising out of the same or in connection therewith. In the case of any such lien attaching, Tenant shall pay off and remove or bond over any such lien to Landlord's satisfaction within fifteen (15) days after the filing thereof. If any such lien attaches, and Tenant falls to remove or bond over such lien within said fifteen (15) day period, Landlord may, but shall not be obligated to, pay the amount necessary to remove such lien without being responsible for making an investigation as to the validity or accuracy thereof, and the amount so paid, together with all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection therewith, shall be deemed Rent hereunder, payable immediately upon demand. Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of Laws or otherwise, to attach to or be placed upon Landlord's title or interest in the Property, the Building or the Premises, and any such claim to a lien or encumbrance shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises, and shall in all respects be subordinate to Landlord's title to the Property and Premises. Tenant shall give Landlord notice at least twenty (20) days prior to the commencement of any work or Alterations on the Premises (or such additional time as may be necessary under applicable Laws), to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility.

15. WAIVERS AND INDEMNITIES.

15.1 Waiver.

(a) Except to the extent Landlord expressly indemnifies Tenant in accordance with Section 15.2 or otherwise expressly provides any other rights, indemnities or remedies for the benefit of Tenant under this Lease, Tenant waives all claims it may have against the Landlord Parties for any damage either to person or property or loss of business due to the Property, the Premises or any part of any thereof or any appurtenances thereto or improvements thereon not being in good condition or becoming out of repair, or due to the happening of any accident in or about the Property or

the Premises or due to any act or neglect of Tenant or any tenant or occupant of the Property, or of any other person, including the Landlord Parties. This provision shall apply particularly (but not exclusively) to damage caused by water, snow, frost, steam, sewage, gas, faucets and plumbing fixtures, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the causes specifically enumerated above or to some other cause of an entirely different kind. Tenant further agrees that all Tenant's property upon the Premises or the Property shall be there at the risk of Tenant only, and that Landlord shall not be liable for any damage thereto or theft thereof.

(b) Except to the extent Tenant expressly indemnifies Landlord in accordance with Section 15.2 or otherwise expressly provides any other rights, indemnities or remedies for the benefit of Landlord under this Lease, Landlord waives all claims it may have against Tenant for any damage either to person or property or loss of business due to the Property, the Premises or any part of any thereof or any appurtenances thereto or improvements thereon not being in good condition or becoming out of repair, or due to the happening of any accident in or about the Property or the Premises or due to any act or neglect of Landlord or any tenant or occupant of the Property, or of any other person, including the Landlord Parties.

15.2 Indemnification.

(a) Except to the extent caused by the negligence or willful misconduct of any of the Landlord Parties, and subject to the waiver of subrogation provided in accordance with Section 18.1 below, Tenant hereby agrees to indemnify, defend and hold harmless the Landlord Parties from and against any claims or liability for damage to person or property (or for loss or misappropriation of property) occurring in or on the Property or the Premises, arising from any breach or default on the part of Tenant under this Lease, or from any act or omission of Tenant or any employee, agent, servant, invitee or contractor of Tenant, or from Tenant's operations or activities on or use of the Property or the Premises, and from any cost relating thereto (including, without limitation, attorneys' fees), but only to the extent not covered by Landlord's insurance and expressly excluding any consequential or special damages.

(b) Except to the extent caused by the negligence or willful misconduct of any of Tenant or its officers, shareholders, directors, invitees, agents or employees, and subject to the waiver of subrogation provided in accordance with Section 18.1 below, Landlord hereby agrees to indemnify, defend and hold harmless Tenant and its officers, shareholders, directors, clients, servants, agents and employees from and against any claims or liability for damage to person or property (or for loss or

misappropriation of property) and the reasonable costs relating thereto (including, without limitation, attorneys' fees) to the extent any such damage, injury or death is the result of the negligence or willful misconduct of any of the Landlord Parties, but only to the extent not covered by Tenant's insurance and expressly excluding any consequential or special damages.

15.3 Waiver of Notice. Except for any notices expressly provided for in this Lease, Tenant hereby expressly waives the service of any notice of intention to terminate this Lease or to re-enter the Premises, and waives the service of any demand for payment of Rent or for possession and waives the service of any other notice or demand prescribed by any Laws.

15.4 No Implicit Waivers. No waiver of any condition expressed in this Lease shall be implied by any neglect of Landlord to enforce any remedy on account of the violation of such condition if such violation be continued or repeated subsequently, and no express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of moneys by Landlord from Tenant after the termination in any way of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given to Tenant prior to the receipt of such moneys, it being agreed that after the service of notice of the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

16. DEFAULTS AND LANDLORD'S REMEDIES.

16.1 Defaults. It shall be a "default" or "event of default" under this Lease if: (i) Tenant fails to pay, when due, Rent or any installment thereof or any other sum required to be paid by Tenant under this Lease (including any required replenishment of the Security Deposit), and such failure continues for more than five (5) days after written notice; (ii) any guarantor or surety ("Guarantor") of Tenant's obligations under this Lease fails to pay, when due, any sum required to be paid by such Guarantor under any guaranty or surety agreement ('Guaranty") that Landlord may have required in connection with this Lease, and such failure continues for more than five (5) days after written notice; (iii) Tenant or any Guarantor fails to observe or perform any of the covenants, conditions or obligations not relating to the payment of Rent or other sums that Tenant or such Guarantor is required to observe or perform under this Lease or any Guaranty, respectively, and such failure continues for more than thirty (30) days after notice thereof to Tenant (unless such failure shall give rise to an emergency or hazardous condition requiring an immediate cure, in which case, no notice is necessary and no cure period shall be allowed); provided, however, that Landlord shall not be entitled to exercise its remedies on account of any default described in this clause (iii) if (a) such default cannot reasonably be cured within thirty (30) days, (b) Tenant or any Guarantor commences to cure such default within said thirty (30) day period and thereafter diligently and continuously proceeds with such cure, and (c) Tenant or any Guarantor cures such default within a reasonable period of time not to exceed sixty (60) days after

Landlord's notice of such default; (iv) the interest of Tenant in this Lease is levied on under execution or other legal process; (v) an Event of Bankruptcy (as defined below) occurs; (vi) Tenant or any Guarantor dissolves or ceases to exist; (vii) Tenant shall attempt to effect a Transfer in violation of Section 11 hereof; or (viii) any material misrepresentation herein, or material misrepresentation or omission in any financial statements or other materials provided by Tenant or any Guarantor in connection with negotiating or entering this Lease or in connection with any Transfer. For purposes of this Lease, an "Event of Bankruptcy" means the occurrence of any one or more of the following events or circumstances:

(a) If Tenant or any Guarantor shall file in any court a petition in bankruptcy or insolvency or for reorganization within the meaning of the Federal Bankruptcy Code, or for arrangement within the meaning of such Code (or for reorganization or arrangement under any future bankruptcy or reform act for the same or similar relief), or for the appointment of a receiver or trustee of all or a portion of the property of Tenant or any Guarantor, or

(b) If an involuntary petition in bankruptcy or insolvency or for reorganization within the meaning of the Federal Bankruptcy Code shall be filed against Tenant or any Guarantor, and such petition shall not be vacated or withdrawn within thirty (30) days after the date of filing thereof, or

(c) If Tenant or any Guarantor shall make an assignment for the benefit of creditors, or

(d) If Tenant or any Guarantor shall be adjudicated a bankrupt or shall admit in writing an inability to pay its debts as they become due, or

(e) If a receiver shall be appointed for the property of Tenant or any Guarantor by order of a court of competent jurisdiction (except where such receiver shall be appointed in an involuntary proceeding and be withdrawn within thirty (30) days from the date of his appointment).

16.2 **Landlord's Remedies**. Upon a default under this Lease, Landlord at its option may, without notice or demand of any kind to Tenant or any Guarantor or other person, exercise any one or more of the following described remedies in addition to all other rights and remedies provided at law or in equity:

(a) Landlord may terminate this Lease and the Term created hereby, in which event Landlord may forthwith repossess the Premises and be entitled to recover forthwith as damages a sum of money equal to all Rent accrued and unpaid for the period up to and including the date of termination, plus as final and liquidated damages (and not as a penalty) Landlord's reasonable estimate of the amount of Rent that would be payable from the date of such termination through the balance of the scheduled Term, less the fair rental value of the Premises for said period (taking into consideration the time to relet the Premises, and taking into consideration

and reducing said fair rental value by, the Costs of Re-Letting [as defined below]), plus any other sum of money and damages owed by Tenant to Landlord.

(b) Landlord may terminate Tenant's right of possession and may repossess the Premises by forcible entry or detainer suit, by taking peaceful possession or otherwise, without terminating this Lease. If Landlord terminates Tenant's right of possession without terminating this Lease, Landlord shall take reasonable measures to the extent required by law, to relet the same for the account of Tenant, for such rent and upon such terms as shall be reasonably satisfactory to Landlord. Reasonable measures shall not obligate Landlord to show the Premises before showing other space in the Building to a prospective tenant. For the purpose of such reletting, Landlord is authorized to decorate, repair, remodel, alter or otherwise improve the Premises and to relet the Premises at such rental rate (which may be higher than the rental rate then applicable under this Lease), as Landlord reasonably determines to be necessary to maximize the effective rent on reletting. If Landlord shall fail to relet the Premises, Tenant shall pay to Landlord as damages the amount of the Rent reserved in this Lease for the balance of the Term as due hereunder. If the Premises are relet and a sufficient sum shall not be realized from such reletting after paying all of the costs and expenses of all decoration, repairs, remodeling, alterations, installations and additions and the expenses of such reletting (including all allowances, abatements and other tenant concessions required under then-existing market conditions) (collectively, the 'Costs of Re-Letting"), to satisfy the Rent provided for in this Lease, Tenant shall satisfy and pay the same upon demand therefor from time to time. Tenant shall not be entitled to any rents received by Landlord in excess of the Rent provided for in this Lease. Tenant agrees that Landlord may file suit to recover any sums falling due under the terms of this paragraph (b) from time to time and that no suit or recovery of any portion due Landlord hereunder shall be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord.

(c) Landlord may perform the obligation which is the subject of such default for the account and at the expense of Tenant. All costs incurred by Landlord in performing such obligation, plus an administrative fee equal to fifteen percent (15%) of such costs, plus all attorneys' fees and expenses of Landlord incurred in enforcing any of the obligations of Tenant under this Lease shall become Rent hereunder and shall be due and payable by Tenant immediately on demand.

(d) Landlord may additionally (i) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof, and (ii) sue Tenant or any Guarantor for and collect any unpaid Rent which has accrued.

16.3 Default Interest. If any payments of Rent remain unpaid for more than five (5) days after the date when due, unless Tenant has not been in default of any monetary obligation under this Lease within the previous twelve (12) month period, such payments shall bear interest from the date when due until the date paid at a rate of interest equal to the lesser of: (i) the maximum rate of interest permitted by applicable Laws; or (ii) six percent (6%) in excess of the rate announced or published from time to time by Bank One, N.A. at its office in Chicago, Illinois as its prime or equivalent base rate of interest adopted as a general benchmark from which Bank One, N.A. determines the floating interest rates chargeable on various loans to borrowers from time to time. Landlord's right to receive such interest shall not, in any way, limit any of Landlord's other remedies under this Lease or at law or equity.

16.4 Late Charge. If any payment or installment of Rent owed by Tenant under this Lease is not paid when due, unless Tenant has not been in default of any monetary obligation under this Lease within the previous twelve (12) month period, in addition to the amounts due under Section 15.3 above, Tenant shall pay to Landlord to compensate it for its additional for bookkeeping and administrative expenses resulting from such late payment an amount equal to the greater of $100.00 or five percent (5%) of the amount of Rent overdue for each and every thirty (30) day period or portion thereof that such Rent remains unpaid.

16.5 Other Matters. No re-entry or repossession, repairs, changes, alterations and additions, reletting, acceptance of keys from Tenant, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or accept a surrender of the Premises, nor shall the same operate to release the Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord or its agent to Tenant. To the fullest extent permitted by Laws, all rent and other consideration paid by any replacement tenants shall be applied: first, to the all reasonable costs and expenses incurred by Landlord for any repairs, maintenance, changes, alterations and improvements to the Premises, brokerage commissions, advertising costs, attorneys' fees, any customary free rent periods or credits, tenant improvement allowances, take-over lease obligations and other customary, necessary or appropriate economic incentives required to enter leases with replacement tenants, and costs of collecting rent from replacement tenants, second, to the payment of any Rent theretofore accrued, and the residue, if any, shall be held by Landlord and applied to the payment of other obligations of Tenant to Landlord as the same become due (with any remaining residue to be retained by Landlord). Rent shall be paid without any prior demand or notice therefor (except as expressly provided herein) and without any deduction, set-off or counterclaim, or relief from any valuation or appraisement laws. Landlord may apply payments received from Tenant to any obligations of Tenant then accrued, without regard to such obligations as may be designated by Tenant. Landlord shall be under no obligation to observe or perform any provision of this Lease on its part to be observed or performed which accrues after the date of any default by Tenant hereunder not cured within the times permitted hereunder. The times set forth herein for the curing of defaults by Tenant are of the essence of this Lease. Tenant hereby irrevocably waives any right otherwise available under any Laws to redeem or reinstate this Lease.

16.6 Landlord's Default. If Landlord shall fail to perform any term or provision under this Lease required to be performed by Landlord, Landlord shall not be deemed to be in default hereunder nor subject to any claims for damages of any kind, unless such failure shall have continued for a period of thirty (30) days after written notice thereof by Tenant; provided, if the nature of Landlord's failure is such that more than thirty (30) days are reasonably required in order to cure, Landlord shall not be in default if Landlord commences to cure such failure within such thirty (30) day period, and thereafter reasonably seeks to cure such failure to completion. The aforementioned periods of time permitted for Landlord to cure shall be extended for any period of time during which Landlord is delayed in, or prevented from, curing due to fire or other casualty, strikes, lock-outs or other labor troubles, shortages of equipment or materials, governmental requirements, power shortages or outages, acts or omissions by Tenant or other Persons, and other causes beyond Landlord's reasonable control. If Landlord shall fail to cure within the times permitted for cure herein, Landlord shall be subject to such remedies as may be available to Tenant under applicable Laws (subject to the other provisions of this Lease); provided, in recognition that Landlord must receive timely payments of Rent and operate the Property, Tenant shall have no right of self-help to perform repairs or any other obligation of Landlord, and shall have no right to withhold, set-off, or abate Rent.

17. SURRENDER OF POSSESSION.

17.1 Condition of Premises. At the expiration or earlier termination of this Lease by lapse of time or otherwise, or upon termination of Tenant's right of possession without terminating this Lease, Tenant shall surrender possession of the Premises to Landlord and deliver all keys to the Premises to Landlord, and shall return the Premises and all Personal Property of Landlord to Landlord in as good condition as when Tenant originally took possession, ordinary wear and tear, loss or damage by fire or other insured casualty, and damage resulting from the act of Landlord or any other of its employees and agents excepted, failing which Landlord may restore the Premises and such Personal Property to such condition and Tenant shall pay the cost thereof to Landlord as Rent immediately upon demand. Except as provided below, all improvements, fixtures and other items in or upon the Premises (including without limitation all Alterations, but expressly excluding movable office furniture, trade fixtures, office equipment and other personal property belonging to Tenant that they may be removed without permanent structural damage to the Premises or the Building), whether temporary or permanent in character and whether made by Landlord or Tenant, shall become Landlord's property and shall remain upon the Premises at the expiration or earlier termination of this Lease by lapse of time or otherwise or upon a termination of Tenant's right of possession, without compensation to Tenant. Notwithstanding the foregoing, if within ten (10) days prior to the expiration or earlier termination of this Lease or Tenant's right of possession thereafter Landlord so directs by notice, Tenant shall promptly remove such of the foregoing items as are designated in such notice and restore the Premises to the condition prior to the installation of such items. If Tenant does not remove such property upon the expiration or earlier termination of this Lease, or upon the termination of Tenant's right of possession, at Landlord's election:
(i) Tenant shall be conclusively presumed to have conveyed the same to Landlord under this Lease as a bill of sale without payment or credit by Landlord, or (ii) Tenant shall be conclusively presumed to have forever

abandoned such property, and without accepting title thereto, Landlord may, at Tenant's expense, remove, store, destroy, discard or otherwise dispose of all or any part thereof without incurring liability to Tenant or to any other person, and Tenant shall pay Landlord immediately upon demand the expenses incurred in taking such actions. Unless prohibited by applicable Laws, Landlord shall have a lien against such property for the costs incurred in removing and storing the same. Tenant's obligations under this Subsection 17.1 shall survive the expiration or earlier termination of the Term or a termination of Tenant's right of possession.

17.2 Holding Over. If Tenant retains possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, whether by lapse of time or otherwise, or after a termination of Tenant's right of possession, then Landlord may, at Landlord's sole election at any time after the termination of this Lease or Tenant's right of possession, serve written notice on Tenant that such holding over constitutes either: (i) the creation of a month-to-month tenancy upon each of the terms herein provided as may be applicable to such month-to-month tenancy, except that Tenant shall pay to Landlord Base Rent for each month or portion thereof in the amount set forth below, plus all Additional Rent (including, without limitation, the Tax Amount, the Operating Expense Amount, the Estimated Tax Payments and the Estimated Operating Expense Payments) coming due during such period, or (ii) the creation of a tenancy at sufferance upon each of the terms herein provided as may be applicable to such tenancy at sufferance, except that Tenant shall pay to Landlord a per diem rent equal to the per diem Base Rent set forth below, plus the per diem amount of all Additional Rent (including, without limitation, the Tax Amount, the Operating Expense Amount, the Estimated Tax Payments and the Estimated Operating Expense Payments). If no written notice is served by Landlord, then a tenancy at sufferance with Rent as stated in (ii) above shall have been created. The provisions of this Subsection shall not operate as a waiver by Landlord of any right of re-entry herein provided. In addition to and not in limitation of all other remedies set out in this Subsection, Tenant shall be liable for all damages (consequential as well as direct) sustained by Landlord on account of Tenant's holding over. Base Rent payable during any holding over shall be as follows:

(a) during the first thirty (30) days following the expiration or earlier termination of this Lease or the termination of Tenant's right of possession, one hundred fifty percent (150%) of the Base Rent for the calendar month immediately preceding the expiration or termination date of this Lease or the termination of Tenant's right of possession; and

(b) from and after the thirty-first (31st) day following the expiration or earlier termination of this Lease or the termination of Tenant's right of possession, two hundred percent (200%) of the Base Rent for the calendar month immediately preceding the expiration or termination date of this Lease or the termination of Tenant's right of possession.

18. INSURANCE.

18.1 Waiver of Subrogation. Landlord and Tenant each hereby waive all claims against the other for loss of or damage to the Property or Premises or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies. Inasmuch as this mutual waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Landlord and Tenant each agree to give each insurance company that has issued, or in the future may issue, to it policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

18.2 Tenant's Insurance. Tenant shall carry insurance during the entire Term insuring Tenant and Landlord and their respective agents and employees, and any other parties designated by Landlord from time to time (including, without limitation, any Mortgagee [as defined below]) as their interests may appear, with terms, coverages and in companies satisfactory to Landlord, and with such increases in limits as Landlord may from time to time request or as any Mortgagee may from time to time require, but initially Tenant shall maintain the following coverages in the following amounts:

(a) Comprehensive or Commercial General Liability insurance, including Contractual Liability coverage of the indemnification provisions contained in this Lease and host liquor liability insurance, with limits for bodily injury or personal injury to or death of any person, or more than one (1) person, or for damage to property in an amount of not less than $1,000,000 per occurrence/$3,000,000 aggregate. The coverage amounts may be provided through an umbrella or excess liability policy. The Comprehensive or Commercial General Liability policy shall include Landlord, Landlord's management agent and any Mortgagee designated by Landlord from time to time as additional insureds on a primary and non-contributory basis to any insurance carried by Landlord, Landlord's management agent and any Mortgagee.

(b) Property damage insurance against 'all risks" of physical loss for the full insurable replacement value of the initial build-out of the Premises, all Alterations, all Personal Property, and of all furniture, trade fixtures, equipment, business records, merchandise and all other items of Tenant's personal property on the Premises.

(c) Worker's Compensation Insurance in amounts required by the State of Illinois, including Voluntary Compensation, Broad Form All States Endorsement, and employer's liability insurance in an amount of not less than $500,000 per occurrence.

(d) Automobile Liability Insurance with limits for bodily injury or personal injury to or death of any person, or more than one (1) person, or for damage to property in an amount of not less than $1,000,000 combined single limit, including Employer's Owned, Non-Owned and Hired Car coverage.

18.3 **Evidence of Insurance**. Tenant shall, prior to the commencement of the Term, furnish to Landlord certificates of insurance evidencing the insurance coverage required under this Section 18, and Tenant shall deliver renewals thereof to Landlord not less than thirty (30) days prior to the end of the term of such coverage, which certificates shall state that such insurance coverage may not be changed or canceled without at least thirty (30) days' prior written notice to Landlord and any Mortgagee identified by Landlord from time to time. Said certificates evidencing liability insurance shall be in the form of ACORD 25 and certificates evidencing property insurance in the form of ACORD 27.

18.4 **Landlord's Insurance**. Landlord may maintain during the Term the following insurance with such coverages and deductibles as Landlord may determine from time to time, the cost of which shall be included in "Operating Expenses": comprehensive (or commercial) general liability insurance; worker compensation insurance as required by statute; employer's liability insurance; fire and extended coverage or "all-risk" property damage insurance; business interruption insurance with coverage of at least twelve (12) months rent; and such other policies as Landlord shall deem appropriate or that may be required by any Mortgagee.

19. FIRE OR CASUALTY. If the Premises or the Building (including machinery or equipment used in the operation of the Building) shall be destroyed or damaged by fire or other casualty and if the Premises or Building may be repaired and restored within two hundred seventy (270) days after such casualty, then Landlord shall repair and restore the same with reasonable promptness, but only to the extent insurance proceeds are actually made available to Landlord for purposes of repair and restoration; provided, however, that Landlord shall only be obligated to repair and restore any improvements made to the Premises to the extent that: (i) Landlord paid for the initial construction of such improvements (either directly or through an allowance granted to Tenant), and (ii) Landlord receives the insurance proceeds related to such improvements under the insurance described in clause (b) of Subsection 18.2 hereof. Tenant agrees to execute all documents and take all actions necessary to make the insurance proceeds described in clause (ii) of the immediately preceding sentence available to Landlord for the repair and restoration of the Premises. Notwithstanding anything contained herein to the contrary, if the Premises or the Building are substantially damaged or destroyed during the last twelve (12) months of the Term, either Landlord or Tenant shall have the right to terminate this Lease as of the date of the fire or other casualty by giving notice to the other within thirty (30) days after the date of the fire or casualty, in which event, Rent shall be apportioned on a per diem basis and paid to the date of such fire or casualty. Notwithstanding anything contained herein to the contrary, if in Landlord's reasonable judgment either: (1) such damage renders the Premises untenantable in whole or in part and cannot reasonably be repaired and restored within two hundred seventy (270) days, or (2) sufficient insurance proceeds are not or will not be made available to Landlord for

repair or restoration, or (3) the cost of the repairs or restoration would exceed twenty five percent (25%) of the replacement value of the Building, or (4) the nature of such work would make termination of this Lease necessary or convenient, then Landlord shall have the right to cancel and terminate this Lease as of the date of such damage upon giving notice to Tenant at any time within ninety (90) days after such damage shall have occurred. In the event any fire or casualty renders the Premises untenantable, in whole or in part, and if this Lease shall not be terminated by reason of such damage, then Base Rent shall abate during the period beginning with the date of such fire or other casualty and ending with the date when Landlord has substantially completed all repairs to the Premises required to be completed by Landlord, by an amount bearing the same ratio to the total amount of Base Rent for such period as the untenantable portion of the Premises bears to the entire Premises. In any event, Base Rent shall only abate to the extent Landlord actually recovers rent toss insurance proceeds specifically allocated to the Base Rent due under this Lease. Landlord shall not otherwise be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from any damage or the repair thereof relating to any fire or other casualty. Tenant agrees that Landlord's obligation to restore, and the abatement of Rent provided herein, shall be Tenant's sole recourse in the event of such damage, and waives any other rights Tenant may have under any applicable Laws to terminate the Lease by reason of damage to the Premises or Pro perty. Tenant acknowledges that this Section 19 represents the entire agreement between the parties respecting damage to the Premises or Property.

20. CONDEMNATION. If the whole or any part of the Premises or the Building or any substantial portion of the Parking Areas shall be taken or condemned by any competent authority for any public use or purpose or if any adjacent property or street shall be condemned or improved in such a manner as to require the use of any part of the Premises or of the Building or the Parking Areas, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the right (but not the obligation) to end the Term upon the date when the possession of the part so taken shall be required for such use or purpose, and current Rent shall be apportioned as of the date of such termination. Tenant shall have no right to any apportionment of or share in any condemnation award or judgment for damages made for the taking of any part of the Premises or the Property, but may seek its own award for loss of or damage to Tenant's business or its property resulting from such taking, provided that such an award to Tenant does not in any way diminish the award payable to Landlord on account of such taking.

21. NOTICES.

21.1 Addresses. All notices to be given by one party to the other under this Lease shall be in writing (except as expressly provided herein to the contrary) and shall be sent by either: (i) United States certified mail, return receipt requested, postage prepaid, (ii) national air courier service for overnight delivery, or (iii) hand delivery as follows:

(a) To Landlord: The Prudential Insurance Company of America
Two Prudential Plaza
180 North Stetson Street, Suite 3275

Chicago, Illinois 60601
Attention: Vice President-PRISA

With a copy to: PDC Properties, lnc.
222 Spring Lake Drive
Itasca, Illinois 601 43
Attention: Margaret Cheney

or to such other person or at such other address designated by notice sent to Tenant, and during the Term with a copy to the address to which Rent is then being paid under this Lease.

To Tenant: Ulta Salon, Cosmetics & Fragrance, Inc.
1135 Arbor Drive
Romeoville, Illinois 60446
Attention: Senior Vice President of Real Estate

or to such other person or at such other address designated by notice sent to Landlord, and during the Term with a copy to the Premises.

21.2 Method. Mailed notices shall be deemed to have been given two (2) business days after posting in the United States mails. Notices sent by overnight courier shall be deemed to have been given one (I) business day after delivery to the overnight courier, and notices which are hand delivered shall be deemed to have been given on the day tendered for delivery.

22. ADDITIONAL COVENANTS OF TENANT. Tenant hereby covenants and agrees to comply with, and to cause its employees, agents, clients, customers, invitees and guests to comply with, the following provisions:

(a) Any sign, lettering, picture, notice, or advertisement installed within the Premises or on the Property shall be installed at Tenant's expense and in compliance with all Laws. Without obtaining Landlord's prior, written consent (which consent may be withheld in Landlord's sole discretion) no sign, lettering, picture, notice or advertisement may be placed on any portion of the Premises which is visible from outside the Premises or on any portion of the Property.

(b) Tenant shall not advertise the business, profession or activities of Tenant in any manner which violates the letter or spirit of any code of ethics adopted by any recognized association or organization pertaining thereto, or use the name of the Building or the business park in which the Building is located for any purpose other than for identifying Tenant's business address, or use any picture or likeness of the Building in any letterheads, envelopes, circulars, notices, advertisements, containers or wrapping material, without Landlord's prior consent in writing.

(c) Except with respect to satellite or other communication dishes or antennas as may be permitted by applicable Laws and the Park Covenants (as defined below) and as are installed: (i) in locations on the roof of the Building specified by Landlord; (ii) subject to Landlord's reasonable size restrictions, utility and structural load requirements and screening criteria; (iii) with the use of Landlord's roofing contractor; and (iv) subject to other reasonable requirements relating to any warranty, guaranty or service contract applicable to the roof of the Building, Tenant shall not place any radio or television antenna on the roof of the Building or on any other part of the Property other than inside the Premises, or operate or permit to be operated any musical or sound producing instrument or device inside or outside the Premises that may be heard outside the Premises. Tenant shall not make noises, cause disturbances or vibrations or use or operate any electrical or electronic devices or other devices that emit sound or other waves or disturbances, or create odors, any of which may be offensive to other tenants and occupants of the Building or that would interfere with the operation of any device or equipment or radio or television broadcasting or reception from or within the Building or elsewhere.

(d) Tenant shall not obstruct sidewalks, roadways, Parking Areas or entrances in and about the Property. Tenant shall not place objects against doors or windows that would be unsightly from the exterior of the Building, and will promptly remove same upon notice from Landlord. Tenant shall store and dispose of refuse as directed by Landlord, including, without limitation, storing and disposing of all refuse, in a neat and clean condition so as not to be visible to members of the public and so as not to create any health or fire hazard.

(e) Tenant shall not make any room-to-room canvass to solicit business from other tenants in the Building and shall not exhibit, sell or offer to sell, use, rent or exchange any item or service in or from the Premises.

(f) Tenant shall not waste electricity or water and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air conditioning systems, and shall not adjust any controls other than room thermostats installed for Tenant's use or take any action which could jeopardize the warranties covering the heating, ventilating or air conditioning systems. Tenant shall comply with all programs instituted by Landlord under applicable federal, state or local energy conservation standards or other governmental requirements or directives (whether mandatory or voluntary).

(g) Door keys for doors in the Premises will be furnished on the Commencement Date by Landlord. Tenant shall not affix additional locks on doors and shall purchase duplicate keys only from Landlord. At the end of the Term or earlier termination of the Lease or upon a termination of Tenant's right of possession, Tenant shall return all keys to Landlord

and will disclose to Landlord the combination of any safes, cabinets or vaults left in the Premises in accordance with the terms and conditions of this Lease.

(h) Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed and secured. In addition, the parties acknowledge that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal acts, or ensure safety of persons or property. The risk that any safety or security device, service or program may not be effective, or may malfunction, or be circumvented by a criminal, is assumed by Tenant with respect to Tenant's property and interests, and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such criminal acts and other losses. Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord or required by applicable Laws.

(i) Peddlers, solicitors and beggars shall be reported promptly to Landlord.

(j) Tenant shall not install or operate machinery or any mechanical devices of a nature not directly related to Tenant's permitted use of the Premises.

(k) Tenant shall comply with all covenants, conditions and restrictions of record encumbering or relating to the Property or any portion of either thereof (including, without limitation, any declaration of covenants, conditions, restrictions and easements encumbering the business park in which the Property is located) (the "Park Covenants"), and with all rules and regulations issued from time to time by Landlord or the Windham Lakes Business Park Association.

(l) Tenant will not in any manner deface or injure the Property or any part of either thereof or overload the floors of the Premises.

(m) Tenant will not use the Premises for lodging or sleeping purposes or for any immoral or illegal purposes.

(n) Tenant shall not at any time manufacture or sell, and shall not at any time permit the manufacture or sale of any spirituous, fermented, intoxicating or alcoholic liquors on the Premises or the Property. If Tenant desires to permit the use of alcoholic beverages on the Premises, it may do so only in connection with social events not generally open to the public conducted by Tenant wholly within the Premises, provided that (i) such events shall be in the ordinary course of Tenant's business and shall not involve the sale of any food or beverages, (ii) such events shall not violate any Laws, Park Covenants or other provisions of this Lease, and shall in no event unreasonably disturb or bother other tenants or occupants of the Building,

and (iii) Tenant shall in all cases obtain, or maintain in full force and effect full liquor liability insurance in the amount of Tenant's insurance as required under Section 18.2(a) and otherwise in accordance with Section 18.1, Section 18.2 and Section 18.3.

(o) In no event shall Tenant permit on the Property flammables or explosives or any other article of an intrinsically dangerous nature. If by reason of Tenant's failure to comply with the provisions of this Subsection, any insurance coverage is jeopardized or insurance premiums are increased, in addition to all other rights and remedies available to Landlord upon a default by Tenant under this Lease, Landlord shall have the right to require Tenant to make immediate payment of the increased insurance premium, if any.

(p) Tenant shall not introduce, use, handle, generate, treat, transport, store or dispose of, or permit the introduction, use, handling, generation, treatment, transportation, storage or disposal of any Hazardous Materials (as defined below) in, on, under, to, from, around or about the Premises, the Building or the Property, except for Hazardous Materials contained in products which are reasonably and customarily used in general office uses, such as photocopy machine solutions and cleaning solvents, as long as such Hazardous Materials are only used in compliance with all Laws (without the need for a special permit) and all manufacturer's and supplier's instructions and recommendations, and in quantities and for purposes which are reasonably and customarily used in general office uses. Tenant shall indemnify, defend and hold harmless the Landlord Parties from and against all fines, penalties, liens, suits, procedures, claims, demands, liabilities, damages (including consequential damages), actions, causes of action, costs and expenses of every kind and nature whatsoever (including, without limitation, reasonable attorneys', engineers', experts' and consultants' fees and costs of testing, monitoring, remediation, removal and cleanup), contingent or otherwise, known or unknown, incurred or imposed, arising directly or indirectly out of or in any way connected with Tenant's breach of the covenants set forth in this Subsection 22(p) or otherwise in connection with the introduction, use, handling, generation, treatment, transportation, storage or disposal of any Hazardous Materials. Tenant's obligations under the immediately preceding sentence shall survive the expiration or earlier termination of this Lease and a termination of Tenant's right of possession. For purposes hereof, "Hazardous Materials" shall mean (i) substances defined as 'hazardous substances", "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., Sec. 9061, et. seq.), the Hazardous Materials Transportation Act (49 U.S.C., Sec. 1802), the Resource Conservation and Recovery Act (42 U.S.C., Sec. 6901 et. seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C., Sec. 2601, et. seq.) or in any other Laws now or hereafter in effect governing similar

matters, or in any regulations adopted or publications promulgated pursuant thereto; (ii) asbestos and asbestos containing materials; and (iii) petroleum and petroleum based products. Tenant shall promptly notify Landlord of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Materials on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Materials, (iii) any release, discharge or nonroutine, improper or unlawful disposal or transportation of any Hazardous Materials on or from the Premises, and (iv) any matters where Tenant is required by Laws to give a notice to any governmental or regulatory authority respecting any Hazardous Materials on the Premises.

23. ESTOPPEL CERTIFICATES; MORTGAGE ISSUES.

23.1 Estoppel Certificates. Tenant agrees that from time to time upon not less than ten (10) days prior request by Landlord or any Mortgagee, Tenant will deliver to Landlord or such Mortgagee an estoppel certificate substantially in the form of Exhibit C attached hereto and made a part hereof or in such other form as Landlord or any Mortgagee may request. In the event Tenant fails or refuses to deliver any such certificate within said 10-day period, in addition to all other rights and remedies available under this Lease, at law or in equity upon a default by Tenant under this Lease, Tenant shall be deemed to have accepted, agreed to and certified to, each of the statements set forth in any such certificate.

23.2 Subordination and Attornment. Landlord may sell the Land and become the tenant under a ground or underlying lease of the Land and this Lease and all rights of Tenant hereunder will then be subject and subordinate to such underlying lease and any extensions or modifications thereof. This Lease and all of Tenant’s rights hereunder shall also be subject and subordinate to any mortgage or mortgages (and the liens thereof) now or at any time hereafter in force against the Building, the Land and/or the underlying leasehold estate, and to all advances made or hereafter to be made upon the security thereof. For purposes of this Lease, “Mortgagee” shall mean the mortgagee, from time to time, under any mortgage granted by Landlord and now or hereafter encumbering the Property or any portion thereof or interest therein. Tenant shall execute such further instruments subordinating this Lease to any such mortgage or mortgages as Landlord from time to time may request. Tenant covenants and agrees that, if by reason of any default on the part of Landlord herein as tenant under said underlying lease, or as mortgagor under any mortgage to which this Lease is subject and subordinate, said underlying lease is terminated or such mortgage is foreclosed by summary proceedings, voluntary agreement or otherwise, Tenant, at the election of the landlord under said underlying lease or the Mortgagee of such mortgage, as the case may be, will attorn to and recognize such landlord or Mortgagee as the “Landlord” under this Lease. Tenant further agrees to execute and deliver at any time upon request of Landlord, any Mortgagee or any party which shall succeed to the interest of Landlord as tenant under said underlying lease, any instrument to evidence such attornment. However, in the event

of attornment, no Mortgagee or any party which shall succeed to the interest of Landlord as tenant under said underlying lease shall be: (i) liable for any act or omission of Landlord, or subject to any offsets or defenses which Tenant might have against Landlord (prior to such Mortgagee or other party becoming Landlord under such attornment), (ii) liable for any security deposit or bound by any prepaid Rent not actually received by such Mortgagee or other party, or (iii) bound by any future modification of this Lease not consented to by such Mortgagee or other party. Tenant waives the provision of any law now or hereafter in effect which may give to Tenant any right of election to terminate this Lease or to surrender possession of the Premises in the event any proceeding is brought by landlord under said underlying lease or the Mortgagee under any such mortgage to terminate said underlying lease or foreclose such mortgage. At the election of any Mortgagee (expressed in a document signed by such Mortgagee), such Mortgagee may make all or some of Tenant's rights and interests in this Lease superior to any mortgage held by such Mortgagee and the lien thereof.

23.3 **Notices to Mortgagees**. Tenant agrees to give any Mortgagee, by United States certified mail, return receipt requested, postage prepaid, a copy of any notice of default served upon Landlord. Tenant further agrees that if Landlord shall have failed to cure such default, then such Mortgagee shall have an additional thirty (30) days within which to cure such default, and Tenant shall not pursue any remedies it may have for such default and this Lease shall not be terminated, while such cure is being diligently pursued during such period.

23.4 **Quiet Possession**. Upon payment by Tenant of the Rent due hereunder, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed under this Lease, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, always subject, however, to the terms and conditions of this Lease.

24. MISCELLANEOUS.

24.1 **Definition of Landlord**. For purposes of this Lease, Landlord shall mean Landlord named above, except that in the event of any sale or other transfer of the Property or the Building, the seller or transferor (and the beneficiaries of any selling or transferring land trust) shall be and hereby is and are entirely freed and relieved of all agreements, covenants and obligations of the Landlord hereunder accruing from and after the effective date of such transfer, and without further agreement between the parties and the purchaser or transferee on any sale or transfer, such purchaser or transferee shall be deemed and held to have assumed and agreed to carry out any and all agreements, covenants and obligations of the Landlord hereunder accruing from and after the effective date of such sale or transfer.

24.2 **Real Estate Brokers**. Tenant represents that Tenant has dealt with no broker in connection with this Lease other than the Broker, and that insofar as Tenant knows, no other broker or finder negotiated this Lease or is entitled to any fee or commission in connection herewith. Tenant agrees to indemnify, defend and hold the Landlord Parties

free and harmless from and against all claims for broker's commissions or finder's fees by any person claiming to have represented or procured, or to have been engaged by, Tenant in connection with this transaction other than the Broker. Landlord represents that Landlord has dealt with no broker in connection with this Lease other than the Broker and that insofar as Landlord knows, no other broker or finder negotiated this Lease or is entitled to any fee or commission in connection herewith. Landlord agrees to indemnify, defend and hold Tenant free and harmless from and against all claims for broker's commissions or finder's fees by any person claiming to have represented or to have been engaged by Landlord in connection with this transaction.

24.3 **Cumulative Remedies**. All rights and remedies of Landlord under this Lease shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

24.4 **Grammatical Interpretation**. The word "Tenant" wherever used herein shall be construed to mean Tenants in all cases where there is more than one Tenant, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

24.5 **Successors and Assigns**. Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit, not only of Landlord and of Tenant, but also of their respective heirs, legal representatives, successors and assigns, provided this clause shall not permit any Transfer contrary to the provisions of Section 11 hereof.

24.6 **No Oral Modifications**. All of the agreements, representations and obligations of Landlord are contained herein, and no modification, waiver or amendment of this Lease or of any of its conditions or provisions shall be binding upon Landlord unless in writing signed by Landlord or by a duly authorized agent of Landlord empowered by a written authorization signed by Landlord.

24.7 **Irrevocable Offer; No Option**. In consideration of Landlord's administrative expense in considering this Lease, Tenant's submission to Landlord of this Lease, duly executed by Tenant, shall constitute Tenant's irrevocable offer to continue for twenty (20) days from and after receipt by Landlord or until Landlord shall deliver to Tenant written notice of rejection of Tenant's offer, whichever shall first occur. If within said 20-day period Landlord shall neither return this Lease duly executed by Landlord nor so advise Tenant of Landlord's rejection of Tenant's offer, then Tenant shall be free to revoke its offer. Although Tenant's execution of this Lease shall be deemed an irrevocable offer by Tenant, the submission of this Lease by Landlord to Tenant for examination shall not constitute a reservation of or option for the Premises. This Lease shall become effective only upon execution thereof by both parties and delivery thereof to Tenant.

24.8 **No Air Rights**. No rights to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease.

24.9 [Intentionally omitted].

24.10 Landlord's Title. Landlord's title to the Property is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord to the Property.

24.11 Recording Prohibited. Neither this Lease, nor any memorandum, affidavit or other writing with respect hereto, shall be recorded in any public record by Tenant or by anyone acting through, under or on behalf of Tenant, and the recording thereof in violation of this provision shall make this Lease null and void at Landlord's election.

24.12 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party, to create the relationship of principal and agent, partnership, joint venture or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any other provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of lessor and lessee.

24.13 Limitation of Liability. Any claim against, or liability or obligation of, Landlord under this Lease or relating to the Premises or the Property shall be limited solely to and satisfied solely from the interest of Landlord in the Property, and none of the Landlord Parties (other than Landlord) shall be individually or personally liable for any claim arising out of this Lease or relating to the Premises or the Property. A deficit capital account of any partner in Landlord shall not be deemed an asset or property of Landlord.

24.14 Excuse for Non-Performance. Except as expressly provided to the contrary in this Lease, this Lease and Tenant's obligation to pay Rent hereunder and to perform all of Tenant's covenants and agreements hereunder shall not be impaired or affected, and Landlord shall not be in default hereunder, if Landlord is unable to fulfill any of its obligations under this Lease because of any accident, governmental restriction, inability to obtain fuel or materials, strike or lockout (whether legal or illegal), act of God or other event, occurrence or circumstance beyond Landlord's reasonable control ("Events of Force Majeure").

24.15 Riders and Exhibits. All exhibits and riders attached to this Lease are made a part hereof and are incorporated herein by reference.

24.16 Captions and Severability. The captions of the Sections and Subsections of this Lease are for convenience of reference only and shall not be considered or referred to in resolving questions of interpretation. If any term or provision of this Lease shall be found invalid, void, illegal, or unenforceable with respect to any particular person or entity by a court of competent jurisdiction, it shall not affect, impair or invalidate any other terms or provisions hereof, or its enforceability with respect to any other person or entity, the parties hereto agreeing that they would have entered into the remaining portion of this Lease notwithstanding the omission of the portion or portions adjudged invalid, void, illegal, or unenforceable with respect to such person or entity.

25. PARKING. Tenant agrees not to utilize (and shall cause its agents, employees and invitees to not utilize) more than sixty three (63) parking spaces in the parking areas located on the Land (the “Parking Areas”). Tenant agrees to comply with, and to cause its agents, employees and invitees to comply with, all rules and regulations which may from time to time be promulgated by Landlord with respect to use of the Parking Areas. Tenant shall be responsible for supervising the use of the Parking Areas by Tenant’s agents, employees and invitees in order to confirm compliance with the terms set forth in this Section 25. If Tenant is in default of its covenants and obligations set forth in this Section 25, Landlord shall have the right, but not the obligation, in addition to all other rights and remedies under this Lease, to employ or engage one or more individuals to supervise the use of the Parking Areas by Tenant’s agents, employees and invitees in order to confirm compliance with the terms set forth in this Section 25, and Tenant shall reimburse Landlord for all costs incurred in connection therewith within ten (10) days after being billed therefor.

26. ERISA. Tenant hereby represents and warrants that:

26.1 Neither Tenant nor any of its “affiliates” (within the meaning of Part V(c) of Prohibited Transaction Exemption 84-14, 49 Fed. Reg. 9494 (1984), as amended (“PTE 84-14”)) has, or during the immediately preceding year has exercised the authority to:

(a) appoint or terminate Landlord as investment manager over assets of any “employee benefit plan” (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA)) invested in, or sponsored by, Landlord; or

(b) negotiate the terms of a management agreement (including renewals or modifications thereof) with Landlord on behalf of any such plan;

26.2 Tenant is not “related” to Landlord (as determined under in Part V(h) of PTE 84-14);

26.3 Tenant has negotiated and determined the terms of this Lease at arm’s length, as such terms would be negotiated and determined by the Tenant with unrelated parties; and

26.4 Tenant is not an “employee benefit plan” as defined in Section 3(3) of ERISA, a “plan” as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended, or an entity deemed to hold “plan assets” within the meaning of 29 C.F.R. § 2510.3-101 of any such employee benefit plan or plan.

27. ATTORNEYS’ FEES. In the event of any litigation between the parties, the prevailing party shall be entitled to obtain, as part of the judgment, all reasonable attorneys’ fees, costs and expenses incurred in connection with such litigation, except as may be limited by applicable Laws.

28. AMERICANS WITH DISABILITIES ACT. The parties acknowledge that Title Ill of the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to here as the “ADA”)

established requirements for accessibility and barrier removal, and that such requirements may or may not apply to the Premises and Property depending on, among other things: (a) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (b) whether such requirements are "readily achievable", and (c) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (x) Landlord shall be responsible for ADA Title Ill compliance on the common areas of the Property and in the Building common areas and in the common area lobby restrooms, if any, (y) Tenant shall be responsible for ADA Title Ill compliance in the Premises, and (z) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title Ill "path of travel" requirements triggered by Alterations in the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

[Signature Page to Follow]

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Lease as of the date first above written.

TENANT

ULTA SALON, COSMETICS & FRAGRANCE, INC.,
a Delaware corporation

By: /s/ Charles R. Weber
Name: Charles R. Weber
Its: Executive Vice President & COO/CFO

By: /s/ Douglas W. Walrod
Name: Douglas W. Walrod
Its: Senior Vice President of Real Estate

LANDLORD

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a New Jersey corporation

By: PDC Properties, Inc., its agent

By: /s/ Rex Davis
Its: Portfolio Manager

Exhibit A

Plan of the Premises

Exhibit B

Legal Description of the Land

LOT 1 IN WINDHAM LAKES RESUBDIVISION NO. 22, BEING A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 29, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ___, 2000, AS DOCUMENT NO. ___, IN WILL COUNTY, ILLINOIS.

Exhibit C

Form of Tenant Estoppel Certificate

Lease Date: ____________________, 200_
Landlord: The Prudential Insurance Company of America
Tenant: ______________________________
Premises: Unit No. ____________________
Rentable Area: ______________________________square feet

The undersigned, being the Tenant under the above-described Lease hereby certifies to__________ ("Lender" or "Purchaser") and Landlord as follows:

1. The Lease requires monthly base rent installments of $__________ each, commencing on__________, 20___. The Lease requires monthly installments of Tenant's estimated share of operating expenses of $__________ and of Tenant's estimated share of taxes of $__________.

2. Tenant has not prepaid, and will not prepay, any rent for more than one (1) month, and Tenant is paying rent under the Lease on a current basis with no offsets, credits, claims or setoffs. Tenant has not been given any free rent, partial rent, rebates, rent abatements, or rent concessions of any kind, which are unexpired, except as disclosed herein.

3. A security deposit in the amount of $__________ is being held by Landlord, which amount is not subject to any setoff or reduction or to any increase for interest or other credit due to Tenant. The Lease ___is or ___is not (check applicable provision) guaranteed by a third party. If the Lease is guaranteed by a third party, the name of the guarantor is ____________________.

4. The Lease is a valid lease and is in full force and effect. Attached hereto is a true and complete copy of the Lease and all amendments thereto and other agreements relating to the Lease and the rent payable thereunder, which documents represent the entire agreement between the parties.

5. There is no existing default by Landlord, or to Tenant's knowledge, by Tenant under the Lease, and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute an event of default by Landlord, or to Tenant's knowledge, by Tenant, under the Lease. To the best of Tenant's knowledge, no claim, controversy or dispute exists between Tenant and Landlord. As of the date hereof, Tenant is not asserting that the Lease is not fully enforceable by Landlord in accordance with its terms.

6. The Lease provides for a primary term of__________ (___) months, commencing on__________, 20___and ending on__________,20___. The Lease contains an option for __________ (___) additional terms of__________ (___) years each upon the

terms and conditions as set forth in the Lease. Tenant has not exercised any option or rights to renew, extend, amend, modify, or change the term of the Lease, except as may be stated in the Lease. Tenant does not have any preferential right to lease or purchase all or any part of the property of which the Premises are a part (including any rights of first refusal or expansion options). The only interest of Tenant in the Property is that of a tenant pursuant to the terms of the Lease. Tenant hereby waives any option, right of first refusal or other right to purchase the Property or any portion thereof or interest therein that is contained in the Lease or any other document or agreement, if any.

7. There are no actions, voluntary or involuntary, pending against Tenant under the bankruptcy laws of the United States or any state thereof.

8. Tenant is entitled to no rent concessions under the Lease other than the following:

____

____

9. All construction, build-out, improvements, or alterations work to be completed to date by Landlord in the Premises under the Lease has been completed.

10. Tenant has obtained or will obtain all necessary licenses and permits to carry on its business at the Premises prior to opening for business.

11. Tenant has received no notice of any claim, litigation or proceeding, pending or threatened, against or relating to Tenant that would adversely affect Tenant’s ability to fulfill its obligations under the Lease or with respect to the Premises. Tenant has received no notice of, and has no knowledge of, any violations of any federal, state, county or municipal statutes, laws, codes, ordinances, rules, regulations, orders, decrees or directives relating to the use or condition of the Premises or Tenant’s operation thereon. Tenant has received no notice from any governmental body or agency or from any person or entity with respect to any actual or threatened taking of the Property or any portion thereof for any public or quasi-public purpose by the exercise of condemnation or eminent domain.

12. Tenant has accepted, is in sole possession of and is occupying the Premises. Except as specified below, Tenant has not subleased all or any part of the Premises or assigned the Lease, or otherwise transferred or hypothecated its interest in the Lease or the Premises.

This certification is made knowing that Landlord, **[Lender]/[Purchaser]** is relying upon the representations herein made.

TENANT

______________________________,

____

____________________corporation

By: ______________________________
Its: ______________________________

EXHIBIT 10.11(a)

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "Amendment") is made as of the 24th day of August, 2004, between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation ("Landlord") and ULTA SALON, COSMETICS AND FRAGRANCE, INC., a Delaware corporation ("Tenant").

WHEREAS, Landlord and Tenant entered into that certain lease dated as of September 11, 2002 (the "Lease") pursuant to which Tenant leases from Landlord approximately 12,532 square feet of space (the "Existing Premises") in the building commonly known as The Offices at Windham Lakes and located at 1275 Windham Parkway, Romeoville, Illinois, 60446; and

WHEREAS, any initially capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Lease.

WHEREAS, the parties hereto now desire to amend the Lease to extend the Term, modify the Rent payable under the Lease, add additional space to the Premises and amend the Lease in certain other respects.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby amended as follows:

1. Extension of Existing Premises Term. The Term of the Lease with respect to the Existing Premises, currently set to expire on January 31, 2005, is hereby extended to the last day of the Term of the Lease with respect to the Additional Premises (defined below).

2. The Additional Premises.

(a) Lease of the Additional Premises. Subject to the terms of the Lease and this Amendment, Landlord agrees to lease to Tenant, and Tenant agrees to lease from Landlord, an additional 11,047 square feet of rentable area in the Building, located adjacent to the Existing Premises (such space is hereinafter collectively referred to as the "Additional Premises"), all as more particularly described on Exhibit A, attached hereto and made a part hereof. The Term of the Lease with respect to the Additional Premises shall be five (5) years, shall commence on the Substantial Completion Date (as such term is defined in the Workletter; such date being hereinafter referred to as the "Additional Premises Commencement Date") and expire on the last day of the calendar month in which the fifth (5th) anniversary of the Additional Premises Commencement Date occurs. Each twelve (12) consecutive month period is hereinafter referred to as an "Additional Premises Lease Year"; provided however that if the Additional Premises Commencement Date is other than the first day of any calendar month, the first Additional Premises Lease Year shall consist of the partial month in which the Additional Premises Commencement Date occurs and the twelve (12) consecutive month period that follows.

(b) Termination of Amendment. In the event that Landlord cannot deliver the Additional Premises to Tenant on or before April 1, 2005, Tenant may elect to terminate the Lease with respect to the Additional Premises upon written notice to Landlord delivered by April 30, 2005, upon which termination landlord shall have no further liability to Tenant hereunder or

under the Lease with respect to the Additional Premises, but the Lease shall continue in full force and effect, without regard to the Amendment, with respect to the Existing Premises, as if this Amendment had never been entered into between Landlord and Tenant.

(c) Improvement of the Additional Premises. Landlord shall improve the Additional Premises in accordance with the Workletter, attached hereto asExhibit B.

(d) Definition of Premises; Lease Binding. From and after the Additional Premises Commencement Date (i) the Premises shall consist of both the Existing Premises and the Additional Premises constituting 23,579 rentable square feet in the aggregate, (ii) all references in the Lease to "Premises" shall be deemed to refer to both the Existing Premises and the Additional Premises, (iii) the Additional Premises shall be deemed to be a part of the Premises and shall be governed by all the terms of the Lease.

3. Base Rent.

(a) Existing Premises Base Rent. Base Rent for the Existing Premises shall continue to be paid in the same manner, time and place as provided in the Lease, in the following amounts:

Period from/to	Annual Base Rent Per Square Foot	Annual Base Rent	Monthly Base Rent
February 1, 2005- last day of Additional Premises Lease Year 1	$ 11.50	$ 144,118.00	$ 12,009.83
Additional Premises Lease Year 2	$ 12.00	$ 150,384.00	$ 12,532.00
Additional Premises Lease Year 3	$ 12.50	$ 156,650.00	$ 13,054.17
Additional Premises Lease Year 4	$ 13.00	$ 162,916.00	$ 13,576.33
Additional Premises Lease Year 5	$ 13.50	$ 169,182.00	$ 14,098.50

(b) Additional Premises Base Rent. Tenant shall commence the payment of Rent for the Additional Premises on the Additional Premises Commencement Date. Tenant shall pay Base Rent for the Additional Premises in the same manner, time and place as set forth in the Lease with respect to the Existing Premises. The amount of Base Rent payable by Tenant for the Additional Premises is as follows:

Period from/to	Annual Base Rent Per Square Foot	Annual Base Rent	Monthly Base Rent
Additional Premises Lease Year 1	$ 12.50	$ 138,087.50	$ 11,507.29
Additional Premises Lease Year 2	$ 13.00	$ 143,611.00	$ 11,967.58
Additional Premises Lease Year 3	$ 13.50	$ 149,134.50	$ 12,427.88
Additional Premises Lease Year 4	$ 14.00	$ 154,658.00	$ 12,888.17
Additional Premises Lease Year 5	$ 14.50	$ 160,181.50	$ 13,348.46

(c) Abatement of Rent on Additional Premises. If Tenant has taken possession of the Additional Premises for the purpose of carrying on its business therein and if Tenant is not in default under any of terms, provisions and conditions of the Lease (as described in Section 16 of the Lease) on the date such installment is due, the first monthly installment of Base Rent and Additional Rent due shall be abated in full and shall not be payable by Tenant.

4. Tenant's Proportionate Share. From and after the Additional Premises Commencement Date, Tenant's Proportionate Share shall be 49.65%.

5. Parking. From and after the Additional Premises Commencement Date, Tenant, its agents, employees and invitees shall be entitled to utilize up to 118 parking spaces in the Parking Areas in accordance with Section 25 of the Lease.

6. Termination Right. Subject to the terms of this Section 6, Tenant shall have the option (the "Termination Option") to terminate the Lease effective as of the last day of the third Additional Premises Lease Year (the "Termination Date"), if Tenant is not in default under any of its obligations under this Lease at the time it exercises such option or on the Termination Date. To exercise the Termination Option, Tenant must:

(a) give to Landlord written notice of such election prior to the last day of the second Additional Premises Lease Year; and

(b) pay to Landlord a termination fee, in an amount equal to $250,000 (the "Termination Fee"), fifty percent of which is to be paid at the time of such notice, and fifty percent of which is to be paid on or before the Termination Date.

Exercise of the Termination Option shall be irrevocable but shall not excuse Tenant from paying Rent accruing through the Termination Date. If Tenant fails to exercise the Termination Option

prior to the last day of the second Additional Premises Lease Year, or fails to pay any portion of the Termination fee when required, Tenant shall be deemed to have waived all of its rights under the Termination Option and, thereafter, the Termination Option shall be null and void and of no further effect.

7. Miscellaneous.

(a) The preambles to this Amendment are incorporated into the body of this Amendment as if restated herein.

(b) Interpretation of this Amendment shall be governed by the laws of the State of Illinois.

(c) The mutual obligations of the parties as provided herein are the sole consideration for this Amendment and no representations, promises or inducements have been made by the parties other than as appear in this Amendment. This Amendment may not be amended except in writing signed by both parties.

(d) Except as modified herein, the Lease is hereby ratified and confirmed and the terms, covenants, conditions and agreements contained therein remain in full force and effect.

(e) This Amendment shall not be binding until executed and delivered by both parties.

(f) Tenant represents and warrants to Landlord that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker other than GVA Williams in the negotiation or making of this Amendment, and Tenant agrees to indemnify and hold harmless Landlord from any and all claims, liability, costs and expenses (including reasonable attorneys' fees) incurred as a result of any inaccuracy in the foregoing representation and warranty. Landlord represents and warrants to Tenant that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiation or making of this Amendment other than GVA Williams and Landlord agrees to indemnify and hold harmless Tenant from any and all claims, liability, costs and expenses (including reasonable attorneys' fees) incurred as a result of any inaccuracy in the foregoing representation and warranty. Landlord will pay GVA Williams a commission in connection with this Amendment in accordance with a separate agreement between Landlord and GVA Williams.

NO FURTHER TEXT ON THIS PAGE

IN WITNESS WHEREOF, the parties have executed this Amendment on the date first written above.

LANDLORD

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation

By: PDC Properties, Inc., its agent

By: /s/ Rex Davis
Its: Portfolio Manager

TENANT:

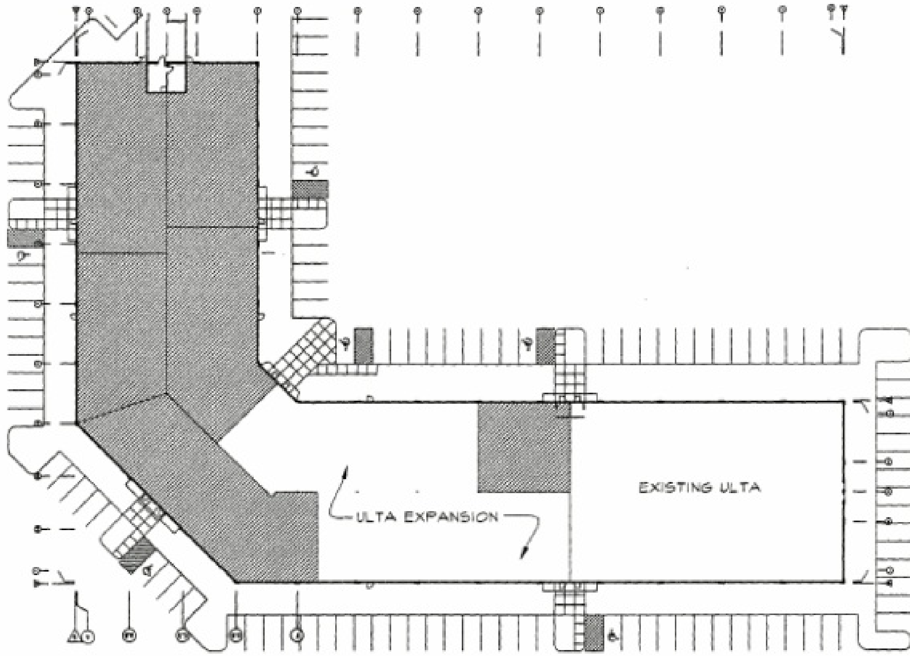
ULTA SALON, COSMETICS & FRAGRANCE, INC., **a** Delaware corporation

By: /s/ Charles Weber
Its: Charles R. Weber, CFO

By: /s/ George Frye
Its: George L. Frye, Senior Vice President

EXHIBIT A

Additional Premises



interwork architects incorporated
1200 shermer rd. northbrook, il 60062
t: 847.509.4070 f: 847.509.9604

PROJECT ULTA EXPANSION PREMISES - OFFICES AT WINDHAM LAKES ROMEOVILLE, ILLINOIS

DATE 8-24-04 PROJ NO 4417.24 REV SHEET SK-1

EXHIBIT B

Workletter

All of the terms and conditions of the Amendment are incorporated herein by reference and, except as may be expressly set forth to the contrary in this Work Letter or the Amendment, shall apply as fully to this Work Letter as to the Amendment. The capitalized terms used but not defined in this Work Letter shall have the meanings ascribed to them in the Amendment.

1. **Construction of Tenant Improvements**. Except as provided below to the contrary, Landlord, at Landlord's sole cost and expense, shall provide the construction material, hardware and equipment and the labor to construct the Tenant Improvements. "Tenant Improvements" means (i) the materials, hardware and equipment to be affixed to or incorporated into the Additional Premises pursuant to the Plans (as defined below and as the same may be modified pursuant to Section 4 of this Work Letter), and the labor to construct and install such items, (ii) the other building standard items described in the Plans, as the same may be modified pursuant to Section 4 of this Work Letter, and (iii) the installation of roof mounted heating and cooling units for reasonable temperature control in the Additional Premises. Landlord shall proceed diligently to cause the Tenant Improvements to be substantially completed substantially in accordance with the Plans and the terms and conditions of the Amendment. The cost to construct the Tenant Improvements, including but not limited to all costs relating to material, hardware, equipment, labor, applicable governmental fees and permit cost, taxes, architectural fees, engineering fees, design fees, but expressly excluding any the cost of Tenant's furniture, trade fixtures or equipment or other personal property of Tenant that Tenant is permitted or required to remove from the Additional Premises upon the expiration or earlier termination of the Lease, is hereinafter referred to as the "Permitted Costs." Permitted Costs shall also include a construction management fee of 15% per cent of all other Permitted Costs payable to Landlord.

2. **Contractors**. If Tenant elects to engage an interior designer for the Additional Premises (the "Interior Designer"), Tenant shall have the right to do so, subject to Landlord's reasonable approval, and Tenant shall contract directly with the Interior Designer for the provision of services. All other architects, engineers, contractors, subcontractors, suppliers, manufacturers or materialmen performing services or supplying materials in connection with the design and/or construction of the Tenant Improvements (the "Contractors") shall be selected by Landlord, and shall enter into contracts directly with Landlord for the provision of services and materials.

3. **The Plans.** Landlord and Tenant have approved the preliminary description of the Tenant Improvements attached to this Work Letter asSchedule 1 and made a part hereof. Landlord will cause to be prepared, and Landlord and Tenant shall act in good faith and cooperate with each other to finalize and approve as soon as reasonably possible, the plans, drawings and specifications for the Tenant Improvements based on the description in Schedule 1. If Landlord and Tenant have not approved the final plans, drawings and specifications for the Tenant Improvements within thirty (30) days after the execution and delivery of the Lease by Landlord and Tenant, at the request of either party, any disagreements regarding such final plans, drawings and specifications shall be submitted to and resolved by arbitration in accordance with under the Expedited Procedures of the Commercial Arbitration Rules of the American

Arbitration Association then in force except as provided below. Any such arbitration proceedings shall be conducted through the American Arbitration Association in Chicago, Illinois and the cost of such arbitration proceedings shall be split evenly between Landlord and Tenant, provided that each party shall be solely responsible for its own costs and expenses incurred in connection with any arbitration proceedings. The final plans, drawings and specifications for the Tenant Improvements approved by Landlord and Tenant prior to the commencement of construction are collectively referred to as the "Plans".

4. **Changes to the Plans**.

(a) Tenant Changes to the Plans.

(i) Tenant may propose one or more changes to the Plans to Landlord at any time before the Substantial Completion Date (as defined below), and, as promptly as reasonably practicable after the receipt and approval thereof by Landlord (which approval may be withheld in Landlord's reasonable discretion), Landlord shall provide Tenant with a written estimate of the delay (if any) in the Substantial Completion Date (which delay shall be a Tenant Delay [as defined below]) and the additional cost (if any) to complete the Tenant Improvements which will result from such change (whether hard costs or soft costs), which costs shall include, without limitation: (A) the actual cost of all materials, supplies, equipment and labor used or supplied in making the proposed change, including general conditions and any contractor's fees; (B) any architect and engineer fees; and (C) a construction management fee payable to Landlord equal to fifteen percent (15%) of such additional costs (collectively, "Change Order Costs"). If Tenant fails to approve the estimate of Change Order Costs within five (5) business days after delivery of same, Tenant shall be deemed to have abandoned its request for such change, and the Tenant Improvements shall be constructed substantially in accordance with the then existing Plans. If Tenant approves the estimate of Change Order Costs within said 5-day period by signing and returning a copy of Landlord's estimate, Landlord shall cause the Tenant Improvements to be constructed substantially in accordance with the Plans as so revised. Unless requested in writing by Tenant to the contrary, Landlord shall continue with construction of the Tenant Improvements according to the then existing Plans during the pendency of any proposed change in the Plans until such change is approved by Landlord and Tenant as provided above. Any delay resulting from a halt in construction requested in writing by Tenant shall constitute a Tenant Delay.

(ii) If Tenant approves Landlord's estimate of the time and Change Order Costs of a proposed change to the Plans: (A) Tenant shall be liable for the actual Change Order Costs, whether or not such actual cost exceeds Landlord's estimate, and (B) Landlord shall not be liable for any delay in the Substantial Completion Date resulting from the requested change, whether or not the delay exceeds Landlord's estimate, and any such delay shall be a Tenant Delay. Upon Tenant's request, Landlord shall provide Tenant with reasonable evidence of the actual Change Order Costs and the basis for any delay in the Substantial Completion Date resulting from such change.

(iii) lf Tenant requests a change to the Plans pursuant to this Section 4(a), and Tenant does not ultimately approve the resulting revised Plans or estimate, Tenant shall promptly reimburse Landlord, as Rent, for any reasonable costs and expenses resulting from such requested changes incurred by Landlord.

(b) Landlord Changes to the Plans. Landlord may make changes to the Plans without Tenant's consent, provided that such changes (i) are necessary to address field conditions, (ii) will not create any additional monetary obligation for Tenant under the Lease, (iii) are in material conformity with the Plans (as they may have been previously revised by permissible Tenant and/or Landlord changes thereto), and (iv) will not result in the use of materials or equipment which are of a materially lesser quality than those specified in the Plans. Landlord will notify Tenant of any changes made pursuant to this Section 4(b).

5. **Payment of Costs.** Tenant shall deposit with Landlord the amount of any Change Order Costs within ten (10) days after Tenant's approval of the estimate of such Change Order Costs in accordance with Section 4(a) of this Work Letter. Thereafter, in the event that at any time the actual Change Order Costs exceed the estimated Change Order Costs, Tenant shall deposit with Landlord the amount of such excess within ten (10) days after written demand therefor by Landlord. Upon Tenant's request, Landlord shall provide Tenant with reasonable evidence of the actual Change Order Costs.

6. **Punchlist Items.** Before Tenant takes occupancy of the Additional Premises, but no later than five (5) business days after the Substantial Completion Date, Landlord, Landlord's architect, Tenant and at Tenant's election, Tenant's consulting architect or other construction consultants shall conduct an inspection of the Additional Premises and shall work in good faith to jointly prepare a punchlist for the Tenant Improvements. Any items not on such punchlist shall be deemed accepted by Tenant. Landlord shall complete all punchlist items as soon as reasonably practicable after such punchlist items are finally determined.

7. **Representatives of Landlord and Tenant.** Landlord designates John Pagliari as its representative for all purposes of this Work Letter. Tenant designates George Frye as its representative for all purposes of this Work Letter. Wherever this Work Letter requires any notice to be given to or by a party, or any determination or action to be made or taken by a party, the representative(s) of each party shall act for and on behalf of such party, and the other party shall be entitled to rely thereon. Either party may designate one or more additional or substitute representatives for all or a specified portion of the provisions of this Work Letter, subject to notice to the other party of the identity of such additional or substitute representative(s).

8. **Delay in the Additional Premises Commencement Date**.

(a) The Substantial Completion Date. The "Substantial Completion Date" shall mean (i) the later to occur of (A) the date on which Landlord receives the approval from the City of Romeoville authorizing occupancy of the Additional Premises by Tenant, which approval may take the form of a conditional or temporary certificate of occupancy so long as Tenant may occupy the Additional Premises, and (B) the date on which Landlord's architect issues a certificate to Landlord and Tenant stating that the Tenant Improvements have been substantially completed substantially in accordance with the Plans, or (ii) if the substantial completion of the Tenant improvements has been delayed as a result of one or more Tenant Delays (as defined below), the date on which Landlord would have substantially completed the Tenant Improvements but for such Tenant Delays, as so certified by the Landlord's architect.

(b) Tenant Delays. “Tenant Delay” shall mean any interruption or delay at any time in the progress of the Tenant Improvements which is the result of: (a) Tenant changes to the Plans, including, in addition to delays resulting from the actual execution of such changes to the Plans, any delay occurring because the change to the Plans requested by Tenant expressly requires the design or construction of the Additional Premises to be halted or delayed pending resolution of any request by Tenant for a change to the Plans, whether or not the requested change is ultimately approved by Landlord and/or Tenant; (b) the performance or non-performance of any work at the Additional Premises by Tenant or any person, firm or corporation employed by Tenant; or (c) any other act or omission of Tenant (for example, but not by way of limitation, failure to timely respond to requests for information or approval of construction related matters submitted by Landlord).

(c) Force Majeure Delays. “Force Majeure Delay” shall mean any interruption or delay at any time in the progress of the Tenant Improvements which is not a Tenant Delay and is the result of any Events of Force Majeure. Any delay shall be deemed to be a Force Majeure Delay notwithstanding that Landlord or its agent or Contractor with respect to which the time period for the Force Majeure Delay is being claimed is concurrently delayed by events within its control.

(d) Notice of Tenant Delays and Force Majeure Delays. Landlord agrees that it shall exercise reasonable efforts to provide Tenant with written notice of any Tenant Delay or Force Majeure Delay (and the expected length of the applicable delay) as soon as reasonably practicable following the date Landlord has been notified of any such delay; provided, however, that Landlord’s failure to furnish such notice shall in no event be deemed to a waiver by Landlord of the Tenant Delay or Force Majeure Delay or otherwise affect the operation of this Section 8 Landlord shall be deemed to have notified Tenant of a Tenant Delay or a Force Majeure Delay **f** the applicable delay is noted in the written job meeting minutes, if any, prepared by Landlord or any Contractor and furnished to Tenant.

9. **Governmental Approvals.** Landlord shall use reasonable efforts to obtain all governmental licenses, permits and approvals necessary for the construction of the Tenant Improvements and to achieve Substantial Completion of the Tenant Improvements in a timely manner. If Landlord is unable to obtain any permit, license or approval from any governmental authority necessary for the construction of the Tenant Improvements, Landlord may elect to terminate the Lease with respect to the Additional Premises upon written notice to Tenant delivered within thirty (30) days after the date hereof, upon which termination Landlord shall have no further liability to Tenant hereunder or under the Lease with respect to the Additional Premises, but the Lease shall continue in full force and effect, without regard to the Amendment, with respect to the Existing Premises.

10. **Access by Tenant Prior to Commencement Date.** Landlord will permit Tenant and Tenant’s agents, suppliers, contractors and workmen to enter the Additional Premises prior to the completion of the Tenant Improvements to enable Tenant to do such other things as may be required by Tenant to make the Additional Premises ready for Tenant’s occupancy, provided that Tenant shall fully perform and comply with each of the following covenants, conditions and requirements:

(a) Tenant and Tenant's agents, contractors, workmen, mechanics, suppliers and invitees, shall work in harmony and not interfere with Landlord and Landlord's agents in performing the Tenant Improvements or work for other tenants and occupants of the Building, and if at any time such entry shall in the judgment of Landlord cause or threaten to cause disharmony or interference, Landlord shall have the right to withdraw such permission upon twelve (12) hours written notice.

(b) Tenant agrees that any such entry into the Additional Premises shall be deemed to be under all of the terms, covenants, conditions, and provisions of the Lease except the covenant to pay Rent, and further agrees that in connection therewith Landlord shall not be liable in any way for any injury, loss or damage which may occur to any of Tenant's work or installations made in the Additional Premises or to property placed therein prior to the Additional Premises Commencement Date (except to the extent caused by the gross negligence or willful misconduct of Landlord), the same being at Tenant's sole risk. In addition, Tenant shall require all entities performing work on behalf of Tenant to provide protection for existing improvements to an extent that is satisfactory to Landlord and shall allow Landlord access to the Additional Premises, for inspection purposes, at all times during the period when Tenant is undertaking construction activities therein. In the event any entity performing work on behalf of Tenant causes any damage to the Tenant Improvements or the property of Landlord or others, Tenant shall cause such damage to be repaired at Tenant's expense, and if Tenant fails to cause such damage to be repaired immediately upon Landlord's demand therefor, Landlord may in addition to any other rights or remedies available to Landlord under the Lease or at law or equity cause such damage to be repaired, in which event Tenant shall immediately upon Landlord's demand pay to Landlord the cost of such repairs as Rent.

(c) All contractors and subcontractors shall use only those entrances designated by Landlord for ingress and egress of personnel, and the delivery and removal of equipment and material through or across any common areas of the Building or parking areas on the Property shall only be permitted with the written approval of Landlord and during hours determined by Landlord. Landlord shall have the right to order Tenant or any contractor or subcontractor that violates the above requirements to cease work and remove it, its equipment, and its employees from the Building or the Property.

(d) During the performance of Tenant's work and Tenant's fixturing, Landlord may provide trash removal service from a location designated by Landlord. Tenant shall be responsible for breaking down boxes and placing trash in Landlord's containers at such designated location. Tenant shall accumulate its trash in containers supplied by Tenant and Tenant shall not permit trash to accumulate within the Additional Premises or in the corridors or public areas adjacent to the Additional Premises. Tenant shall cause each entity employed by it to perform work on the Additional Premises to abide by the provisions of this Work Letter as to the storage of trash and shall require each such entity to perform its work in a way that dust and dirt is contained entirely within the Additional Premises and not within any other portion of the Building or the Property and shall cause Tenant's contractors to leave the Additional Premises broom clean at the end of each day. Should Landlord deem it necessary to remove Tenant's trash because of accumulation, an additional charge to Tenant will be on a time and material basis.

(e) Tenant agrees that all services and work performed on the Additional Premises by, on behalf of, or for the account of Tenant, including installation of materials and personal property delivered to the Additional Premises shall be done in a first-class workmanlike manner using only good grades of material, shall be performed in accordance with Laws, and shall be performed only by persons covered by a collective bargaining agreement with the appropriate trade union.

(f) Tenant agrees to protect, indemnify, defend and hold harmless the Landlord Parties from and against any and all losses, damages, liabilities, claims, liens, costs and expenses, including reasonable attorneys' fees, of whatever nature, including those to the person and property of Tenant, its employees, agents, invitees, licensees and others arising out of or in connection with the activities of Tenant or Tenant's contractors or subcontractors in or about the Additional Premises and the Property, and the cost of any repairs to the Additional Premises and the Property necessitated by activities of Tenant or Tenant's contractors or subcontractors.

(g) Tenant shall secure, pay for, and maintain during the continuance of its work within the Additional Premises, policies of insurance with such coverages and such amounts as Landlord may reasonably require, which policies shall be endorsed to include Landlord and its contractors and their respective employees and agents and any Mortgagee as additional insured parties, and which shall provide thirty (30) days prior written notice of any alteration or termination of coverage. Tenant shall not permit Tenant's contractors to commence any work until all required insurance has been obtained by Tenant and certificates evidencing such coverage have been delivered to and approved by Landlord in writing.

11. **Warranties.** Landlord shall assign to Tenant and Tenant shall have the benefit of any guaranties and warranties Landlord receives from contractors with respect to the Tenant Improvements.

12. **Termination of Work Letter; Survival of Terms.** Landlord and Tenant acknowledge and agree that the provisions of this Work Letter are intended and designed to govern certain rights and obligations of the parties relating to the construction of the Tenant Improvements and other matters prior to the Additional Premises Commencement Date. Accordingly, except as hereinafter set forth in this Section 12, from and alter the Additional Premises Commencement Date, the terms and provisions of this Work Letter shall become null and void and of no further force or effect. Notwithstanding anything to the contrary in this Section 12, however, the following provisions shall not terminate and shall continue in full force and effect after the Additional Premises Commencement Date, and shall survive the Additional Premises Commencement Date: Sections 1 and 6 (both of which shall terminate at such time as all punchlist items have been completed and all claims in connection therewith have been satisfied in full); Sections 10(b), 10(e), 10(f), 12 and 13 (which shall remain in effect for the duration of the Term); and Section 14 (which shall terminate at such time as the parties have executed the Confirmatory Memorandum).

13. **Application of Work Letter.** This Work Letter shall not be applicable to any space added to the Premises other than the Additional Premises or in the event of a renewal or extension of the Term of the Lease or the exercise of any expansion option granted to Tenant pursuant to the Lease.

14. **Confirmatory Memorandum.** At the request of either party, at such time as the Substantial Completion Date has been finally determined, the parties shall jointly execute a written memorandum in the form attached to this Work Letter as Schedule 2, and such memorandum shall be attached to and become a part of the Lease.

SCHEDULE 1

The Plans

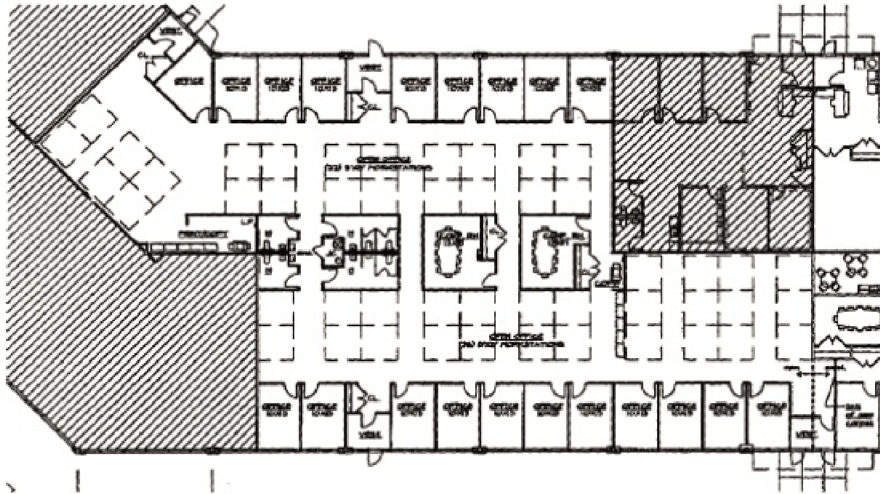
Space Plan Prepared by Interwork Architects dated .June 28,2004, last revised August 6, 2004, attached hereto as Schedule 1-A, and modified as follows:

Landlord and Tenant acknowledge that the 8 x 8 workstations shown on the Plans are not built in partitions, and Landlord is not obligated to supply workstations.

All materials shall be building standard finishes, comparable to the finishes used in the Existing Premises, including without limitation the installation of inset glass in all perimeter offices.

SCHEDULE 1-A

Space Plan



SCHEDULE 2

Form of Confirmatory Memorandum

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA (“Landlord”) and ______________________ (“Tenant”) hereby execute and deliver this Confirmatory memorandum pursuant to Section 13 of the Work Letter attached as **Exhibit B** to that certain Amendment between Landlord and Tenant dated______________________ 2004.

1. This Confirmatory Memorandum is for the convenience and reference of the parties. The provisions of the Amendment and the Work Letter shall be valid and given their full force and effect with respect to the terms contained in this Confirmatory Memorandum, notwithstanding the failure or refusal of either party to execute this document.

2. Landlord and Tenant further agree and acknowledge as follows:

(a) the Substantial Completion Date occurred on______________________, 2004; and

(b) the Additional Premises Commencement Date occurred on______________________, 2004.

Executed and delivered as of______________________, 2004.

LANDLORD:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation

By: PDC Properties, Inc., its agent

By: ______________________________
Its: ______________________________

TENANT:

ULTA SALON, COSMETICS & FRAGRANCE, INC.,
a Delaware corporation

By: ______________________________
Its: ______________________________

By: ______________________________
Its: ______________________________

EXHIBIT 10.12

WINDHAM INDUSTRIAL CENTER III
ROMEOVILLE, ILLINOIS

LEASE

BETWEEN

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a New Jersey corporation,
Landlord

AND

ULTA SALON, COSMETICS & FRAGRANCE, INC.,
a Delaware corporation
Tenant

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EXHIBITS

Exhibit A— Plan of the Premises

Exhibit B— Legal Description of the Land

Exhibit C— Form of Tenant Estoppel Letter

WINDHAM INDUSTRIAL CENTER III
LEASE

THIS LEASE ("Lease") is entered into as of the 31st day of October, 2006, by and between **THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**, a New Jersey corporation, whose address is Two Prudential Plaza, 180 North Stetson Street, Suite 3275, Chicago, Illinois 60601 (together with its successors and assigns, "Landlord") and **ULTA SALON, COSMETICS & FRAGRANCE, INC.**, a Delaware corporation (together with its permitted successors and assigns, "Tenant").

1. FUNDAMENTAL LEASE TERMS. Certain fundamental lease terms (the "Fundamental Lease Terms") are set forth below in this Section 1:

1.1	**Building and Address:**	Windham Industrial Center III 1198 Arbor Drive Romeoville, Illinois 60446
1.2	**Tenant:**	ULTA SALON, COSMETICS & FRAGRANCE, INC., a Delaware corporation
1.3	**Tenant's Current Address:**	1135 Arbor Drive Romeoville, Illinois 60446
1.4	**Landlord:**	The Prudential Insurance Company of America, a New Jersey corporation
1.5	**Landlord's Address:**	Two Prudential Plaza 180 North Stetson Street, Suite 3275 Chicago, Illinois 60601
1.6	**Premises:**	Approximately 2,500 square feet of office space and 55,048 square feet of warehouse space located in the Building, as shown on the plan attached hereto and made a part hereof as **Exhibit A**.
1.7	**Term:**	February 1, 2007- April 10, 2010
1.8	**Commencement Date:**	February 1, 2007
1.9	**Base Rent:**	$225,437.20/year, $18,703.10/month
1.10	**Security Deposit:**	$0
1.11	**Broker:**	NAI Hiffman

2. AGREEMENT TO LEASE. Landlord hereby leases to Tenant, and Tenant hereby accepts and leases from Landlord the Premises in the Building located on the real estate legally described on **Exhibit B** attached hereto and made a part hereof (the "Land") for the Term. The Land, the Building and all other improvements now or hereafter located on the Land are collectively referred to herein as the "Property."

3. RENT. Tenant shall pay Rent (as defined below) to:

PDC PR 132803 Windham Industrial Ctr III
23237 Network Place
Chicago, Illinois 60673-1232

or to such other person or at such other place as Landlord may designate, without offsets or deductions of any kind whatsoever, at the times and in the manner hereinafter set forth. As used herein "Rent" shall mean Base Rent (as defined below), Additional Rent (as defined below) and all other amounts to be paid by Tenant to Landlord under this Lease. Tenant's covenant to pay Rent shall be independent of every other covenant in this Lease.

4. BASE RENT. The Base Rent payable for each Lease Year (as defined below) set forth in Section 1.9 shall be paid in twelve (12) equal monthly installments, paid in advance not later than the first (1st) day of each month. If the Commencement Date is other than the first (1st) day of a month, then the installment of Base Rent for such initial month shall be prorated on a per diem basis for such fractional period. Base Rent for the first full calendar month for which Base Rent shall be due shall be paid on or before the Commencement Date. As used herein, "Lease Year" shall mean each consecutive twelve (12) month period beginning with the Commencement Date, except that if the Commencement Date is other than the first (1st) day of a calendar month, then the first (1st) Lease Year shall be the period from the Commencement Date through the date twelve (12) months after the last day of the calendar month in which the Commencement Date occurs, and each subsequent Lease Year shall be the period of twelve (12) months following the last day of the prior Lease Year.

5. ADDITIONAL RENT. In addition to paying the Base Rent specified in Section 4 hereof, Tenant shall pay as "Additional Rent" the amounts determined as set forth below in this Section 5.

5.1 Definitions. As used in this Lease, the following terms shall have the following meanings:

(a) "Calendar Year" shall mean the twelve (12) month period January through December of any year (or portion thereof) falling within the Term.

(b) "Tenant's Proportionate Share" shall be 35.27%, a percentage determined by dividing 57,548 square feet, the rentable area contained in the Premises, by 163,172 square feet, the rentable area contained in the Building. The parties acknowledge and agree that a variety of methods and standards exist for measuring the rentable area of a building or a portion thereof, and that individuals, including experts in this area, may reach different conclusions on the rentable area of a building or a portion thereof, even though such parties have based their conclusions on the same measurement methods or standards. Accordingly, in order to eliminate any ambiguity or uncertainty the parties hereby agree that the rentable areas of the Premises and the Building and such figures, and Tenant's Proportionate Share shall not be contested by either party. Tenant's Proportionate Share shall only be revised upon an actual change in the physical dimensions of the Premises or upon an actual reconfiguration, addition or modification to the rentable area of space leased or available for lease at the Building during the Term, each of which as Landlord may reasonably redetermine from time to time. If the Building or any development of which it is a part, shall contain non-office uses, Landlord shall have the right to determine in accordance with sound accounting and management principles, Tenant's Proportionate Share of Taxes and Tenant's Proportionate Share of Operating Expenses for only the office portion of the Building or of such development, in

which event, Tenant's Proportionate Share shall be based on the ratio of the rentable area of the Premises to the rentable area of such office portion. Similarly, if the Building shall contain tenants who do not participate in all or certain categories of Taxes or Operating Expenses on a prorata basis, Landlord may exclude the amount of Taxes or Operating Expenses, or such categories of the same, as the case may be, attributable to such tenants, and exclude the rentable area of their premises, in computing Tenant's Proportionate Share. If the Building shall be part of or shall include a complex, development or group of buildings or structures collectively owned or managed by Landlord or its affiliates or collectively managed by Landlord's managing agent, Landlord may allocate Taxes and Operating Expenses within such complex, development or group, and between such buildings and structures and the parcels on which they are located, in accordance with sound accounting and management principles. In the alternative, Landlord shall have the right to determine, in accordance with sound accounting and management principles, Tenant's Proportionate Share of Taxes and Tenant's Proportionate Share of Operating Expenses based upon the totals of each of the same for all such buildings and structures, the land constituting parcels on which the same are located, and all related facilities, including common areas and easements, corridors, lobbies, side-walks, elevators, loading areas, parking facilities and driveways and other appurtenances and public areas, in which event Tenant's Proportionate Share shall be based on the ratio of the rentable area of the Premises to the rentable area of all such buildings.

(c) "Taxes" shall mean all real estate and personal property taxes and assessments and similar governmental charges, special or otherwise, direct or indirect, ordinary or extraordinary (including, without limitation, real estate taxes, general and special assessments, transit taxes, water and sewer rents, taxes based upon the receipt of rent including gross receipts or sales taxes applicable to the receipt of rent or service or value added taxes, ad valorem taxes for Landlord's personal property, and taxes levied or assessed by special taxing districts now or hereafter created) levied or assessed for any Calendar Year (without regard to any different fiscal year used by such government or municipal authority) upon or with respect to the Property or Landlord's personal property used in connection with the Property that Landlord shall actually pay because of or in connection with the ownership, leasing and operation of the Property. Should any political subdivision or governmental authority having jurisdiction over the Property, impose a tax, assessment, charge or fee which Landlord shall be required to pay, either by way of substitution for such real estate taxes and ad valorem personal property taxes, or in addition to such real estate taxes and ad valorem personal property taxes, or impose an income or franchise tax or a tax on rents which may be in addition to or in substitution for a tax levied against the Property and/or Landlord's personal property used in connection with the Property, such taxes, assessments, fees or charges shall be deemed to constitute Taxes hereunder. "Taxes" shall also include all reasonable fees and costs incurred by Landlord in connection with protesting, reducing or limiting the increase in any Taxes, regardless of whether any reduction or limitation is obtained. "Taxes" shall not include inheritance, income, transfer or franchise taxes paid by Landlord to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Property), other than as described above, and shall not include any taxes to be paid by Tenant under the terms of this Lease. In determining the amount of Taxes for any Calendar Year, the amount of special assessments to be included shall be limited to the amount of the installment (plus any interest payable thereon) of such special assessment which would have been required to have been paid during such year if Landlord had elected to have such special assessment paid over the maximum period of time permitted by law. Except as provided in the immediately preceding sentence, all

references to Taxes "for" a particular year shall be deemed to refer to Taxes levied, assessed or otherwise imposed for such year without regard to when such Taxes are payable.

(d) "Operating Expenses" shall mean for any Calendar Year those costs or expenses of every kind and nature paid or incurred by or on behalf of Landlord for owning, managing, operating, maintaining, repairing and restoring the Property and Landlord's personal property used in connection with the Property including, without limitation: (i) dues and other amounts payable to the Windham Lakes Business Center Owner's Association (the "Association"), as the Property is located in the Windham Lakes Business Center (the "Park) and payments under any other easement, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs in any planned development; (ii) utilities for the Property, including but not limited to electricity, power, gas, steam, oil or other fuel, water, sewer, lighting, heating, air conditioning and ventilating, to the extent not separately metered; (iii) the cost of fire monitoring, security and security device systems for the Building, if any; (iv) the cost of maintaining and repairing the Building and other improvements in the Property, and all systems, equipment and components thereof, including but not limited to: (A) sewer, water, mechanical, electrical, sprinkler and other utility systems and equipment, (B) heating, ventilating, and air conditioning systems and equipment, (C) the roof and structural components of the Building, (D) parking lots, driveways and sidewalks, (E) exterior lighting systems and equipment; (F) window cleaning, (G) trash removal, (H) cleaning of walks, parking facilities and building walls, (I) removal of ice and snow, (J) replacement of wall and floor coverings, ceiling tiles and fixtures in lobbies, corridors, restrooms and other common or public areas or facilities, (K) maintenance and replacement of shrubs, trees, grass, sod and other landscaped items, (L) irrigation systems, (M) drainage facilities, (N) fences, curbs, and walkways, (O) re-paving and re- striping parking facilities, and (P) painting of Building exteriors; (v) insurance (including but not limited to, fire, extended coverage, all risk, rent loss, liability, worker's compensation, and any other insurance carried by Landlord and applicable to the Property and not carried by tenants under any provision of their lease); (vi) deductibles paid by Landlord under the insurance policies described above; (vii) uninsured losses; (viii) management agreements (including the cost of any management fee actually paid thereunder and the fair rental value of any office space provided thereunder, up to customary and reasonable amounts); (ix) supplies, tools, equipment and materials used in the operation, repair and maintenance of the Property; (x) the cost of wages, salaries and benefits of all persons at the level of property manager and below, engaged in the operation, management, maintenance and repair of the Property; (xi) accounting, legal, inspection, consulting, concierge and other services; (xii) permits, licenses and certificates necessary to operate, manage and lease the Property; (xiii) any rental (or installment purchase or financing agreements) with respect to equipment used in the operation, repair or maintenance of the Property; and (xiv) any other expense or charge which would be considered as an expense of owning, managing, operating, maintaining, repairing or restoring the Property or Landlord's personal property used in connection therewith. Notwithstanding anything herein to the contrary, Operating Expenses shall not include: costs or other items included within the meaning of the term "Taxes"; costs of tenant alterations to tenant space; marketing costs; costs of capital improvements to the Property, except for the cost of resurfacing the Parking Areas (as hereinafter defined), driveways and sidewalks on the Property and except as provided below; depreciation charges; interest and principal payments on mortgages; real estate brokerage and leasing commissions; and any other expenditures for which Landlord has been reimbursed (other

than pursuant to rent escalation or tax and operating expense reimbursement provisions in leases). Notwithstanding the foregoing, the cost of any capital improvements to the Property made after the date of this Lease that are primarily intended to reduce Operating Expenses or that are required under any laws, statutes, codes, ordinances, or governmental rules, regulations or requirements, or judicial or administrative rules, orders or decrees (collectively, "Laws") that were not applicable to the Property at the time it was constructed, amortized over such reasonable periods as Landlord shall determine, together with interest on the unamortized cost of any such improvements (at the prevailing construction loan rate available to Landlord on the date the cost of such improvements was incurred) shall be included in Operating Expenses. The cost of any capital improvements made in connection with resurfacing the Parking Areas, driveways and sidewalks in their entirety on the Property shall also be amortized, with interest, as provided in the immediately preceding sentence, and included in Operating Expenses. In the event the Property is not fully occupied during any Calendar Year, the variable Operating Expenses for that year may be adjusted by Landlord to reflect the Operating Expenses as though the Property were fully occupied; provided, however, that in no event shall the payments made by all tenants of the Property to Landlord for Operating Expenses exceed the actual Operating Expenses paid or incurred by Landlord in any Calendar Year. Notwithstanding anything to the contrary contained in this Section 5.1(e), Operating Expenses may include, at Landlord's sole, but reasonable discretion, both (i) snow removal costs, and/or (ii) maintenance, repair and/or replacement costs of the parking areas for both the Property and the building directly west of and immediately adjacent to the Property (the "Adjacent Property"); provided, however, in no event shall Tenant's Proportionate Share of the aggregate cost for (i) snow removal for the Property and the Adjacent Property; or (ii) maintenance, repair and/or replacement costs of the parking areas for both the Property and the Adjacent Property exceed Tenant's Proportionate Share of snow removal costs for the Property or Tenant's Proportionate Share of maintenance, repair and/or replacement costs of the Parking Areas for the Property.

5.2 Tax Amount. Tenant shall pay to Landlord as Rent, in addition to the Base Rent and the Operating Expense Amount (as defined below), an amount (the "Tax Amount") equal to Tenant's Proportionate Share multiplied by the amount of Taxes for each Calendar Year. Tenant shall pay to Landlord the Tax Amount with respect to each Calendar Year in monthly installments, at the same time and place as Base Rent is to be paid, in an amount estimated from time to time by Landlord by a written notice to Tenant (the "Estimated Tax Payments"). Landlord shall deliver to Tenant as soon as practical after the close of each Calendar Year (including the Calendar Year in which this Lease terminates) a statement showing the amount of the Taxes for such Calendar Year and the Tax Amount. Tenant hereby acknowledges that Landlord will not be able to deliver such statement until Landlord receives the real estate tax bills for each Calendar Year, which bills are currently received six (6) to nine (9) months after the end of each Calendar Year. If the Estimated Tax Payments paid by Tenant during any Calendar Year are less than the Tax Amount for such Calendar Year, Tenant shall pay any deficiency to Landlord as shown by such statement within fifteen (15) days after receipt of such statement. If the Estimated Tax Payments paid by Tenant during any Calendar Year exceed the Tax Amount due from Tenant for such Calendar Year, such excess shall be credited against payments of Rent next due hereunder. If no such payments are next due, such excess shall be refunded by Landlord. Landlord's failure to deliver an annual statement of the Taxes for any Calendar Year shall not constitute a waiver or release of, or relieve Tenant from, its obligations under this Subsection. If Taxes for any period during the Term or any extension thereof, shall be increased after payment thereof by Landlord, for any reason including without limitation error or

reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord upon demand Tenant's Proportionate Share of such increased Taxes. Tenant shall pay increased Taxes whether Taxes are increased as a result of increases in the assessment or valuation of the Property (whether based on a sale, change in ownership or refinancing of the Property or otherwise), increases in the tax rates, reduction or elimination of any rollbacks or other deductions available under current law, scheduled reductions of any tax abatement, as a result of the elimination, invalidity or withdrawal of any tax abatement, or for any other cause whatsoever. Notwithstanding the foregoing, Tenant shall pay prior to delinquency all taxes, charges or other governmental impositions assessed against or levied upon Tenant's fixtures, furnishings, equipment and personal property located in the Premises, and any Alterations. Whenever possible, Tenant shall cause all such items to be assessed and billed separately from the property of Landlord. In the event any such items shall be assessed and billed with the property of Landlord, Tenant shall pay Landlord its share of such taxes, charges or other governmental impositions within thirty (30) days after Landlord delivers a statement and a copy of the assessment or other documentation, showing the amount of such impositions applicable to Tenant's property. Tenant shall pay any rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the Rent or services herein or otherwise respecting this Lease.

5.3 Operating Expense Amount. Tenant shall pay to Landlord as Rent, in addition to the Base Rent and the Tax Amount, an amount (the "Operating Expense Amount") equal to Tenant's Proportionate Share multiplied by the amount of Operating Expenses for each Calendar Year. Tenant shall pay to Landlord the Operating Expense Amount with respect to each Calendar Year in monthly installments, at the same time and place as Base Rent is to be paid, in an amount estimated from time to time by Landlord by a written notice to Tenant (the "Estimated Operating Expense Payments"). Landlord shall deliver to Tenant as soon as practical after the close of each Calendar Year (including the Calendar Year in which this Lease terminates) a statement showing the amount of the Operating Expenses for such Calendar Year and the Operating Expense Amount. If the Estimated Operating Expense Payments paid by Tenant during any Calendar Year are less than the Operating Expense Amount for such Calendar Year, Tenant shall pay any deficiency to Landlord as shown by such statement within fifteen (15) days after receipt of such statement. If the Estimated Operating Expense Payments paid by Tenant during any Calendar Year exceed the Operating Expense Amount due from Tenant for such Calendar Year, such excess shall be credited against payments of Rent next due hereunder. If no such payments are next due, such excess shall be refunded by Landlord. Landlord's failure to deliver an annual statement of the Operating Expenses for any Calendar Year shall not constitute a waiver or release of, or relieve Tenant from, its obligations under this Subsection.

5.4 Survival. Without limiting any other obligations of Tenant which shall survive the expiration of the Term or a termination of Tenant's right of possession, the obligations of Tenant to pay the Additional Rent provided for in this Section 5 shall survive the expiration of the Term or a termination of Tenant's right of possession.

6. SERVICES.

6.1 Services Furnished by Landlord. As long as Tenant is not in default under this Lease, Landlord shall furnish the following services:

(a) Repairs and maintenance (and if necessary, replacements) of air conditioning and heating units providing service to the Premises. Notwithstanding anything contained herein to the contrary, if any repairs, maintenance or replacements are

necessitated by the act or neglect of Tenant, its agents, servants or employees, then the cost thereof shall be billed directly to Tenant, and Tenant shall pay Landlord therefor within fifteen (15) days after receiving such bill. Landlord shall not otherwise be responsible for the operation of air conditioning and heating units serving the Premises or the costs thereof, the parties acknowledging that the use and operation of such units shall be within the sole control of Tenant. Landlord shall not be responsible for inadequate air-conditioning or ventilation to the extent the same occurs because Tenant uses any item of equipment consuming more than 500 watts at rated capacity without providing adequate air-conditioning and ventilation therefor.

(b) Domestic Water for drinking, lavatory and toilet purposes at those points of supply provided for nonexclusive general use of other tenants at the Property. In the event that Tenant uses or requires a materially greater amount of water or refuse disposal service than the usual and ordinary office use of either of such services, then Landlord may bill Tenant for the additional cost of such increased use and for the cost of determining the amount of such increased use, and Tenant shall pay Landlord for such costs as Rent within fifteen (15) days after receiving such bill. If as of the Commencement Date, water service is not separately metered for the Premises, Landlord reserves the right to install separate meters for the Premises at Tenant’s cost.

(c) Exterior window washing of all windows in the Premises, weather permitting, at intervals to be reasonably determined by Landlord.

(d) Refuse disposal service in common with other tenants.

6.2 Utilities. Landlord shall arrange with the public utility companies and/or municipality providing the Building with electricity and natural gas service for the supply of such services to the Premises. Such services shall be separately metered to the Premises, and Tenant shall pay for the cost of any meter required in connection therewith. Tenant shall pay the public utility companies and/or municipality directly for any services provided and separately metered to the Premises. Tenant shall bear the cost of maintaining light fixtures and replacing bulbs, tubes, ballasts and similar items in the Premises.

6.3 No Other Services. Landlord shall not be obligated to provide any services other than those expressly set forth above in this Section. Landlord does not warrant that any of the services described in this Section 6 will be free from interruptions caused by repairs, improvements or alterations of equipment, or by war, insurrection, civil commotion, acts of God or governmental action, strikes, lockouts, picketing, whether legal or illegal, accidents, inability of Landlord to obtain fuel or supplies, or any other cause or causes beyond Landlord’s reasonable control. None of such interruptions shall be deemed an eviction (constructive or actual) or disturbance of Tenant’s use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for damages or abatement of Rent, or relieve Tenant from performance of Tenant’s obligations under this Lease. Landlord in no event shall be liable for damages by reason of loss of profits, business interruption or other consequential damages.

7. SECURITY DEPOSIT. [INTENTIONALLY DELETED]

8. USE. Tenant shall use and occupy the Premises for general office, warehouse and distribution purposes and for no other purpose, unless otherwise expressly agreed in writing by Landlord. Notwithstanding the foregoing, Tenant shall not use or occupy the Premises, or permit the Premises to be used or occupied contrary to or in violation of any Laws or any covenant, condition or restriction of

record, or in any manner that would: (i) cause structural injury to the Premises or the Building; (ii) invalidate any insurance policy affecting the Premises or the Building; (iii) increase the amount of premiums for any insurance policy affecting the Premises or the Building; (iv) affect any certificate of occupancy affecting the Premises or the Building; (v) or may be dangerous to persons or property; (vi) create a nuisance, or disturb any other occupant of the Building; or (vii) injure the reputation of the Property or of Landlord.

9. CONDITION OF PREMISES. Landlord shall perform the following work in the Premises: (i) reduce the office space existing in the Premises to 2,500 square feet, including general office area, lunchroom and bathrooms, (ii) re-paint and re-carpet the remaining office space as required, using Building standard materials, (iii) leave the existing vestibule in place at the northwest corner entrance to the Premises, (iv) at Tenant's election, either (a) relocate 400 amp electrical service to the Premises, or (b) provide controls for lighting within the Premises and provide Tenant and credit against Base Rent in the amount of $5,000, and (v) apply a "frost" coating to the existing windows that would otherwise permit the inside of the Premise to be seen from the outside. Tenant's taking possession of the Premises shall be conclusive evidence as against Tenant that the Premises were in good, clean and sanitary order, repair and condition satisfactory to Tenant and at such time free from defects. No promise of Landlord to alter, remodel or improve the Premises or the Building and no representation respecting the condition of the Premises or the Building has been made by Landlord to Tenant other than as may be expressly set forth in this Lease.

10. EARLY POSSESSION. Landlord acknowledges and agrees that Tenant may take possession of all or any part of the Premises on prior to January 1, 2007 in order to undertake improvements to the Premises at its sole cost and expense and in accordance with the provisions of this Lease (including but not limited to Section 12). If Tenant does so take possession of all or any part of the Premises prior to the Commencement Date, all of the covenants and conditions of this Lease shall be binding upon the parties hereto the same as if the Commencement Date had been fixed as of the date when Tenant took such possession, except that Tenant shall not be responsible for the payment of Base Rent or Additional Rent for any period prior to the Commencement Date. Notwithstanding the foregoing, Tenant shall be responsible for the payment of all costs and expenses relating to utility services being provided to the Premises after Landlord has delivered possession of all or any part of the Premises to Tenant.

11. ASSIGNMENT AND SUBLETTING.

11.1 Prohibitions. Tenant shall not, without the prior written consent of Landlord, undertake any of the following (collectively, a "Transfer"): (a) assign, convey or mortgage this Lease or any interest hereunder; (b) permit any assignment of, or lien upon this Lease or Tenant's interest herein by operation of law or otherwise; (c) sublet the Premises or any part thereof; or (d) permit the use of the Premises by any parties other than Tenant, its agents and employees. Any Transfer attempted to be made without complying with this Section 11 shall at Landlord's option be null, void and of no effect and shall constitute a default under this Lease. Neither a Transfer to any party (including but not limited to any affiliates or subsidiaries), nor Landlord's consent to any other Transfer, nor Landlord's election to accept any assignee, sublessee or transferee as Tenant hereunder shall release the original Tenant from any covenant or obligation under this Lease. Landlord's consent to any Transfer shall not constitute a waiver of Landlord's right to consent to any future Transfer.

11.2 Notice to Landlord. Tenant shall give Landlord written notice of any proposed Transfer (including, without limitation, a proposed Transfer to an affiliate or subsidiary) at least forty-five (45) days prior to the effective date of such proposed Transfer. Such written notice

shall include: (a) the name and address of the proposed assignee, sublessee or transferee (a "Transferee"), and whether the proposed Transferee is an Affiliate (as defined below), (b) the proposed effective date (which shall not be less than 45 nor more than 180 days after Tenant's notice), (c) the portion of the Premises subject to the proposed Transfer (the "Subject Space"), (d) except if Tenant makes a Transfer to an Affiliate, the terms of the proposed Transfer and the consideration therefor, (e) except if Tenant makes a Transfer to an Affiliate, a copy of all documentation pertaining to the proposed Transfer, (f) except if Tenant makes a Transfer to an Affiliate, current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, (g) except if Tenant makes a Transfer to an Affiliate, any other reasonable information to enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space, and (h) except if Tenant makes a Transfer to an Affiliate, such other information as Landlord may reasonably require. The term "Affiliate" in this Lease shall mean an entity that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with Tenant. For purposes of this definition, the term "control" shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

11.3 Approval. Landlord will not unreasonably withhold or delay its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in Tenant's notice. The parties hereby agree that it shall be reasonable under this Lease and under any applicable Laws for Landlord to withhold consent to any proposed Transfer where one or more of the following applies (without limitation as to other reasonable grounds for withholding consent): (i) the proposed Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Property, or would be a significantly less prestigious occupant of the Property than Tenant, (ii) the proposed Transferee intends to use the Subject Space for purposes which are not permitted under this Lease, (iii) the proposed Subject Space is not regular in shape with appropriate means of ingress and egress suitable for normal renting purposes, (iv) the proposed Transferee is either a governmental authority (or agency or instrumentality thereof) or a current tenant or occupant of the Property, (v) the proposed Transferee does not have a reasonable financial condition in relation to the obligations to be assumed in connection with the Transfer, (vi) an uncured event of default under this Lease shall exist at the time Tenant requests consent to the proposed Transfer, or (vii) any such transfer will cause a violation of ERISA (as defined below) or other applicable state statutes regulating investments by or fiduciary obligations with respect to "governmental plans." Notwithstanding the foregoing, Tenant shall have the right to make a Transfer of this Lease to an Affiliate without Landlord's prior consent; provided that such Transfer shall otherwise be subject to the terms and conditions of Section 11.2 and Section 11.4.

11.4 Terms of Consent. If Landlord consents to a Transfer, or if Tenant makes a Transfer to an Affiliate: (a) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (b) such consent (if required) shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (c) no Transferee shall succeed to any rights provided in this Lease or any amendment hereto to extend the Term of this Lease, expand the Premises, or lease additional space, any such rights being deemed personal to the original Tenant and its Affiliates, (d) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant from liability under this Lease, (e) except if Tenant makes a Transfer to an Affiliate, Tenant shall deliver to Landlord promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, and (f) except if Tenant makes a Transfer to

an Affiliate, Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any profits Tenant has derived and shall derive from such Transfer. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the profits derived by Tenant from any Transfer shall be found understated, Tenant shall within thirty (30) days after demand pay the deficiency, and if understated by more than 2%, Tenant shall pay Landlord's costs of such audit. Any sublease hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any sublease, Landlord shall have the right to: (i) treat such sublease as canceled and repossess the Subject Space by any lawful means, or (ii) require that such subtenant attorn to and recognize Landlord as its landlord under any such sublease. In the event of default, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured.

11.5 Sharing of Profits. Without limitation of any other provision hereof, should Tenant propose to Transfer to any Transferee other than an Affiliate, Landlord may condition its consent to the Transfer on the condition that fifty percent (50%) of the profit derived by Tenant from the Transfer be paid by Tenant to Landlord as Rent. For purposes of Subsections 11.4 and 11.5, "profits" shall mean the amount of any and all consideration received by Tenant in connection with such Transfer, minus the amount of Base Rent and Additional Rent to be paid by Tenant under this Lease for the portion of the Term and the Subject Space, minus all reasonable, out-of-pocket costs actually incurred by Tenant in connection with such Transfer (including leasing commissions, advertising expenses, costs of alterations or improvements to the Premises approved by Landlord in accordance with this Lease, and attorney's fees).

11.6 Transfer of Ownership Interests in Tenant. For purposes of this Lease, the term "Transfer" shall also include any one of the following events if and only if Tenant does not maintain substantially the same (or better) net worth and remain in substantially the same (or better) financial condition upon and after such event: (a) the direct or indirect sale or other transfer of an aggregate of 50% or more of the voting or ownership interests of Tenant, (b) the sale, mortgage, hypothecation or pledge of an aggregate of 50% or more of Tenant's net assets, or (c) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of a majority of the partners or the dissolution of the partnership. Notwithstanding anything to the contrary in this Lease, any transfer of ownership interests in Tenant shall not be permitted hereunder, shall at Landlord's option be null, void and of no effect and shall constitute a default under this Lease if such transfer would cause any of the representations and warranties made by Tenant in Section 26.2 below to be inaccurate or incorrect at any time. Tenant shall indemnify, defend and hold the Landlord Parties (as defined below) harmless from all claims, causes of action, liabilities, losses, costs, damages, liens and expenses related to any transfer of ownership interests in Tenant that may cause any of the representations and warranties made by Tenant in Section 26.2 below to be inaccurate or incorrect at any time. Notwithstanding anything in this Lease to the contrary, a transfer of the share or other interests of Tenant or an Affiliate of Tenant whose outstanding voting stock is listed on a national stock exchange regulated by the U.S. Securities and Exchange Commission shall not be deemed to be a Transfer.

11.7 Recapture. Notwithstanding anything to the contrary contained in this Article, Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after receipt of Tenant's notice of any proposed Transfer, to recapture the Subject Space. Such recapture notice shall cancel and terminate this Lease with respect to the Subject Space as of the

date stated in Tenant's notice as the effective date of the proposed Transfer (or at Landlord's option, shall cause the Transfer to be made to Landlord or its agent, in which case the parties shall execute the Transfer documentation promptly thereafter). If this Lease shall be cancelled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises (both as reasonably determined by Landlord), this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same.

11.8 Landlord's Costs. Tenant shall pay to Landlord as Rent hereunder, all costs and expenses (including, without limitation, reasonable attorneys' fees) paid or incurred by Landlord in connection with any proposed assignment or subletting hereunder, regardless of whether Landlord exercises its recapture option pursuant to Subsection 11.7 hereof or withholds or grants its consent to such assignment or subletting in accordance with the terms and conditions of this Section 11.

12. REPAIRS AND ALTERATIONS.

12.1 Tenant's Repair Obligations. Tenant shall, at its own expense, keep and maintain the Premises in good and sanitary condition, working order and repair during the Term. Tenant shall promptly and adequately repair all damage to the Premises and restore, replace or repair all damaged or broken glass, carpet, wall-covering, doors, fixtures, equipment, improvements and appurtenances; provided, however, that Tenant shall not be obligated to repair or replace the roof or any structural defects in the Premises, or the heating and air conditioning systems servicing the Premises, except to the extent that such repair or replacement are necessitated by the act or neglect of Tenant, its agents, servants or employees. In the event that any such repairs, maintenance or replacements are required, Tenant shall promptly arrange for the same either through Landlord for such reasonable charges as Landlord may from time to time establish, or such contractors as Landlord generally uses at the Property or such other contractors as Landlord shall first approve in writing, and in a first class, workmanlike manner approved by Landlord in advance in writing. If Tenant does not fulfill its obligations under this Subsection 12.1, Landlord may, but need not, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof, plus an additional fifteen percent (15%) to cover Landlord's overhead and related expenses, immediately upon written demand therefor. Landlord may enter the Premises at all reasonable times to make such repairs and replacements and any other repairs, alterations, improvements and additions to the Premises or to the Building or to any equipment or system located in the Building. Notwithstanding anything contained herein to the contrary, if any damage to the Premises or the Property or to any equipment or system thereon (including but not limited to the roof of the Building or any heating, air conditioning and ventilation systems serving the Premises) or appurtenance thereto results from any act, omission or neglect of Tenant or of Tenant's contractors, agents or employees, Landlord may but is not obligated to, at Landlord's option, repair such damage, and Tenant shall reimburse Landlord immediately upon written demand for the total cost of such repairs, plus an additional fifteen percent (15%) to cover Landlord's overhead and related expenses.

12.2 Prohibition on Alterations. Tenant shall not, without the prior written consent of Landlord, make any alterations, improvements, decorations or additions (collectively, "Alterations") to the Premises. Landlord may, in its sole discretion, withhold its consent to any Alteration which: (i) affects the roof or structural components of the Building; (ii) affects any heating, ventilating, air conditioning, utility or mechanical systems or equipment in the Building; (iii) is visible from outside of the Premises; (iv) costs more than $10,000.00 to complete

(including all labor and material costs); or (iv) requires a building permit to perform. Except as provided in the immediately preceding sentence, Landlord shall not unreasonably withhold its consent to any Alterations. Landlord's consent to any Alterations (including, without limitation, Landlord's approval of Tenant's plans, specifications or working drawings therefor), shall impose no responsibility or liability on Landlord with respect to the completeness, or design sufficiency thereof or the compliance thereof with all applicable Laws.

12.3 **Performance of Alterations**. The work necessary to make any Alterations shall be done at Tenant's sole cost and expense, by employees of or contractors employed by Landlord or, with Landlord's prior written consent, by contractors and subcontractors arranged for by Tenant and approved by Landlord. If Alterations are, with Landlord's consent, performed by contractors employed by Tenant, Tenant shall deliver to Landlord, for its review and approval prior to commencing any such Alterations, copies of all contracts and subcontracts related to such Alterations, and plans, working drawings and specifications necessary to perform such work. Landlord's review of Tenant's plans, specifications or working drawings shall impose no responsibility or liability on Landlord, and shall not constitute a representation, warranty or guarantee by Landlord, with respect to the completeness, design, sufficiency or compliance thereof with any Laws. In addition, Alterations shall be performed subject to all conditions that Landlord may impose upon Tenant and its contractors and subcontractors, including without limitation: furnishing Landlord with bonds and other security for the payment of all costs to be incurred in connection with such Alterations; insuring against liabilities which may arise out of such Alterations, as determined by Landlord; obtaining necessary licenses and permits; contractor and subcontractor lien waivers; affidavits listing all contractors, subcontractors and suppliers; use of union labor (if Landlord uses union labor); affidavits from engineers acceptable to Landlord stating that the Alterations will not adversely affect the systems and equipment or the structure of the Building; and requirements as to the manner and times in which such Alterations shall be done. All Alterations performed by Tenant or its contractors shall be done in a first-class, workmanlike manner using only new and good grades of materials and shall comply with all insurance requirements and all Laws. Tenant shall permit Landlord to supervise all Alterations, and Landlord may charge a supervising fee not to exceed: (a) ten percent (10%) of the total cost of the Alterations, including without limitation, all labor and material costs, if Tenant's employees or contractors perform the Alterations, or (b) fifteen percent (15%) of the total cost of the Alterations, including, without limitation, all labor and material costs, if Landlord's employees or contractors perform the Alterations. Tenant shall promptly pay to Landlord and/or to Tenant's contractors, as the case may be, when due, the cost of all work and of all decorating required in connection with any Alterations, and all supervising fees, and if payment is made directly to Tenant's contractors, upon completion of the Alterations, Tenant shall deliver to Landlord evidence of payment and full and final waivers of all liens for labor, services or materials. Except to the extent caused by Landlord's gross negligence or willful misconduct, Tenant shall indemnify, defend and hold Landlord and its owners and their respective officers, shareholders, directors, partners, agents and employees (collectively, the "Landlord Parties") harmless from all claims, causes of action, liabilities, losses, costs, damages, liens and expenses related to any Alterations, whether performed by or under the direction of Landlord, and whether performed in compliance with this Section 12 or any other conditions imposed by Landlord.

13. CERTAIN RIGHTS RESERVED BY LANDLORD. Except to the extent expressly limited herein, Landlord reserves full rights to control the Property, including but not limited to the following rights, exercisable without notice (except as expressly provided below in this Section) and without liability to Tenant for damage or injury to property, person or business, and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for set-off or abatement of Rent:

(a) To change the name or street address of the Building or the Property;

(b) To install, affix and maintain any and all signs on the exterior of the Building, and to prescribe the location and style of the identification sign (including ground mounted sign with panels, if any), logo and/or lettering for the Premises occupied by the Tenant;

(c) To designate and/or approve, prior to installation, all types of window shades, blinds, drapes, awnings, window ventilators and other similar equipment, which approval shall not be unreasonably withheld or delayed so long as any such window covering does not violate any Laws or Association rules, and to control all internal lighting that may be visible from the exterior of the Premises;

(d) To show the Premises to prospective tenants at reasonable hours during the last twelve (12) months of the Term and, if vacated during such year, to prepare the Premises for re-occupancy, and to show the Premises to current and prospective insurers, brokers, purchasers and lenders of the Building at reasonable hours upon reasonable prior verbal notice at any time during the Term;

(e) To retain at all times, and to use in appropriate instances, keys to all doors within and into the Premises. Landlord agrees to use all commercially reasonable efforts not to disturb or interfere with Tenant's use of the Premise. No locks shall be changed without the prior written consent of Landlord;

(f) To decorate or maintain or to make repairs, alterations, additions or improvements, whether structural or otherwise, in and about the Property or the Building, or any part of any thereof, and for such purposes to enter upon the Premises upon reasonable prior verbal notice (except in an emergency, in which case no notice shall be necessary), and, during the continuance of any such work, to take into and upon or through the Premises all materials required to make such decorations, repairs, maintenance, alterations or improvements, to erect scaffolding and other structures as may be reasonably required, to close roads, drives, doors, entryways, public space and corridors in the Property or the Building on a temporary basis, and to interrupt or suspend temporarily Building services and facilities, all without abatement of Rent or affecting any of Tenant's obligations hereunder, so long as the Premises are reasonably accessible;

(g) To have and retain a paramount title to the Premises free and clear of any act of Tenant purporting to burden or encumber it;

(h) To grant to anyone the exclusive right to conduct any business or render any service in or to the Property, provided such exclusive right shall not operate to exclude Tenant from the use expressly permitted herein;

(i) To approve the location of fixtures, equipment and other articles of personal property in and about the Premises and the Building so as not to exceed the legal live load;

(j) To prohibit the placing of vending or dispensing machines of any kind in or about the Premises, except for vending or dispensing machines for the sole use of Tenant and its employees;

(k) To issue rules and regulations, from time to time, governing the use of the Parking Areas (as defined below); and

(l) To limit or prevent access to the Property or otherwise take such action or preventative measures deemed necessary by Landlord for the safety of tenants or other occupants of the Property or the protection of the Property and other property located thereon or therein, in case of fire, invasion, insurrection, riot, civil disorder, public excitement or other dangerous condition, or threat thereof.

14. COVENANT AGAINST LIENS. Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen to be placed against the Property, the Building or the Premises in connection with any work or Alterations on or respecting the Premises not performed by or at the request of Landlord, and Tenant shall indemnify and hold Landlord harmless from and against any claims, liabilities, judgments, or costs (including attorneys' fees) arising out of the same or in connection therewith. In the case of any such lien attaching, Tenant shall pay off and remove or bond over any such lien to Landlord's satisfaction within fifteen (15) days after the filing thereof. If any such lien attaches, and Tenant falls to remove or bond over such lien within said fifteen (15) day period, Landlord may, but shall not be obligated to, pay the amount necessary to remove such lien without being responsible for making an investigation as to the validity or accuracy thereof, and the amount so paid, together with all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in connection therewith, shall be deemed Rent hereunder, payable immediately upon demand. Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of Laws or otherwise, to attach to or be placed upon Landlord's title or interest in the Property, the Building or the Premises, and any such claim to a lien or encumbrance shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises, and shall in all respects be subordinate to Landlord's title to the Property and Premises. Tenant shall give Landlord notice at least twenty (20) days prior to the commencement of any work or Alterations on the Premises (or such additional time as may be necessary under applicable Laws), to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility.

15. WAIVERS AND INDEMNITIES.

15.1 Waiver.

(a) Except to the extent Landlord expressly indemnifies Tenant in accordance withSection 15.2 or otherwise expressly provides any other rights, indemnities or remedies for the benefit of Tenant under this Lease, Tenant waives all claims it may have against the Landlord Parties for any damage either to person or property or loss of business due to the Property, the Premises or any part of any thereof or any appurtenances thereto or improvements thereon not being in good condition or becoming out of repair, or due to the happening of any accident in or about the Property or the Premises or due to any act or neglect of Tenant or any tenant or occupant of the Property, or of any other person, including the Landlord Parties. This provision shall apply particularly (but not exclusively) to damage caused by water, snow, frost, steam, sewage, gas, faucets and plumbing fixtures, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the causes specifically enumerated above or to some other cause of an entirely different kind. Tenant further agrees that all Tenant's property upon the Premises or the Property shall be there at the risk of Tenant only, and that Landlord shall not be liable for any damage thereto or theft thereof.

(b) Except to the extent Tenant expressly indemnifies Landlord in accordance withSection 15.2 or otherwise expressly provides any other rights, indemnities or remedies for the benefit of Landlord under this Lease, Landlord waives all claims it may have against Tenant for any damage either to person or property or loss of business due to the Property, the Premises or any part of any thereof or any appurtenances thereto or improvements thereon not being in good condition or becoming out of repair, or due to the happening of any accident in or about the Property or the Premises or due to any act or neglect of Landlord or any tenant or occupant of the Property, or of any other person, including the Landlord Parties.

15.2 Indemnification.

(a) Except to the extent caused by the negligence or willful misconduct of any of the Landlord Parties, and subject to the waiver of subrogation provided in accordance with Section 18.1 below, Tenant hereby agrees to indemnify, defend and hold harmless the Landlord Parties from and against any claims or liability for damage to person or property (or for loss or misappropriation of property) occurring in or on the Property or the Premises, arising from any breach or default on the part of Tenant under this Lease, or from any act or omission of Tenant or any employee, agent, servant, invitee or contractor of Tenant, or from Tenant's operations or activities on or use of the Property or the Premises, and from any cost relating thereto (including, without limitation, attorneys' fees), but only to the extent not covered by Landlord's insurance and expressly excluding any consequential or special damages.

(b) Except to the extent caused by the negligence or willful misconduct of any of Tenant or its officers, shareholders, directors, invitees, agents or employees, and subject to the waiver of subrogation provided in accordance with Section 18.1 below, Landlord hereby agrees to indemnify, defend and hold harmless Tenant and its officers, shareholders, directors, clients, servants, agents and employees from and against any claims or liability for damage to person or property (or for loss or misappropriation of property) and the reasonable costs relating thereto (including, without limitation, attorneys' fees) to the extent any such damage, injury or death is the result of the negligence or willful misconduct of any of the Landlord Parties, but only to the extent not covered by Tenant's insurance and expressly excluding any consequential or special damages.

15.3 Waiver of Notice. Except for any notices expressly provided for in this Lease, Tenant hereby expressly waives the service of any notice of intention to terminate this Lease or to re-enter the Premises, and waives the service of any demand for payment of Rent or for possession and waives the service of any other notice or demand prescribed by any Laws.

15.4 No Implicit Waivers. No waiver of any condition expressed in this Lease shall be implied by any neglect of Landlord to enforce any remedy on account of the violation of such condition if such violation be continued or repeated subsequently, and no express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of moneys by Landlord from Tenant after the termination in any way of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given to Tenant prior to the receipt of such moneys, it being agreed that after the service of notice of the commencement of a suit or after final judgment for possession of the Premises, Landlord may

receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

16. DEFAULTS AND LANDLORD'S REMEDIES.

16.1 Defaults. It shall be a "default" or "event of default" under this Lease if: (i) Tenant fails to pay, when due, Rent or any installment thereof or any other sum required to be paid by Tenant under this Lease (including any required replenishment of the Security Deposit), and such failure continues for more than five (5) days after written notice; (ii) any guarantor or surety ("Guarantor") of Tenant's obligations under this Lease fails to pay, when due, any sum required to be paid by such Guarantor under any guaranty or surety agreement ("Guaranty") that Landlord may have required in connection with this Lease, and such failure continues for more than five (5) days after written notice; (iii) Tenant or any Guarantor fails to observe or perform any of the covenants, conditions or obligations not relating to the payment of Rent or other sums that Tenant or such Guarantor is required to observe or perform under this Lease or any Guaranty, respectively, and such failure continues for more than thirty (30) days after notice thereof to Tenant (unless such failure shall give rise to an emergency or hazardous condition requiring an immediate cure, in which case, no notice is necessary and no cure period shall be allowed); provided, however, that Landlord shall not be entitled to exercise its remedies on account of any default described in this clause (iii) if (a) such default cannot reasonably be cured within thirty (30) days, (b) Tenant or any Guarantor commences to cure such default within said thirty (30) day period and thereafter diligently and continuously proceeds with such cure, and (c) Tenant or any Guarantor cures such default within a reasonable period of time not to exceed sixty (60) days after Landlord's notice of such default; (iv) the interest of Tenant in this Lease is levied on under execution or other legal process; (v) an Event of Bankruptcy (as defined below) occurs; (vi) Tenant or any Guarantor dissolves or ceases to exist; (vii) Tenant shall attempt to effect a Transfer in violation of Section 11 hereof; or (viii) any material misrepresentation herein, or material misrepresentation or omission in any financial statements or other materials provided by Tenant or any Guarantor in connection with negotiating or entering this Lease or in connection with any Transfer. For purposes of this Lease, an "Event of Bankruptcy" means the occurrence of any one or more of the following events or circumstances:

(a) If Tenant or any Guarantor shall file in any court a petition in bankruptcy or insolvency or for reorganization within the meaning of the Federal Bankruptcy Code, or for arrangement within the meaning of such Code (or for reorganization or arrangement under any future bankruptcy or reform act for the same or similar relief), or for the appointment of a receiver or trustee of all or a portion of the property of Tenant or any Guarantor, or

(b) If an involuntary petition in bankruptcy or insolvency or for reorganization within the meaning of the Federal Bankruptcy Code shall be filed against Tenant or any Guarantor, and such petition shall not be vacated or withdrawn within thirty (30) days after the date of filing thereof, or

(c) If Tenant or any Guarantor shall make an assignment for the benefit of creditors, or

(d) If Tenant or any Guarantor shall be adjudicated a bankrupt or shall admit in writing an inability to pay its debts as they become due, or

(e) If a receiver shall be appointed for the property of Tenant or any Guarantor by order of a court of competent jurisdiction (except where such receiver shall be appointed in an involuntary proceeding and be withdrawn within thirty (30) days from the date of his appointment).

16.2 Landlord's Remedies. Upon a default under this Lease, Landlord at its option may, without notice or demand of any kind to Tenant or any Guarantor or other person, exercise any one or more of the following described remedies in addition to all other rights and remedies provided at law or in equity:

(a) Landlord may terminate this Lease and the Term created hereby, in which event Landlord may forthwith repossess the Premises and be entitled to recover forthwith as damages a sum of money equal to all Rent accrued and unpaid for the period up to and including the date of termination, plus as final and liquidated damages (and not as a penalty) Landlord's reasonable estimate of the amount of Rent that would be payable from the date of such termination through the balance of the scheduled Term, less the fair rental value of the Premises for said period (taking into consideration the time to relet the Premises, and taking into consideration and reducing said fair rental value by, the Costs of Re-Letting [as defined below]), plus any other sum of money and damages owed by Tenant to Landlord.

(b) Landlord may terminate Tenant's right of possession and may repossess the Premises by forcible entry or detainer suit, by taking peaceful possession or otherwise, without terminating this Lease. If Landlord terminates Tenant's right of possession without terminating this Lease, Landlord shall take reasonable measures to the extent required by law, to relet the same for the account of Tenant, for such rent and upon such terms as shall be reasonably satisfactory to Landlord. Reasonable measures shall not obligate Landlord to show the Premises before showing other space in the Building to a prospective tenant. For the purpose of such reletting, Landlord is authorized to decorate, repair, remodel, alter or otherwise improve the Premises and to relet the Premises at such rental rate (which may be higher than the rental rate then applicable under this Lease), as Landlord reasonably determines to be necessary to maximize the effective rent on reletting. If Landlord shall fail to relet the Premises, Tenant shall pay to Landlord as damages the amount of the Rent reserved in this Lease for the balance of the Term as due hereunder. If the Premises are relet and a sufficient sum shall not be realized from such reletting after paying all of the costs and expenses of all decoration, repairs, remodeling, alterations, installations and additions and the expenses of such reletting (including all allowances, abatements and other tenant concessions required under then-existing market conditions) (collectively, the "Costs of Re-Letting"), to satisfy the Rent provided for in this Lease, Tenant shall satisfy and pay the same upon demand therefor from time to time. Tenant shall not be entitled to any rents received by Landlord in excess of the Rent provided for in this Lease. Tenant agrees that Landlord may file suit to recover any sums falling due under the terms of this paragraph (b) from time to time and that no suit or recovery of any portion due Landlord hereunder shall be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord.

(c) Landlord may perform the obligation which is the subject of such default for the account and at the expense of Tenant. All costs incurred by Landlord in performing such obligation, plus an administrative fee equal to fifteen percent (15%) of such costs, plus all attorneys' fees and expenses of Landlord incurred in enforcing any of

the obligations of Tenant under this Lease shall become Rent hereunder and shall be due and payable by Tenant immediately on demand.

(d) Landlord may additionally (i) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof, and (ii) sue Tenant or any Guarantor for and collect any unpaid Rent which has accrued.

16.3 **Default Interest**. If any payments of Rent remain unpaid for more than five (5) days after the date when due, unless Tenant has not been in default of any monetary obligation under this Lease within the previous twelve (12) month period, such payments shall bear interest from the date when due until the date paid at a rate of interest equal to the lesser of: (i) the maximum rate of interest permitted by applicable Laws; or (ii) six percent (6%) in excess of the "prime rate" or "corporate base rate" of interest rate announced or published from time to time by a major Chicago bank selected by Landlord (the "Prime Rate"), but in no event at a rate which is more than the highest lawful rate allowable in the state of Illinois. Landlord's right to receive such interest shall not, in any way, limit any of Landlord's other remedies under this Lease or at law or equity.

16.4 **Late Charge**. If any payment or installment of Rent owed by Tenant under this Lease is not paid when due, unless Tenant has not been in default of any monetary obligation under this Lease within the previous twelve (12) month period, in addition to the amounts due under Section 15.3 above, Tenant shall pay to Landlord to compensate it for its additional for bookkeeping and administrative expenses resulting from such late payment an amount equal to the greater of $100.00 or five percent (5%) of the amount of Rent overdue for each and every thirty (30) day period or portion thereof that such Rent remains unpaid.

16.5 **Other Matters**. No re-entry or repossession, repairs, changes, alterations and additions, reletting, acceptance of keys from Tenant, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or accept a surrender of the Premises, nor shall the same operate to release the Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord or its agent to Tenant. To the fullest extent permitted by Laws, all rent and other consideration paid by any replacement tenants shall be applied: first, to the all reasonable costs and expenses incurred by Landlord for any repairs, maintenance, changes, alterations and improvements to the Premises, brokerage commissions, advertising costs, attorneys' fees, any customary free rent periods or credits, tenant improvement allowances, take-over lease obligations and other customary, necessary or appropriate economic incentives required to enter leases with replacement tenants, and costs of collecting rent from replacement tenants, second, to the payment of any Rent theretofore accrued, and the residue, if any, shall be held by Landlord and applied to the payment of other obligations of Tenant to Landlord as the same become due (with any remaining residue to be retained by Landlord). Rent shall be paid without any prior demand or notice therefor (except as expressly provided herein) and without any deduction, set-off or counterclaim, or relief from any valuation or appraisement laws. Landlord may apply payments received from Tenant to any obligations of Tenant then accrued, without regard to such obligations as may be designated by Tenant. Landlord shall be under no obligation to observe or perform any provision of this Lease on its part to be observed or performed which accrues after the date of any default by Tenant hereunder not cured within the times permitted hereunder. The times set forth herein for the curing of defaults by Tenant are of the essence of this Lease. Tenant hereby irrevocably waives any right otherwise available under any Laws to redeem or reinstate this Lease.

16.6 <u>Landlord's Default</u>. If Landlord shall fail to perform any term or provision under this Lease required to be performed by Landlord, Landlord shall not be deemed to be in default hereunder nor subject to any claims for damages of any kind, unless such failure shall have continued for a period of thirty (30) days after written notice thereof by Tenant; provided, if the nature of Landlord's failure is such that more than thirty (30) days are reasonably required in order to cure, Landlord shall not be in default if Landlord commences to cure such failure within such thirty (30) day period, and thereafter reasonably seeks to cure such failure to completion. The aforementioned periods of time permitted for Landlord to cure shall be extended for any period of time during which Landlord is delayed in, or prevented from, curing due to fire or other casualty, strikes, lock-outs or other labor troubles, shortages of equipment or materials, governmental requirements, power shortages or outages, acts or omissions by Tenant or other Persons, and other causes beyond Landlord's reasonable control. If Landlord shall fail to cure within the times permitted for cure herein, Landlord shall be subject to such remedies as may be available to Tenant under applicable Laws (subject to the other provisions of this Lease); provided, in recognition that Landlord must receive timely payments of Rent and operate the Property, Tenant shall have no right of self-help to perform repairs or any other obligation of Landlord, and shall have no right to withhold, set-off, or abate Rent.

17. SURRENDER OF POSSESSION.

17.1 <u>Condition of Premises</u>. At the expiration or earlier termination of this Lease by lapse of time or otherwise, or upon termination of Tenant's right of possession without terminating this Lease, Tenant shall surrender possession of the Premises to Landlord and deliver all keys to the Premises to Landlord, and shall return the Premises and all equipment and fixtures of Landlord to Landlord in as good condition as when Tenant originally took possession, ordinary wear and tear, loss or damage by fire or other insured casualty, and damage resulting from the act of Landlord or any other of its employees and agents excepted, failing which Landlord may restore the Premises and such equipment and fixtures to such condition and Tenant shall pay the cost thereof to Landlord as Rent immediately upon demand. Except as provided below, all improvements, fixtures and other items in or upon the Premises (including without limitation all Alterations, but expressly excluding movable office furniture, trade fixtures, office equipment and other personal property belonging to Tenant that they may be removed without permanent structural damage to the Premises or the Building), whether temporary or permanent in character and whether made by Landlord or Tenant, shall become Landlord's property and shall remain upon the Premises at the expiration or earlier termination of this Lease by lapse of time or otherwise or upon a termination of Tenant's right of possession, without compensation to Tenant. Notwithstanding the foregoing, if within ten (10) days prior to the expiration or earlier termination of this Lease or Tenant's right of possession thereafter Landlord so directs by notice, Tenant shall promptly remove such of the foregoing items as are designated in such notice and restore the Premises to the condition prior to the installation of such items. If Tenant does not remove such property upon the expiration or earlier termination of this Lease, or upon the termination of Tenant's right of possession, at Landlord's election: (i) Tenant shall be conclusively presumed to have conveyed the same to Landlord under this Lease as a bill of sale without payment or credit by Landlord, or (ii) Tenant shall be conclusively presumed to have forever abandoned such property, and without accepting title thereto, Landlord may, at Tenant's expense, remove, store, destroy, discard or otherwise dispose of all or any part thereof without incurring liability to Tenant or to any other person, and Tenant shall pay Landlord immediately upon demand the expenses incurred in taking such actions. Unless prohibited by applicable Laws, Landlord shall have a lien against such property for the costs incurred in removing and storing the same. Tenant's obligations under this <u>Subsection 17.1</u> shall survive the expiration or earlier termination of the Term or a termination of Tenant's right of possession.

17.2 Holding Over. If Tenant retains possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, whether by lapse of time or otherwise, or after a termination of Tenant's right of possession, then Landlord may, at Landlord's sole election at any time after the termination of this Lease or Tenant's right of possession, serve written notice on Tenant that such holding over constitutes either: (i) the creation of a month-to-month tenancy upon each of the terms herein provided as may be applicable to such month-to-month tenancy, except that Tenant shall pay to Landlord Base Rent for each month or portion thereof in the amount set forth below, plus all Additional Rent (including, without limitation, the Tax Amount, the Operating Expense Amount, the Estimated Tax Payments and the Estimated Operating Expense Payments) coming due during such period, or (ii) the creation of a tenancy at sufferance upon each of the terms herein provided as may be applicable to such tenancy at sufferance, except that Tenant shall pay to Landlord a per diem rent equal to the per diem Base Rent set forth below, plus the per diem amount of all Additional Rent (including, without limitation, the Tax Amount, the Operating Expense Amount, the Estimated Tax Payments and the Estimated Operating Expense Payments). If no written notice is served by Landlord, then a tenancy at sufferance with Rent as stated in (ii) above shall have been created. The provisions of this Subsection shall not operate as a waiver by Landlord of any right of re-entry herein provided. In addition to and not in limitation of all other remedies set out in this Subsection, Tenant shall be liable for all damages (consequential as well as direct) sustained by Landlord on account of Tenant's holding over. Base Rent payable during any holding over shall be as follows:

(a) during the first thirty (30) days following the expiration or earlier termination of this Lease or the termination of Tenant's right of possession, one hundred fifty percent (150%) of the Base Rent for the calendar month immediately preceding the expiration or termination date of this Lease or the termination of Tenant's right of possession; and

(b) from and after the thirty-first (31st) day following the expiration or earlier termination of this Lease or the termination of Tenant's right of possession, two hundred percent (200%) of the Base Rent for the calendar month immediately preceding the expiration or termination date of this Lease or the termination of Tenant's right of possession.

18. INSURANCE.

18.1 Waiver of Subrogation. Landlord and Tenant each hereby waive all claims against the other for loss of or damage to the Property or Premises or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies. Inasmuch as this mutual waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Landlord and Tenant each agree to give each insurance company that has issued, or in the future may issue, to it policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver.

18.2 Tenant's Insurance. Tenant shall carry insurance during the entire Term insuring Tenant and Landlord and their respective agents and employees, and any other parties designated by Landlord from time to time (including, without limitation, any Mortgagee [as defined below]) as their interests may appear, with terms, coverages and in companies satisfactory to Landlord, and with such increases in limits as Landlord may from time to time request or as any Mortgagee may from time to time

request or as any Mortgagee may from time to time require, but initially Tenant shall maintain the following coverages in the following amounts:

(a) Comprehensive or Commercial General Liability insurance, including Contractual Liability coverage of the indemnification provisions contained in this Lease and host liquor liability insurance, with limits for bodily injury or personal injury to or death of any person, or more than one (1) person, or for damage to property in an amount of not less than $1,000,000 per occurrence/$3,000,000 aggregate. The coverage amounts may be provided through an umbrella or excess liability policy. The Comprehensive or Commercial General Liability policy shall include Landlord, Landlord's management agent and any Mortgagee designated by Landlord from time to time as additional insureds on a primary and non-contributory basis to any insurance carried by Landlord, Landlord's management agent and any Mortgagee.

(b) Property damage insurance against "all risks" of physical loss for the full insurable replacement value of the initial build-out of the Premises, all Alterations, all Personal Property, and of all furniture, trade fixtures, equipment, business records, merchandise and all other items of Tenant's personal property on the Premises.

(c) Worker's Compensation Insurance in amounts required by the State of Illinois, including Voluntary Compensation, Broad Form All States Endorsement, and employer's liability insurance in an amount of not less than $500,000 per occurrence.

(d) Automobile Liability Insurance with limits for bodily injury or personal injury to or death of any person, or more than one (1) person, or for damage to property in an amount of not less than $1,000,000 combined single limit, including Employer's Owned, Non-Owned and Hired Car coverage.

18.3 Evidence of Insurance. Tenant shall, prior to the commencement of the Term, furnish to Landlord certificates of insurance evidencing the insurance coverage required under this Section 18, and Tenant shall deliver renewals thereof to Landlord not less than thirty (30) days prior to the end of the term of such coverage, which certificates shall state that such insurance coverage may not be changed or canceled without at least thirty (30) days' prior written notice to Landlord and any Mortgagee identified by Landlord from time to time. Said certificates evidencing liability insurance shall be in the form of ACORD 25 and certificates evidencing property insurance in the form of ACORD 27.

18.4 Landlord's Insurance. Landlord may maintain during the Term the following insurance with such coverages and deductibles as Landlord may determine from time to time, the cost of which shall be included in "Operating Expenses": comprehensive (or commercial) general liability insurance; worker compensation insurance as required by statute; employer's liability insurance; fire and extended coverage or "all-risk" property damage insurance; business interruption insurance with coverage of at least twelve (12) months rent; and such other policies as Landlord shall deem appropriate or that may be required by any Mortgagee.

19. FIRE OR CASUALTY. If the Premises or the Building (including machinery or equipment used in the operation of the Building) shall be destroyed or damaged by fire or other casualty and if the Premises or Building may be repaired and restored within two hundred seventy (270) days after such casualty, then Landlord shall repair and restore the same with reasonable promptness, but only to the extent insurance proceeds are actually made available to Landlord for purposes of repair and restoration; provided, however, that Landlord shall only be obligated to repair and restore any improvements made to

the Premises to the extent that: (i) Landlord paid for the initial construction of such improvements (either directly or through an allowance granted to Tenant), and (ii) Landlord receives the insurance proceeds related to such improvements under the insurance described in clause (b) of Subsection 18.2 hereof. Tenant agrees to execute all documents and take all actions necessary to make the insurance proceeds described in clause (ii) of the immediately preceding sentence available to Landlord for the repair and restoration of the Premises. Notwithstanding anything contained herein to the contrary, if the Premises or the Building are substantially damaged or destroyed during the last twelve (12) months of the Term, either Landlord or Tenant shall have the right to terminate this Lease as of the date of the fire or other casualty by giving notice to the other within thirty (30) days after the date of the fire or casualty, in which event, Rent shall be apportioned on a per diem basis and paid to the date of such fire or casualty. Notwithstanding anything contained herein to the contrary, if in Landlord's reasonable judgment either: (1) such damage renders the Premises untenantable in whole or in part and cannot reasonably be repaired and restored within two hundred seventy (270) days, or (2) sufficient insurance proceeds are not or will not be made available to Landlord for repair or restoration, or (3) the cost of the repairs or restoration would exceed twenty five percent (25%) of the replacement value of the Building, or (4) the nature of such work would make termination of this Lease necessary or convenient, then Landlord shall have the right to cancel and terminate this Lease as of the date of such damage upon giving notice to Tenant at any time within ninety (90) days after such damage shall have occurred. In the event any fire or casualty renders the Premises untenantable, in whole or in part, and if this Lease shall not be terminated by reason of such damage, then Base Rent shall abate during the period beginning with the date of such fire or other casualty and ending with the date when Landlord has substantially completed all repairs to the Premises required to be completed by Landlord, by an amount bearing the same ratio to the total amount of Base Rent for such period as the untenantable portion of the Premises bears to the entire Premises. In any event, Base Rent shall only abate to the extent Landlord actually recovers rent loss insurance proceeds specifically allocated to the Base Rent due under this Lease. Landlord shall not otherwise be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from any damage or the repair thereof relating to any fire or other casualty. Tenant agrees that Landlord's obligation to restore, and the abatement of Rent provided herein, shall be Tenant's sole recourse in the event of such damage, and waives any other rights Tenant may have under any applicable Laws to terminate the Lease by reason of damage to the Premises or Property. Tenant acknowledges that this Section 19 represents the entire agreement between the parties respecting damage to the Premises or Property.

20. CONDEMNATION. If the whole or any part of the Premises or the Building or any substantial portion of the Parking Areas shall be taken or condemned by any competent authority for any public use or purpose or if any adjacent property or street shall be condemned or improved in such a manner as to require the use of any part of the Premises or of the Building or the Parking Areas, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the right (but not the obligation) to end the Term upon the date when the possession of the part so taken shall be required for such use or purpose, and current Rent shall be apportioned as of the date of such termination. Tenant shall have no right to any apportionment of or share in any condemnation award or judgment for damages made for the taking of any part of the Premises or the Property, but may seek its own award for loss of or damage to Tenant's business or its property resulting from such taking, provided that such an award to Tenant does not in any way diminish the award payable to Landlord on account of such taking.

21. NOTICES.

21.1 Addresses. All notices to be given by one party to the other under this Lease shall be in writing (except as expressly provided herein to the contrary) and shall be sent by

either: (i) United States certified mail, return receipt requested, postage prepaid, (ii) national air courier service for overnight delivery, or (iii) hand delivery as follows:

(a) To Landlord: The Prudential Insurance Company of America
Two Prudential Plaza
180 North Stetson Street, Suite 3275
Chicago, Illinois 60601
Attention: Vice President-PRISA

With a copy to: PDC Properties, Inc.
One O'Hare Center
6250 N. River Road, Suite 4050
Rosemont, IL 60018
Attention: Susan Lehman

or to such other person or at such other address designated by notice sent to Tenant, and during the Term with a copy to the address to which Rent is then being paid under this Lease.

(b) To Tenant: Ulta Salon, Cosmetics & Fragrance, Inc.
1135 Arbor Drive
Romeoville, Illinois 60446
Attention: Senior Vice President of Real Estate

or to such other person or at such other address designated by notice sent to Landlord, and during the Term with a copy to the Premises.

21.2 Method. Mailed notices shall be deemed to have been given two (2) business days after posting in the United States mails. Notices sent by overnight courier shall be deemed to have been given one (1) business day after delivery to the overnight courier, and notices which are hand delivered shall be deemed to have been given on the day tendered for delivery.

22. ADDITIONAL COVENANTS OF TENANT. Tenant hereby covenants and agrees to comply with, and to cause its employees, agents, clients, customers, invitees and guests to comply with, the following provisions:

(a) Any sign, lettering, picture, notice, or advertisement installed within the Premises or on the Property shall be installed at Tenant's expense and in compliance with all Laws. Without obtaining Landlord's prior, written consent (which consent may be withheld in Landlord's sole discretion) no sign, lettering, picture, notice or advertisement may be placed on any portion of the Premises which is visible from outside the Premises or on any portion of the Property.

(b) Tenant shall not advertise the business, profession or activities of Tenant in any manner which violates the letter or spirit of any code of ethics adopted by any recognized association or organization pertaining thereto, or use the name of the Building or the business park in which the Building is located for any purpose other than for identifying Tenant's business address, or use any picture or likeness of the Building in any letterheads, envelopes, circulars, notices, advertisements, containers or wrapping material, without Landlord's prior consent in writing.

(c) Except with respect to satellite or other communication dishes or antennas as may be permitted by applicable Laws and the Park Covenants (as defined below) and as are installed: (i) in locations on the roof of the Building specified by Landlord; (ii) subject to Landlord's reasonable size restrictions, utility and structural load requirements and screening criteria; (iii) with the use of Landlord's roofing contractor; and (iv) subject to other reasonable requirements relating to any warranty, guaranty or service contract applicable to the roof of the Building, Tenant shall not place any radio or television antenna on the roof of the Building or on any other part of the Property other than inside the Premises, or operate or permit to be operated any musical or sound producing instrument or device inside or outside the Premises that may be heard outside the Premises. Tenant shall not make noises, cause disturbances or vibrations or use or operate any electrical or electronic devices or other devices that emit sound or other waves or disturbances, or create odors, any of which may be offensive to other tenants and occupants of the Building or that would interfere with the operation of any device or equipment or radio or television broadcasting or reception from or within the Building or elsewhere.

(d) Tenant shall not obstruct sidewalks, roadways, Parking Areas or entrances in and about the Property. Tenant shall not place objects against doors or windows that would be unsightly from the exterior of the Building, and will promptly remove same upon notice from Landlord. Tenant shall store and dispose of refuse as directed by Landlord, including, without limitation, storing and disposing of all refuse, in a neat and clean condition so as not to be visible to members of the public and so as not to create any health or fire hazard.

(e) Tenant shall not make any room-to-room canvass to solicit business from other tenants in the Building and shall not exhibit, sell or offer to sell, use, rent or exchange any item or service in or from the Premises.

(f) Tenant shall not waste electricity or water and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air conditioning systems, and shall not adjust any controls other than room thermostats installed for Tenant's use or take any action which could jeopardize the warranties covering the heating, ventilating or air conditioning systems. Tenant shall comply with all programs instituted by Landlord under applicable federal, state or local energy conservation standards or other governmental requirements or directives (whether mandatory or voluntary).

(g) Door keys for doors in the Premises will be furnished on the Commencement Date by Landlord. Tenant shall not affix additional locks on doors and shall purchase duplicate keys only from Landlord. At the end of the Term or earlier termination of the Lease or upon a termination of Tenant's right of possession, Tenant shall return all keys to Landlord and will disclose to Landlord the combination of any safes, cabinets or vaults left in the Premises in accordance with the terms and conditions of this Lease.

(h) Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed and secured. In addition, the parties acknowledge that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal

acts, or ensure safety of persons or property. The risk that any safety or security device, service or program may not be effective, or may malfunction, or be circumvented by a criminal, is assumed by Tenant with respect to Tenant's property and interests, and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such criminal acts and other losses. Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord or required by applicable Laws.

(i) Peddlers, solicitors and beggars shall be reported promptly to Landlord.

(j) Tenant shall not install or operate machinery or any mechanical devices of a nature not directly related to Tenant's permitted use of the Premises.

(k) Tenant shall comply with all covenants, conditions and restrictions of record encumbering or relating to the Property or any portion of either thereof (including, without limitation, any declaration of covenants, conditions, restrictions and easements encumbering the Park in which the Property is located) (the "Park Covenants"), and with all rules and regulations issued from time to time by Landlord or the Association.

(l) Tenant will not in any manner deface or injure the Property or any part of either thereof or overload the floors of the Premises.

(m) Tenant will not use the Premises for lodging or sleeping purposes or for any immoral or illegal purposes.

(n) Tenant shall not at any time manufacture or sell, and shall not at any time permit the manufacture or sale of any spirituous, fermented, intoxicating or alcoholic liquors on the Premises or the Property. If Tenant desires to permit the use of alcoholic beverages on the Premises, it may do so only in connection with social events not generally open to the public conducted by Tenant wholly within the Premises, provided that (i) such events shall be in the ordinary course of Tenant's business and shall not involve the sale of any food or beverages, (ii) such events shall not violate any Laws, Park Covenants or other provisions of this Lease, and shall in no event unreasonably disturb or bother other tenants or occupants of the Building, and (iii) Tenant shall in all cases obtain, or maintain in full force and effect full liquor liability insurance in the amount of Tenant's insurance as required under Section 18.2(a) and otherwise in accordance with Section 18.1, Section 18.2 and Section 18.3.

(o) In no event shall Tenant permit on the Property flammables or explosives or any other article of an intrinsically dangerous nature. If by reason of Tenant's failure to comply with the provisions of this Subsection, any insurance coverage is jeopardized or insurance premiums are increased, in addition to all other rights and remedies available to Landlord upon a default by Tenant under this Lease, Landlord shall have the right to require Tenant to make immediate payment of the increased insurance premium, if any.

(p) Tenant shall not introduce, use, handle, generate, treat, transport, store or dispose of, or permit the introduction, use, handling, generation, treatment, transportation, storage or disposal of any Hazardous Materials (as defined below) in, on, under, to, from, around or about the Premises, the Building or the Property, except for Hazardous Materials contained in products which are reasonably and customarily used in general office uses, such as photocopy machine solutions and cleaning solvents, as long as such Hazardous Materials are only used in compliance with all Laws (without the need

for a special permit) and all manufacturer's and supplier's instructions and recommendations, and in quantities and for purposes which are reasonably and customarily used in general office uses. Tenant shall indemnify, defend and hold harmless the Landlord Parties from and against all fines, penalties, liens, suits, procedures, claims, demands, liabilities, damages (including consequential damages), actions, causes of action, costs and expenses of every kind and nature whatsoever (including, without limitation, reasonable attorneys', engineers', experts' and consultants' fees and costs of testing, monitoring, remediation, removal and cleanup), contingent or otherwise, known or unknown, incurred or imposed, arising directly or indirectly out of or in any way connected with Tenant's breach of the covenants set forth in this Subsection 22(p) or otherwise in connection with the introduction, use, handling, generation, treatment, transportation, storage or disposal of any Hazardous Materials. Tenant's obligations under the immediately preceding sentence shall survive the expiration or earlier termination of this Lease and a termination of Tenant's right of possession. For purposes hereof, "Hazardous Materials" shall mean (i) substances defined as "hazardous substances", "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., Sec. 9061, et. seq.), the Hazardous Materials Transportation Act (49 U.S.C., Sec. 1802), the Resource Conservation and Recovery Act (42 U.S.C., Sec. 6901 et. seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C., Sec. 2601, et. seq.) or in any other Laws now or hereafter in effect governing similar matters, or in any regulations adopted or publications promulgated pursuant thereto; (ii) asbestos and asbestos containing materials; and (iii) petroleum and petroleum based products. Tenant shall promptly notify Landlord of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Materials on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Materials, (iii) any release, discharge or nonroutine, improper or unlawful disposal or transportation of any Hazardous Materials on or from the Premises, and (iv) any matters where Tenant is required by Laws to give a notice to any governmental or regulatory authority respecting any Hazardous Materials on the Premises.

23. ESTOPPEL CERTIFICATES; MORTGAGE ISSUES.

23.1 Estoppel Certificates. Tenant agrees that from time to time upon not less than ten (10) business days prior request by Landlord or any Mortgagee, Tenant will deliver to Landlord or such Mortgagee an estoppel certificate substantially in the form of **Exhibit C** attached hereto and made a part hereof or in such other form as Landlord or any Mortgagee may request. In the event Tenant fails or refuses to deliver any such certificate within said 10-business day period, in addition to all other rights and remedies available under this Lease, at law or in equity upon a default by Tenant under this Lease, Tenant shall be deemed to have accepted, agreed to and certified to, each of the statements set forth in any such certificate.

23.2 Subordination and Attornment. Landlord may sell the Land and become the tenant under a ground or underlying lease of the Land and this Lease and all rights of Tenant hereunder will then be subject and subordinate to such underlying lease and any extensions or modifications thereof. This Lease and all of Tenant's rights hereunder shall also be subject and subordinate to any mortgage or mortgages (and the liens thereof) now or at any time hereafter in force against the Building, the Land and/or the underlying leasehold estate, and to all advances made or hereafter to be made upon the security thereof. For purposes of this Lease, "Mortgagee"

shall mean the mortgagee, from time to time, under any mortgage granted by Landlord and now or hereafter encumbering the Property or any portion thereof or interest therein. Tenant shall execute such further instruments subordinating this Lease to any such mortgage or mortgages as Landlord from time to time may request. Tenant covenants and agrees that, if by reason of any default on the part of Landlord herein as tenant under said underlying lease, or as mortgagor under any mortgage to which this Lease is subject and subordinate, said underlying lease is terminated or such mortgage is foreclosed by summary proceedings, voluntary agreement or otherwise, Tenant, at the election of the landlord under said underlying lease or the Mortgagee of such mortgage, as the case may be, will attorn to and recognize such landlord or Mortgagee as the "Landlord" under this Lease. Tenant further agrees to execute and deliver at any time upon request of Landlord, any Mortgagee or any party which shall succeed to the interest of Landlord as tenant under said underlying lease, any instrument to evidence such attornment. However, in the event of attornment, no Mortgagee or any party which shall succeed to the interest of Landlord as tenant under said underlying lease shall be: (i) liable for any act or omission of Landlord, or subject to any offsets or defenses which Tenant might have against Landlord (prior to such Mortgagee or other party becoming Landlord under such attornment), (ii) liable for any security deposit or bound by any prepaid Rent not actually received by such Mortgagee or other party, or (iii) bound by any future modification of this Lease not consented to by such Mortgagee or other party. Tenant waives the provision of any law now or hereafter in effect which may give to Tenant any right of election to terminate this Lease or to surrender possession of the Premises in the event any proceeding is brought by landlord under said underlying lease or the Mortgagee under any such mortgage to terminate said underlying lease or foreclose such mortgage. At the election of any Mortgagee (expressed in a document signed by such Mortgagee), such Mortgagee may make all or some of Tenant's rights and interests in this Lease superior to any mortgage held by such Mortgagee and the lien thereof. Landlord will use commercially reasonable efforts to obtain for Tenant, at Tenant's sole cost and expense, a nondisturbance agreement from any Mortgagee of the Property.

23.3 Notices to Mortgagees. Tenant agrees to give any Mortgagee, by United States certified mail, return receipt requested, postage prepaid, a copy of any notice of default served upon Landlord. Tenant further agrees that if Landlord shall have failed to cure such default, then such Mortgagee shall have an additional thirty (30) days within which to cure such default, and Tenant shall not pursue any remedies it may have for such default and this Lease shall not be terminated, while such cure is being diligently pursued during such period.

23.4 Quiet Possession. Upon payment by Tenant of the Rent due hereunder, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed under this Lease, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, always subject, however, to the terms and conditions of this Lease.

24. MISCELLANEOUS.

24.1 Definition of Landlord. For purposes of this Lease, Landlord shall mean Landlord named above, except that in the event of any sale or other transfer of the Property or the Building, the seller or transferor (and the beneficiaries of any selling or transferring land trust) shall be and hereby is and are entirely freed and relieved of all agreements, covenants and obligations of the Landlord hereunder accruing from and after the effective date of such transfer, and without further agreement between the parties and the purchaser or transferee on any sale or transfer, such purchaser or transferee shall be deemed and held to have assumed and agreed to

carry out any and all agreements, covenants and obligations of the Landlord hereunder accruing from and after the effective date of such sale or transfer.

24.2 **Real Estate Brokers**. Tenant represents that Tenant has dealt with no broker in connection with this Lease other than the Broker, and that insofar as Tenant knows, no other broker or finder negotiated this Lease or is entitled to any fee or commission in connection herewith. Tenant agrees to indemnify, defend and hold the Landlord Parties free and harmless from and against all claims for broker's commissions or finder's fees by any person claiming to have represented or procured, or to have been engaged by, Tenant in connection with this transaction other than the Broker. Landlord represents that Landlord has dealt with no broker in connection with this Lease other than the Broker and that insofar as Landlord knows, no other broker or finder negotiated this Lease or is entitled to any fee or commission in connection herewith. Landlord agrees to indemnify, defend and hold Tenant free and harmless from and against all claims for broker's commissions or finder's fees by any person claiming to have represented or to have been engaged by Landlord in connection with this transaction.

24.3 **Cumulative Remedies**. All rights and remedies of Landlord under this Lease shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

24.4 **Grammatical Interpretation**. The word "Tenant" wherever used herein shall be construed to mean Tenants in all cases where there is more than one Tenant, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

24.5 **Successors and Assigns**. Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit, not only of Landlord and of Tenant, but also of their respective heirs, legal representatives, successors and assigns, provided this clause shall not permit any Transfer contrary to the provisions of Section 11 hereof.

24.6 **No Oral Modifications**. All of the agreements, representations and obligations of Landlord are contained herein, and no modification, waiver or amendment of this Lease or of any of its conditions or provisions shall be binding upon Landlord unless in writing signed by Landlord or by a duly authorized agent of Landlord empowered by a written authorization signed by Landlord.

24.7 **Irrevocable Offer; No Option**. In consideration of Landlord's administrative expense in considering this Lease, Tenant's submission to Landlord of this Lease, duly executed by Tenant, shall constitute Tenant's irrevocable offer to continue for twenty (20) days from and after receipt by Landlord or until Landlord shall deliver to Tenant written notice of rejection of Tenant's offer, whichever shall first occur. If within said 20-day period Landlord shall neither return this Lease duly executed by Landlord nor so advise Tenant of Landlord's rejection of Tenant's offer, then Tenant shall be free to revoke its offer. Although Tenant's execution of this Lease shall be deemed an irrevocable offer by Tenant, the submission of this Lease by Landlord to Tenant for examination shall not constitute a reservation of or option for the Premises. This Lease shall become effective only upon execution thereof by both parties and delivery thereof to Tenant.

24.8 **No Air Rights**. No rights to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease.

24.9 **[Intentionally omitted]**.

24.10 Landlord's Title. Landlord's title to the Property is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord to the Property.

24.11 Recording Prohibited. Neither this Lease, nor any memorandum, affidavit or other writing with respect hereto, shall be recorded in any public record by Tenant or by anyone acting through, under or on behalf of Tenant, and the recording thereof in violation of this provision shall make this Lease null and void at Landlord's election.

24.12 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party, to create the relationship of principal and agent, partnership, joint venture or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any other provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of lessor and lessee.

24.13 Limitation of Liability. Any claim against, or liability or obligation of, Landlord under this Lease or relating to the Premises or the Property shall be limited solely to and satisfied solely from the interest of Landlord in the Property, and none of the Landlord Parties (other than Landlord) shall be individually or personally liable for any claim arising out of this Lease or relating to the Premises or the Property. A deficit capital account of any partner in Landlord shall not be deemed an asset or property of Landlord.

24.14 Excuse for Non-Performance. Except as expressly provided to the contrary in this Lease, this Lease and Tenant's obligation to pay Rent hereunder and to perform all of Tenant's covenants and agreements hereunder shall not be impaired or affected, and Landlord shall not be in default hereunder, if Landlord is unable to fulfill any of its obligations under this Lease because of any accident, governmental restriction, inability to obtain fuel or materials, strike or lockout (whether legal or illegal), act of God or other event, occurrence or circumstance beyond Landlord's reasonable control ("Events of Force Majeure").

24.15 Riders and Exhibits. All exhibits and riders attached to this Lease are made a part hereof and are incorporated herein by reference.

24.16 Authority. Tenant and all Persons signing for Tenant below hereby represent that this Lease has been fully authorized and no further approvals are required (and has any required certificates, licenses, permits and other such items).

24.17 Captions and Severability. The captions of the Sections and Subsections of this Lease are for convenience of reference only and shall not be considered or referred to in resolving questions of interpretation. If any term or provision of this Lease shall be found invalid, void, illegal, or unenforceable with respect to any particular person or entity by a court of competent jurisdiction, it shall not affect, impair or invalidate any other terms or provisions hereof, or its enforceability with respect to any other person or entity, the parties hereto agreeing that they would have entered into the remaining portion of this Lease notwithstanding the omission of the portion or portions adjudged invalid, void, illegal, or unenforceable with respect to such person or entity.

25. PARKING. Tenant agrees not to utilize (and shall cause its agents, employees and invitees to not utilize) more than forty (40) parking spaces in the parking areas located on the Land (the

"Parking Areas"). Tenant agrees to comply with, and to cause its agents, employees and invitees to comply with, all rules and regulations which may from time to time be promulgated by Landlord with respect to use of the Parking Areas. Tenant shall be responsible for supervising the use of the Parking Areas by Tenant's agents, employees and invitees in order to confirm compliance with the terms set forth in this Section 25. If Tenant is in default of its covenants and obligations set forth in thisSection 25, Landlord shall have the right, but not the obligation, in addition to all other rights and remedies under this Lease, to employ or engage one or more individuals to supervise the use of the Parking Areas by Tenant's agents, employees and invitees in order to confirm compliance with the terms set forth in this Section 25, and Tenant shall reimburse Landlord for all costs incurred in connection therewith within ten (10) days after being billed therefor.

26. ERISA. Tenant hereby represents and warrants that:

26.1 Neither Tenant nor any of its "affiliates" (within the meaning of Part V(c) of Prohibited Transaction Exemption 84-14, 49 Fed. Reg. 9494 (1984), as amended ("PTE 84-14")) has, or during the immediately preceding year has exercised the authority to:

(a) appoint or terminate Landlord as investment manager over assets of any "employee benefit plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) invested in, or sponsored by, Landlord; or

(b) negotiate the terms of a management agreement (including renewals or modifications thereof) with Landlord on behalf of any such plan;

26.2 Tenant is not "related" to Landlord (as determined under in Part V(h) of PTE 84- 14);

26.3 Tenant has negotiated and determined the terms of this Lease at arm's length, as such terms would be negotiated and determined by the Tenant with unrelated parties; and

26.4 Tenant is not an "employee benefit plan" as defined in Section 3(3) of ERISA, a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended, or an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. § 2510.3-101 of any such employee benefit plan or plan.

27. ATTORNEYS' FEES. In the event of any litigation between the parties, the prevailing party shall be entitled to obtain, as part of the judgment, all reasonable attorneys' fees, costs and expenses incurred in connection with such litigation, except as may be limited by applicable Laws.

28. AMERICANS WITH DISABILITIES ACT. The parties acknowledge that Title III of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to here as the "ADA") established requirements for accessibility and barrier removal, and that such requirements may or may not apply to the Premises and Property depending on, among other things: (a) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (b) whether such requirements are "readily achievable", and (c) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (x) Landlord shall be responsible for ADA Title III compliance on the common areas of the Property and in the Building common areas and in the common area lobby restrooms, if any, (y) Tenant shall be responsible for ADA Title III compliance in the Premises, and (z) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel"

requirements triggered by Alterations in the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

[Signature Page to Follow]

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Lease as of the date first above written.

TENANT

ULTA SALON, COSMETICS & FRAGRANCE, INC.,
a Delaware corporation

By: /s/ Alex J. Lelli, Jr.
Its: Senior Vice President
Growth & Development

LANDLORD

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a New Jersey corporation

By: PDC Properties, Inc., its agent

By: /s/ Rex Davis
Its: Asset Manager

Exhibit A

Plan of the Premises

Exhibit B

Legal Description of the Land

LOT 1 IN WINDHAM LAKES RESUBDIVISION NO. 22 BEING A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 29, TOWNSHIP 37 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 17, 2001 AS DOCUMENT NO. R2001-43185, IN WILL COUNTY ILLINOIS.

Exhibit C

Form of Tenant Estoppel Certificate

Lease Date:	____________________, 200___
Landlord:	The Prudential Insurance Company of America
Tenant:	______________________________
Premises:	Unit No.____________________
Rentable Area:	____________________square feet

The undersigned, being the Tenant under the above-described Lease hereby certifies to____________________ ("Lender" or "Purchaser") and Landlord as follows:

1. The Lease requires monthly base rent installments of $__________ each, commencing on__________, 20___. The Lease requires monthly installments of Tenant's estimated share of operating expenses of $__________ and of Tenant's estimated share of taxes of $__________.

2. Tenant has not prepaid, and will not prepay, any rent for more than one (1) month, and Tenant is paying rent under the Lease on a current basis with no offsets, credits, claims or setoffs. Tenant has not been given any free rent, partial rent, rebates, rent abatements, or rent concessions of any kind, which are unexpired, except as disclosed herein.

3. A security deposit in the amount of $__________ is being held by Landlord, which amount is not subject to any setoff or reduction or to any increase for interest or other credit due to Tenant. The Lease __________ is or __________ is not (check applicable provision) guaranteed by a third party. If the Lease is guaranteed by a third party, the name of the guarantor is__________ .

____

____

4. The Lease is a valid lease and is in full force and effect. Attached hereto is a true and complete copy of the Lease and all amendments thereto and other agreements relating to the Lease and the rent payable thereunder, which documents represent the entire agreement between the parties.

5. There is no existing default by Landlord, or to Tenant's knowledge, by Tenant under the Lease, and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute an event of default by Landlord, or to Tenant's knowledge, by Tenant, under the Lease. To the best of Tenant's knowledge, no claim, controversy or dispute exists between Tenant and Landlord. As of the date hereof, Tenant is not asserting that the Lease is not fully enforceable by Landlord in accordance with its terms.

6. The Lease provides for a primary term of__________ (__________) months, commencing on __________, 20___and ending on__________, 20___. The Lease contains an option for __________ (__________) additional terms of__________ (__________) years each upon the terms and conditions as set forth in the Lease. Tenant has not exercised any option or rights to renew, extend, amend, modify, or change the term of the Lease, except as may be stated in the Lease. Tenant does not have any preferential right to lease or purchase all or any part of the property of which the Premises are a part (including any rights of first refusal or expansion options). The only interest of Tenant in the Property is that of a tenant pursuant to the terms of the Lease. Tenant hereby waives any option, right of first refusal or other right to purchase the Property or any portion thereof or interest therein that is contained in the Lease or any other document or agreement, if any.

7. There are no actions, voluntary or involuntary, pending against Tenant under the bankruptcy laws of the United States or any state thereof.

8. Tenant is entitled to no rent concessions under the Lease other than the following: .

---

9. All construction, build-out, improvements, or alterations work to be completed to date by Landlord in the Premises under the Lease has been completed.

10. Tenant has obtained or will obtain all necessary licenses and permits to carry on its business at the Premises prior to opening for business.

11. Tenant has received no notice of any claim, litigation or proceeding, pending or threatened, against or relating to Tenant that would adversely affect Tenant's ability to fulfill its obligations under the Lease or with respect to the Premises. Tenant has received no notice of, and has no knowledge of, any violations of any federal, state, county or municipal statutes, laws, codes, ordinances, rules, regulations, orders, decrees or directives relating to the use or condition of the Premises or Tenant's operation thereon. Tenant has received no notice from any governmental body or agency or from any person or entity with respect to any actual or threatened taking of the Property or any portion thereof for any public or quasi-public purpose by the exercise of condemnation or eminent domain.

12. Tenant has accepted, is in sole possession of and is occupying the Premises. Except as specified below, Tenant has not subleased all or any part of the Premises or assigned the Lease, or otherwise transferred or hypothecated its interest in the Lease or the Premises.

This certification is made knowing that Landlord, [Lender]/[Purchaser] is relying upon the representations herein made.

TENANT

______________________, ______________________

__________ corporation

By: ___________________________

Its: ___________________________

EXHIBIT 10.13

OFFICE LEASE

between

BOLINGBROOK INVESTORS, LLC,

an Illinois limited liability company

Landlord

and

ULTA SALON, COSMETICS & FRAGRANCE, INC.,
a Delaware corporation

Tenant

Dated as of April 17, 2007

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F	Form of Lease Estoppel Certificate
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K	Form of Landlord’s Waiver and Consent
L	Tenant Exterior Building Signage
M	Tenant Lobby Signage
N	Landlord’s Work

OFFICE LEASE

DATED AS OF:	April 17, 2007
BETWEEN:	**BOLINGBROOK INVESTORS, LLC** an Illinois limited liability company ("**Landlord**")
(Address)	c/o BPG Properties, Ltd. 200 South Michigan Avenue, Suite 210 Chicago, Illinois 60604
AND:	**ULTA SALON, COSMETICS & FRAGRANCE, INC.** a Delaware corporation ("**Tenant**")
(Address)	Windham Lakes Business Park 1275 Windham Drive Romeoville, IL 60446 Attn: Sr. Vice President of Real Estate Tele. No.: (630) 226-0020 Taxpayer ID No.: 36-3685240

Landlord and Tenant hereby covenant and agree as follows:

1. CERTAIN PROVISIONS AND DEFINITIONS. The following provisions and definitions are an integral part of this Office Lease (herein, this "Lease"):

(a) "**Abatement**": Subject to Section 4(b), Base Rent and Additional Rent shall be abated with respect to the Phase I Premises (as defined below) for the first Lease Year of the Initial Term; Base Rent and Additional Rent shall be abated with respect to the Phase II Premises (as defined below) for the second Lease Year of the Initial Term; and Base Rent and Additional Rent shall be abated with respect to the Phase III Premises (as defined below) for the third Lease Year of the Initial Term.

(b) "**Base Rent**": The amounts payable with respect to the Premises for the time periods indicated, including application of the Abatement, as follows:

Lease Year Initial Term	Annual Base Rent for Phase I Premises (39,355 s.f.)	Annual Base Rent for Phase II Premises (24,806 s.f.)	Annual Base Rent for Phase III Premises (18,307 s.f.)	Total Annual Base Rent	Total Monthly Base Rent	Annual Base Rent Per Square Foot of Rentable Area of the Premises
1	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 17.50
2	$708,390.00	$ 0.00	$ 0.00	$ 708,390.00	$ 59,032.50	$ 18.00
3	$728,067.50	$458,911.00	$ 0.00	$1,186,978.50	$ 98,914.88	$ 18.50
4	$747,745.00	$471,314.00	$347,833.00	$1,566,892.00	$130,574.33	$ 19.00
5	$767,422.50	$483,717.00	$356,986.50	$1,608,126.00	$134,010.50	$ 19.50
6	$787,100.00	$496,120.00	$366,140.00	$1,649,360.00	$137,446.67	$ 20.00

Lease Year Initial Term	Annual Base Rent for Phase I Premises (39,355 s.f.)	Annual Base Rent for Phase II Premises (24,806 s.f.)	Annual Base Rent for Phase III Premises (18,307 s.f.)	Total Annual Base Rent	Total Monthly Base Rent	Annual Base Rent Per Square Foot of Rentable Area of the Premises
7	$806,777.50	$508,523.00	$375,293.50	$1,690,594.00	$140,882.83	$ 20.50
8	$826,455.00	$520,926.00	$384,447.00	$1,731,828.00	$144,319.00	$ 21.00
9	$846,132.50	$533,329.00	$393,600.50	$1,773,062.00	$147,755.17	$ 21.50
10	$865,810.00	$545,732.00	$402,754.00	$1,814,296.00	$151,191.33	$ 22.00
11	$885,487.50	$558,135.00	$411,907.50	$1,855,530.00	$154,627.50	$ 22.50

Renewal Terms. As determined pursuant to Section 30

(c) "**Base Year**": 2008

(d) "**Broker**": Colliers Bennett & Kahnweiler, Inc.

(e) "**Building**": The building located at 1000 Remington Boulevard, Bolingbrook, Illinois.

(f) "**Commencement Date**": The earlier to occur of (i) the date on which Tenant occupies the Premises for the operation of its business, and (ii) September 1, 2007, which Commencement Date and other matters shall then be confirmed by the parties by entering into a "Memorandum Confirming Term" in the form of Exhibit G attached to this Lease.

(g) "**Common Areas**": Those areas of the Building and Land intended for the common, non-exclusive use of Building tenants, including, without limitation, parking areas, driveways, sidewalks, loading areas, access roads, corridors, landscaping and planted areas, and the following areas which are shown on the Floor Plan of Building attached as Exhibit A to this Lease: the Building cafeteria (the "Cafeteria"), the Building auditorium (the "Auditorium") and the Building conference room (the "Conference Room"). The Common Areas also include a receiving dock area with a minimum of two truck berths (the "Receiving Dock"), to which Tenant shall at all times have access through a code compliant corridor.

(h) "**Expiration Date**": The date of the day immediately preceding the eleventh (11th) anniversary of the Commencement Date, unless this Lease and the Term is earlier terminated or renewed as provided in this Lease.

(i) "**Initial Term**": The period of eleven (11) Lease Years (the '**Initial Term**"), beginning on the Commencement Date, and ending on the Expiration Date, (the "Initial Term") as provided in this lease.

(j) "**Land**": The parcel(s) of real estate on which the Building and the Project are located.

(k) "**Lease Year**": The first Lease Year shall commence on the Commencement Date and shall continue for a period of twelve (12) consecutive calendar months from and after the Commencement Date, except that if the Commencement Date shall be other than the first day of a calendar month, the first Lease Year shall expire at the close of business on the last day of the month in which occurs the first anniversary of

the Commencement Date. Each Lease Year after the first Lease Year shall be a successive period of twelve (12) calendar months.

(l) “**Premises**”: The area indicated on **Exhibit A** on the first and second floors of Section A of the Building, deemed, for purposes of this Lease, to consist of 82,468 square feet of Rentable Area, comprised of 39,355 square feet of Rentable Area on the first floor of the Building (the “**Phase I Premises**”; 24,806 square feet of Rentable Area (the “**Phase II Premises**”), comprised of 4,806 square feet of Rentable Area on the first floor of the Building (the “**First Floor Conference Areas**”) and 20,000 square feet of Rentable Area on the second floor of the Building; provided, however that the Phase II Premises shall not constitute a part of the Premises until the date of the first (1st) day of the second Lease Year (the “ Phase II Commencement Date”), and 18,307 square feet of Rentable Area on the second floor of the Building (the “**Phase III Premises**”); provided, however that the Phase III Premises shall not constitute a part of the Premises until the date of the first (1st) day of the third Lease Year (the “Phase III Commencement Date”).

(m) “**Project**”: The Land and the Building, together with any other improvements located on the Land, all equipment, fixtures, machinery, systems, apparatus and personal property of Landlord located at or used in connection with the Land or the Building from time to time.

(n) “**Tenant Alterations**”: Any alteration, improvements or additions (including decorations) to the Premises performed or to be performed by or on behalf of Tenant, including, without limitation, the Tenant’s Work.

(o) “**Tenant’s Proportionate Share**”: The percentage determined as described in **Exhibit C**. Without limitation of the foregoing, as the date hereof, Tenant’s Proportionate Share is acknowledged, initially, to be 7.18%, to be increased to 11.71% as of the Phase II Commencement Date, and to be further increased to 15.05% as of the Phase III Commencement Date.

(p) “**Tenant’s Work**”: Any work to be performed by or on behalf of Tenant to ready the Premises for initial occupancy by Tenant, as more particularly described in Section 7(b) hereof and in the Workletter.

(q) “**Term**”: The initial Term and any renewal of the Initial Term specifically provided herein unless earlier terminated as provided in this Lease.

(r) “**Use**”: Tenant shall have the right to use the Premises for any of the following purposes: (i) general office use; (ii) conference and meeting room use; (iii) the giving or receiving of any type of classes which are related to the operation of an Ulta retail store or Ulta’s general business operation or otherwise related to training for Ulta personnel, and which use for classes is in compliance with all Laws; (iv) the creation and/or display of a mock ULTA retail store, provided that such mock store is not visible from the Common Areas or the exterior of the Building; (v) the storage of any inventory or other product of Tenant not for sale to the public; and (vi) such other uses as may be

necessary or incidental to any of the foregoing (including, without limitation, a kitchenette, lunchroom and vending machines).

(s) "**Workletter**": The Workletter attached hereto as **Exhibit B**.

See Exhibit C and the Workletter for other definitions of terms used herein.

2. GRANT AND ACCEPTANCE OF LEASE. Landlord hereby leases the Premises to Tenant, and Tenant hereby accepts and leases the Premises from Landlord to have and to hold during the Term, subject to the terms and conditions of this Lease, together with the non-exclusive right to use the Common Areas in accordance with the terms of this Lease. The Premises shall initially be comprised of the Phase I Premises. As of the Phase II Commencement Date, the Premises shall include the Phase I Premises and the Phase II Premises. As of the Phase III Commencement Date, the Premises shall include the Phase I Premises, the Phase II Premises and the Phase III Premises. Landlord represents that it is the fee owner of the Project.

3. RENT. Base Rent, Additional Rent, Additional Rent Estimate and all other amounts becoming due from Tenant to Landlord hereunder (collectively "**Rent**") shall be paid in lawful money of the United States to Landlord at the following address: Colliers Turley Martin Tucker, Attn: 1000 Remington, 4678 World Parkway Circle, St. Louis, MO 63134, or such other address as Landlord shall designate in writing to Tenant from time to time, without any demand and without any reduction, abatement, counterclaim, deduction or set-off whatsoever, except as expressly provided herein, at the times and in the manner hereinafter provided. Unpaid Rent shall bear interest at the Default Rate from the date due until paid; provided, however, that the first time in any 12 month period that Tenant fails to pay Rent when due, no interest shall be charged unless such failure continues for ten (10) days after written notice thereof from Landlord. The payment of Rent hereunder is independent of each and every other covenant and agreement contained in this lease. Rent shall be prorated for any partial months during the Term.

4. BASE RENT.

(a) **Monthly Base Rent**. Subject to the Abatement, Tenant shall pay Base Rent to Landlord in equal monthly installments (herein called "**Monthly Base Rent**") as set forth in Section 1(b), in advance on the Commencement Date, and on or before the first day of each and every calendar month during the Term.

(b) **Rent Abatement**. Notwithstanding anything herein to the contrary, Monthly Base Rent and Tenant's obligation to pay the Tax Adjustment (as hereinafter defined) and the Expense Adjustment (as hereinafter defined) shall abate with respect to the Phase I Premises for the first Lease Year of the Initial Term, shall abate with respect to the Phase II Premises for the first twelve (12) months of the demise of the Phase II Premises beginning on the Phase II Commencement Date, and shall abate with respect to the Phase III for the first twelve (12) months of the demise of the Phase III Premises beginning on the Phase III Commencement Date (the "**Abatement Period**") (each full or partial month within the Abatement Period, as applicable, an "**Abatement Month**", and all of such full or partial months, the "**Abatement Months**"); provided, however, (i) Tenant shall remain responsible for all other obligations of

Tenant hereunder during each of the aforedescribed Abatement Months; (ii) such abatement shall not apply for any Abatement Month during which Tenant, at any time, is in default under this Lease beyond any applicable cure period; and (iii) Tenant shall be responsible for the cost of all electricity consumed in the Premises during the Abatement Period in accordance with Section 8(b).

5. ADDITIONAL RENT. In addition to paying the Base Rent (but subject to the Abatement), Tenant shall also pay as additional rent the amounts (collectively "**Additional Rent**") determined to be Tax Adjustment and Expense Adjustment in accordance with this Section 5:

(a) **Computation of Additional Rent**. Subject to the Abatement, Tenant shall pay as Additional Rent for each Calculation Year (as defined in Exhibit C) the following amounts:

(i) Tenant's Proportionate Share of the amount by which the Taxes (as defined in Exhibit C) for such Calculation Year exceed the Taxes for the Base Year (the "**Tax Adjustment**"); plus

(ii) Tenant's Proportionate Share of the amount by which Expenses (as defined in Exhibit C) for such Calculation Year exceed the Expenses for the Base Year (the "**Expense Adjustment**").

Notwithstanding anything to the contrary contained in this Lease, in calculating the Expense Adjustment for any Calculation Year, the "Controllable Expenses" component of Expenses for said Calculation Year shall not exceed the "Controllable Expenses" component of Expenses for the Base Year by more than five percent (5%), on a cumulative, compounded basis. As used herein, "Controllable Expenses" means Expenses other than the costs of insurance, costs of utilities, union wages and benefits, management fees and any other Expenses which are outside the reasonable control of Landlord.

(b) **Payments of Additional Rent; Additional Rent Estimate; Projections**. Beginning on January 1, 2009, and throughout the Term thereafter, and subject to the Abatement, Tenant shall pay Additional Rent to Landlord in the manner hereinafter provided. The aggregate of payments required to be made by Tenant on account of Additional Rent for any Calculation Year until actual Additional Rent is determined is herein called "Additional Rent Estimate".

(i) Landlord may, at any time and from time to time prior to the first Calculation Date and during the Term, deliver to Tenant a written notice or notices ("Projection Notice") setting forth:

(A) Landlord's reasonable estimates, forecasts or projections (collectively, the "**Projections**") of any or all of Taxes and Expenses for such Calculation Year, and

(B) Tenant's Additional Rent Estimate (setting forth the Expense Adjustment component and Tax Adjustment component

separately) based upon the Projections, being the Tenant's Proportionate Share of the Projections.

(ii) On or before the first (1st) day of the next calendar month which is at least thirty (30) days after Landlord's service of a Projection Notice, and on or before the first day of each month thereafter, Tenant shall pay to Landlord one-twelfth (1/12) of the Additional Rent Estimate shown in the Projection Notice. On or before the first (1st) day of the next calendar month which is at least thirty (30) days after Landlord's service of a Projection Notice, to bring Tenant's payments of Additional Rent Estimate current, Tenant shall also pay Landlord the amount set forth in the Projection Notice, which shall equal the Additional Rent Estimate shown in the Projection Notice less (A) any previous payments on account of Additional Rent Estimate made for such Calculation Year, and (B) total monthly installments on account of Additional Rent Estimate not yet due and payable for the remainder of such Calculation Year. Until such time as Landlord furnishes a Projection Notice for a Calculation Year, Tenant shall pay to Landlord a monthly installment of Additional Rent Estimate on the first day of each month equal to the latest monthly installment of Additional Rent Estimate.

(c) **Readjustments**.

(i) Following the end of each Calculation Year and after Landlord shall have determined the amount of Expenses to be used in calculating the Expense Adjustment for such Calculation Year, Landlord shall deliver to Tenant a statement in reasonable detail setting forth the Expenses for the applicable Calculation Year and the calculation of Tenant's Expense Adjustment for such Calculation Year ("**Landlord's Expense Statement**"). Landlord shall endeavor to deliver Landlord's Expense Statement by May 1 of each year. Landlord's Expense Statement shall also set forth the Expenses for the Base Year. If the actual Expense Adjustment owed for such Calculation Year exceeds the Expense Adjustment component of the Additional Rent Estimate paid by Tenant during such Calculation Year, then Tenant shall, within thirty (30) days after receipt of Landlord's Expense Statement, pay to Landlord an amount equal to the excess of the actual Expense Adjustment over the Expense Adjustment component of the Additional Rent Estimate paid by Tenant during such Calculation Year. If the Expense Adjustment component of the Additional Rent Estimate paid by Tenant during such Calculation Year exceeds the Expense Adjustment owed for such Calculation Year, then, provided that Tenant is not then in Default under this Lease, Landlord shall credit such excess to Additional Rent next coming due and payable after the date of Landlord's Expense Statement, until such excess has been exhausted (provided further, that if Tenant is then in Default, then Landlord may first offset such excess against any rental or other damages due and owing from Tenant resulting from any such existing Default of Tenant under this Lease). If this Lease shall expire or be terminated prior to full application of such excess, Landlord shall pay to Tenant, within thirty (30) days after expiration or termination of this Lease (or, with respect to any such excess attributable to the Calculation Year in which this Lease terminates or expires, then within thirty (30)

days after delivery of the Landlord's Expense Statement applicable thereto), the balance thereof not theretofore applied against Additional Rent and not reasonably required for payment of Rent for the Calculation Year in which the Lease expires, subject to Tenant's obligations under Section 5(e) hereof, provided Tenant is not then in Default under this Lease (and if Tenant is then in Default, then Landlord may first offset such excess against any rental or other damages due and owing from Tenant resulting from any such existing default of Tenant under this Lease).

(ii) Following the end of each Calculation Year and after Landlord shall have determined the actual amount of Taxes to be used in calculating the Tax Adjustment for such Calculation Year, Landlord shall deliver to Tenant a statement in reasonable detail (including copies of relevant tax bills) setting forth the Taxes for the applicable Calculation Year and the calculation of Tenant's Tax Adjustment for such Calculation Year ("**Landlord's Tax Statement**"). Landlord's Tax Statement shall also set forth the Taxes for the Base Year. If the actual Tax Adjustment owed for such Calculation Year exceeds the Tax Adjustment component of the Additional Rent Estimate paid by Tenant during such Calculation Year, then Tenant shall, within thirty (30) days after the date of Landlord's Tax Statement, pay to Landlord an amount equal to the excess of the actual Tax Adjustment over the Tax Adjustment component of the Additional Rent Estimate paid by Tenant during such Calculation Year. If the Tax Adjustment component of the Additional Rent Estimate paid by Tenant during such Calculation Year exceeds the Tax Adjustment owed for such Calculation Year, then, provided that Tenant is not then in Default under this Lease, Landlord shall immediately credit such excess to Additional Rent next coming due and payable after the date of Landlord's Tax Statement, until such excess has been exhausted (provided further, that if Tenant is then in Default, then Landlord may first offset such excess against any rental or other damages due and owing from Tenant resulting from any such existing Default of Tenant under this Lease). If this Lease shall expire or be terminated prior to full application of such excess, Landlord shall pay to Tenant, within thirty (30) days after expiration or termination of this Lease (or, with respect to any such excess attributable to the Calculation Year in which this Lease terminates or expires, then within thirty (30) days after delivery of the Landlord's Tax Statement applicable thereto), the balance thereof not theretofore applied against Rent and not reasonably required for payment of Rent for the Calculation Year in which the Lease expires, subject to Tenant's obligations under Section 5(e) hereof, provided Tenant is not then in Default under this Lease (and if Tenant is then in Default, then Landlord may first offset such excess against any rental or other damages due and owing from Tenant resulting from any such existing Default of Tenant under this Lease).

(d) **Books and Records**. Landlord shall maintain books and records showing Taxes and Expenses actually incurred by Landlord in accordance with sound accounting and management practices (subject to adjustments thereto expressly contemplated by this lease, such as in the case of a so-called gross-up in variable Expenses under Section 11(b) of **Exhibit C** hereto, and subject to other modifications thereto adopted by Landlord at

the Building). Landlord shall maintain such books and records as to a given Calculation Year for at least two calendar years after said Calculation Year. Tenant and its representative (which representative shall be an independent third party public accountant licensed to do business in the State of Illinois and reasonably acceptable to Landlord) shall have the right, at Tenant's expense, to audit and/or otherwise examine such books and records relative to Taxes and Expenses upon reasonable prior notice and during normal business hours, at an office located within the continental United States, at any time within one hundred eighty (180) days following Tenant's receipt of Landlord's Expense Statement (as it relates to an examination of Expenses) or Landlord's Tax Statement (as it relates to an examination of Taxes) provided for in Section 5(c). Unless Tenant shall take written exception to any item of Taxes or Expenses, specifying in detail the reasons for such exception as to a particular item within one hundred eighty (180) days after Tenant's receipt of Landlord's Expense Statement or Landlord's Tax Statement (as the case may be), Landlord's Expense Statement and Landlord's Tax Statement, as applicable, shall be considered as final and accepted by Tenant. If and to the extent that Tenant engages a representative (as described above in this Section 5(d)) to audit and/or inspect Landlord's records pursuant to this Section 5(d), then prior to such audit and/or inspection Tenant shall cause such representative to execute and deliver to Landlord a commercially reasonable form of confidentiality agreement relative to maintaining the confidentiality of all information obtained in the course of any such audit and/or inspection. Tenant shall not retain its representatives on a contingent fee basis. All information received and/or reviewed by Tenant or any representative retained by Tenant to conduct such review is confidential information of Landlord and will not be disclosed by Tenant (or its agents or auditors) to any third parties, including other tenants in the Building, and Tenant shall require its agents, attorneys and accountants to enter into a confidentiality agreement with Landlord agreeing to the aforesaid confidentiality requirements. Notwithstanding anything to the contrary contained herein, Tenant may disclose confidential information as required by deposition, interrogatory, request for documents, subpoena or similar legal process or as otherwise required to pursue or defend against any claims or legal proceedings. Any breach by Tenant of such confidentiality requirements shall constitute a Default by Tenant under this lease and shall immediately afford Landlord all rights and remedies described in Section 19 hereof; provided, however, that if no material damage or loss has been, or is likely to be, suffered by Landlord as a result of such breach by Tenant, and if the breach in question could be remedied by Tenant so as to avoid any such material damage or loss, then such breach shall not constitute a Default and Landlord shall give Tenant written notice of such breach and a reasonable period of time under the circumstances to cure such default before such breach is deemed a Default.

In the event any such audit conducted by Tenant's representatives (herein, a "Tenant Audit") determines that either (1) Landlord's Expense Statement overstated Tenant's Additional Rent attributable to such items from the actual amount so required hereunder for any Calculation Year by an amount in excess of four percent (4%), or (2) Landlord's Tax Statement overstated Tenant's Additional Rent attributable to such items from the actual amount so required hereunder for any Calculation Year by an amount in excess of four percent (4%), then Landlord shall be responsible for the payment of all reasonable out-of-pocket audit fees incurred by Tenant under this Section 5(d) relative to the audit of such Landlord's Expense Statement or

Landlord's Tax Statement (as the case may be), which payment shall be due within thirty (30) days after Tenant's demand therefor. In the event any such Tenant Audit does not result in such a determination or final resolution that Landlord's Expense Statement or Landlord's Tax Statement, as the case may be, overstated Tenant's Additional Rent attributable to such items for such Calculation Year by more than four percent (4%), then Tenant shall be responsible for all fees incurred by Tenant in connection with the Tenant Audit. Notwithstanding any exception made by Tenant and/or its representatives, Tenant shall pay Landlord the full amount of its Additional Rent Estimate and its Additional Rent as determined by Landlord, subject to readjustment at such time as any such exception may be resolved in favor of Tenant (i.e., either through mutual agreement of the parties, or based on a final court order in Tenant's favor).

(e) **Proration and Survival**. With respect to any Calculation Year which does not fall entirely within the Term, Tenant shall be obligated to pay as Additional Rent for such Calculation Year only a pro rata share of Additional Rent as hereinabove determined, based upon the number of days of the Term falling within the Calculation Year. Following expiration or termination of this lease, Tenant shall pay any Additional Rent due to Landlord pursuant to and in accordance with Section 5(c) within thirty (30) days after Tenant's receipt of Landlord's Expense Statement or Landlord's Tax Statement (as the case may be). Without limiting other obligations of Landlord or Tenant which survive the expiration or termination of this Lease, the obligations of Landlord or Tenant (as the case may be) to pay or rebate Additional Rent as provided for in this Section 5 shall survive the expiration or earlier termination of this Lease. No interest or penalties shall accrue on any amounts which Landlord is obligated to credit or pay to Tenant by reason of this Section 5, unless Landlord does not pay amounts which are required to be paid to Tenant under this Section 5 (i.e., as opposed to being credited against Rent) as and when due hereunder, which failure continues for thirty (30) days after Tenant's demand therefor, in which case such amounts so due Tenant shall, from and after such 30-day period and through the date of payment thereof to Tenant, accrue interest at the annual Default Rate hereunder.

(f) **No Decrease in Base Rent**. In no event shall any adjustment of Additional Rent result in a decrease of the Base Rent payable hereunder.

(g) **No Representation or Warranty**. Tenant acknowledges that neither Landlord, nor any of its respective agents or employees, has made or does hereby make any representation or warranty whatsoever to Tenant as to the amount of Taxes, Expenses, Tax Adjustment or Expense Adjustment or any component thereof which may become payable during the Term.

6. USE OF PREMISES.

(a) **Use**. Tenant shall use and occupy the Premises as set forth in Section 1(q) hereof only and for no other use or purpose. Tenant shall comply with all rules and regulations described in **Exhibit D** attached hereto, and with all reasonable modifications and additions thereto made and adopted by Landlord from time to time for the Building as described in Section 12. The following shall apply to Landlord's rules and regulations described in Exhibit D and any other rules, regulations, directives, controls, procedures, measures, orders or other

requirements promulgated by Landlord and governing the Project and which are described in any other provision of this Lease and the Exhibits attached to this Lease, including the Workletter (all of the foregoing, including any modifications and additions thereto, "Rules and Regulations"): (i) Landlord shall not discriminate against Tenant in the enforcement of Rules and Regulations, (ii) the Rules and Regulations shall not be enforceable against Tenant until Tenant has been given reasonable prior written notice of such Rules and Regulations; and (iii) the Rules and Regulations shall not materially and adversely affect Tenant's rights under this Lease.

(b) **Compliance with Requirements**. Tenant shall comply with all applicable Laws (hereinafter defined) now or hereafter in force, and with all applicable insurance underwriters regulations and other requirements, respecting all matters of occupancy, condition or maintenance of the Premises, whether any of the foregoing shall be directed to Tenant or Landlord and whether imposed on the owner or occupant of the Premises. Notwithstanding the foregoing, Tenant shall have no obligation to perform any alterations to the Premises required by applicable Laws unless such requirement is triggered by Tenant's particular use of the Premises or the particular nature of Tenant's business operation as distinguished from general office use. Tenant shall not make or permit any use of the Premises or the Building, or do or permit to be done anything in or upon the Premises or the Building, or bring or keep anything in the Premises or the Building, which directly or indirectly is forbidden by any of the foregoing or which may be dangerous to persons or property, or which may invalidate or increase the rate of insurance on the Building (and Landlord shall give Tenant notice if Landlord becomes aware of any use within the Premises which may invalidate or increase the rate of insurance), its appurtenances, contents or operations, or which would tend to create or continue a nuisance or which is contrary to or prohibited by the terms and conditions of this lease. Landlord shall comply with all applicable Laws and insurance regulations and requirements pertaining to its ownership and operation of the Project.

7. DELIVERY OF POSSESSION; TENANT IMPROVEMENTS.

(a) **Delivery of Possession**. Landlord shall use good faith efforts to deliver possession of the Premises to Tenant promptly following the full execution of this Lease and Tenant's delivery of any security deposit required under this Lease for Tenant to commence and proceed with the Tenant's Work (as defined in Section 7(b) below) therein. If Landlord shall be unable, due to a fire or other casualty, or for any other reason beyond Landlord's reasonable control, to deliver possession of the Premises to Tenant at such time, Landlord shall not be liable or responsible for any claims, damages, or liabilities in connection therewith or by reason thereof, and such failure shall not affect the validity of this lease or otherwise affect the obligations of Tenant hereunder or the expiration date of the Initial Term hereof; provided, however, in such event, Landlord shall continue to use commercially reasonable efforts to deliver possession of the Premises as soon thereafter as reasonably practicable. Tenant's use and occupancy of the Premises, and any work performed by or on behalf of Tenant prior to the Commencement Date, shall be subject to, and in compliance with, all the terms and conditions of this lease, except the obligation to pay Base Rent, Tax Adjustment and the Expense Adjustment.

(b) **Tenant's Work**. Tenant shall, at its sole cost and expense (subject to application of the "Allowance", as described in the Workletter), perform such work as may be necessary or desired by Tenant to improve the Premises for initial occupancy, all subject to and

in accordance with the provisions of this lease, including, without limitation, the provisions of the Workletter attached hereto as **Exhibit B**. All work referred to in this subparagraph, which work is constructed on or before the one (1) year anniversary of the Commencement Date as to the Phase I Premises, the one (1) year anniversary of the Phase II Commencement Date as to the Phase II Premises, and the one (1) year anniversary of the Phase III Commencement Date as to the Phase III Premises (or which work is identified by Tenant, in the Plans submitted from time to time under the Workletter, as being part of such Tenant's Work, but which items are not completed as of such one (1) year anniversaries, respectively, for reasons outside of Tenant's reasonable control, and are instead completed as soon thereafter as reasonably practicable), is hereinafter collectively referred to herein (and in the Workletter) as "**Tenant's Work**". Tenant's Work shall be performed only in accordance with the terms and conditions hereof, including the terms and conditions set forth in the Workletter.

(c) **Memorandum Confirming Term**. Within ten (10) business days following Landlord's request therefor, which request shall be made by notice to Tenant given at any time following Landlord's determination of the actual "Commencement Date" hereunder, Landlord and Tenant shall enter into a "**Memorandum Confirming Term**" in the form of **Exhibit G** attached hereto.

8. SERVICES.

(a) **General Description of Services**. So long as this lease is in full force and effect and Tenant is not in Default, Landlord shall furnish the following services (the cost of which may be included in Expenses):

(i) Air conditioning and heat consistent with the specifications and levels set forth in **Exhibit H** attached hereto, Monday through Friday from 8:00 A.M. to 6:00 P.M. and Saturdays from 8:00 A.M. to 1:00 P.M., Sundays and Holidays excepted. The aforementioned specifications and levels of heating and air conditioning are based upon an occupancy density of not more than one person per one hundred square feet of floor area, and subject to adjustments pursuant to mandatory and voluntary compliance by Landlord with Laws and guidelines relating to energy use.

(ii) Domestic water in common with other tenants for drinking, lavatory and toilet purposes drawn through fixtures installed by Landlord within the core of the Building, and cold water to the core on the floor where the Premises is located for use by Tenant in any internal kitchen areas at the Premises, and warm water in common with other tenants for lavatory purposes from the same regular Building supply and fixtures.

(iii) Janitor and cleaning service in and about the Premises and the Lobby and interior Common Areas within the Building as set forth in **Exhibit I** attached hereto, five (5) days a week, except weekends and Holidays. Tenant shall not provide or use any other janitor or cleaning service; provided, however, that Tenant shall have the right, at Tenant's sole cost and expense, to contract directly with Landlord's janitor or cleaning service for additional cleaning services within the Premises.

(iv) Landlord shall initially cause to be provided an automobile patrol security service for the Building during evening hours. Landlord shall at all times provide manned security for the Project.

(v) Landlord agrees that, within approximately ninety (90) days following the Commencement Date, the exterior doors of the Building and, at Landlord's option, the entrance ways to other Common Areas, shall be equipped with a card key access system for Tenant's use, subject to the Rules and Regulations set forth on **Exhibit D** attached hereto. The system is a GE secure perfect/Interlogix program and uses GE multi-card readers. Landlord makes no representations or warranties (and hereby expressly disclaims any representations and warranties, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF MERCHANTABILITY) regarding the suitability of any key card access system for Tenant's particular purposes. In no event shall Landlord be responsible or liable to Tenant or its employees for any unauthorized entry upon the Premises or for any failure of the access system to prevent such entry. Until such card key access system has been installed and available to Tenant, Tenant shall be provided with keys for access to and from the Building and the Premises. Tenant may, at its option, install a card key access system to the Premises which is compatible with the Building system. If such system is not compatible with the Building system, Tenant shall provide Landlord with a hard key override to Tenant's system, at Tenant's cost.

(vi) Landlord shall cause the Building parking areas to be illuminated from dusk to dawn on a daily basis. Landlord shall cause the interior Common Areas to be illuminated in accordance with all applicable Laws.

(vii) Landlord shall have no obligation to maintain the plants in the atrium within the Premises. Tenant may, at its election, maintain said plants at its own cost or remove said plants.

(b) **Electricity**. Except as hereinafter provided, electricity shall not be furnished by Landlord, but shall be furnished by the electric utility company serving the area. Tenant shall receive such service direct from such utility company at Tenant's cost, and shall permit Landlord's wire and conduits, to the extent available, suitable and safely capable, to be used for such purposes. Unless the cost of electricity consumed in the Premises is at any time separately metered as hereinbelow provided, Tenant shall pay to Landlord an annual amount for the cost of Tenant's consumption of electricity for overhead lighting and outlets. Such amount shall initially equal $1.00 per square foot of the Rentable Area of the Premises, and shall be paid in equal monthly installments on the first day of each month during the Term (so long as the Premises are not separately metered for electricity). Landlord shall have the right from time to time to increase such annual amount (and the monthly installments) to reflect increases in Landlord's cost of electricity from and after the date of this lease. Notwithstanding anything contained in this Section 8(b) to the contrary, at Landlord's sole discretion, Landlord, at Landlord's cost, may install an electrical submeter in the Premises, and, in such event, Tenant shall make all necessary arrangements with the utility company for paying for electric current furnished by it to Tenant, and Tenant shall pay for all charges for electric current consumed on

the Premises during Tenant's occupancy thereof. Tenant shall make no alterations or additions to the electric equipment or systems in the Premises or the Building without the prior written consent of Landlord in each instance. Tenant shall not install in the Premises any equipment which requires electrical current of more than 6 watts per square foot of Rentable Area in the Premises, and Tenant shall ascertain from Landlord the maximum amount of load or demand for or use of electrical current which can be accommodated or permitted in the Premises, taking into account the capacity of the electric feeders, risers, conduits, wiring and other facilities and equipment, the Building and Premises and the needs of other tenants (both present and future) of the Building, and Tenant shall not in any event connect a greater load than such safe capacity. Tenant also agrees to purchase from Landlord or its agents, as Landlord shall direct, at competitive, market rate prices, all lamps, bulbs, ballasts and starters used in the Premises during the Term. Landlord shall replace, as necessary, all lamps, ballasts, bulbs and starters in the Lobby, Receiving Docks and other Common Areas. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of the feeders to the Building or the risers or wiring installed thereon. Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant have agreed that Landlord shall separately meter the Premises for electrical use and Landlord and Tenant shall share the cost of installing such separate metering, 50%-50%, provided, however, that Tenant's maximum obligation for its share of such cost shall be $37,500.00. Landlord shall complete such separate metering by September 1, 2007. Tenant shall then pay to Landlord, as and when Landlord receives the monthly electrical bills for the Building, the billed, separately metered charge for Tenant's electrical use. Notwithstanding anything to the contrary contained herein, Tenant shall have the right (but in no event shall Tenant be obligated) to install, operate and maintain, at Tenant's sole cost and expense, one or two generators in a location within the Project mutually agreeable to Landlord and Tenant. The method of installation, and plans for such installation, shall be subject to the prior written approval of Landlord, not to be unreasonably withheld.

(c) **Telecommunications**. Telephone and telecommunications services shall not be furnished by Landlord. Landlord shall have exclusive access to the Building telephone riser cable and all other telephone or communications cables or wiring, junction boxes, wire conduits and associated facilities and equipment serving the Premises and other premises in the Building, to the point of connection to Tenant's communications equipment and all telephone and communications closets in the Building; provided, however, that upon reasonable prior notice thereof to Landlord, Landlord shall provide such reasonable access to such cables or other equipment or facilities as may be necessary for Tenant to complete its Tenant's Work or to repair or maintain Tenant's telephone or telecommunications services. All telephone and other telecommunications connections which Tenant may desire shall be first approved by Landlord in writing (which approval shall not be unreasonably withheld), before the same are installed, and the location of all wires and the work in connection therewith shall be performed by contractors approved by Landlord (which approval shall not be unreasonably withheld) and shall be subject to the direction of Landlord; provided, however, that Landlord hereby consents to Tenant's performance of such telephone and telecommunications work that shall form a part of Tenant's Work, subject to Tenant's compliance with **Exhibit B**, and provided, further, that Tenant may perform ordinary repair and maintenance of its telephone and telecommunications systems within the interior of the Premises without Landlord's prior consent. Tenant reserves the right to designate the entity or entities providing telephone or other communication cable installation, operation, repair and maintenance for the Premises subject to obtaining Landlord's prior consent

thereto (which consent shall not be unreasonably withheld, conditioned or delayed so long as the Tenant's use of such service provider would not, in Landlord's reasonable judgment, adversely affect operations at the Building or otherwise result in any increase in Landlord's costs or expenses); provided that Landlord shall have the right to impose reasonable controls and to reasonably restrict and control access to telephone cabinets and risers at the Building and to require all such access to be coordinated with the Building's riser manager. Tenant agrees to abide by any and all rules and regulations established by Landlord from time to time relative to telephone riser management at the Building (provided that Landlord shall not discriminate in its enforcement of such rules and regulations as and to the extent provided in Section 12 below). Tenant shall be responsible for and shall pay all costs incurred in connection with the installation of telephone or other telecommunications cables and related wiring in the Premises or Building, including, without limitation, any hook-up, access and maintenance fees related to the installation of such wires and cables in the Premises or Building and the commencement of service therein, and the maintenance thereafter of such wire and cables; and there shall be included in Expenses for the Building all installation, hook-up or maintenance costs incurred by Landlord in connection with telephone or other telecommunications cables and related wiring in the Building which are not allocable to any individual users of such service but are allocable to the Building generally. If Tenant fails to maintain all telephone or other telecommunications cables and related wiring in the Premises and such failure affects or interferes with the operation or maintenance of any other telephone or other telecommunications cables or related wiring in the Building, Landlord or any vendor hired by Landlord may, upon reasonable prior notice, enter into and upon the Premises forthwith and perform such repairs, restorations or alterations as Landlord deems necessary in order to eliminate any such interference (and Landlord may recover from Tenant all of Landlord's costs in connection therewith and Landlord shall have no liability to Tenant by reason thereof). Upon the Expiration Date or earlier termination of this lease or Tenant's right to possession of the Premises, Tenant agrees, to the extent required by Laws, to remove all telephone and other telecommunications, cables and related wiring installed by Tenant. Tenant agrees that neither Landlord nor any of its agents or employees shall be liable to Tenant, or any of Tenant's employees, agents customers or invitees or anyone claiming through, by or under Tenant, for any damages, injuries, losses, expenses, claims or causes of action because of any interruption, diminution, delay or discontinuance at any time for any reason in the furnishing of any telephone or other telecommunications service to the Premises and the Building (except due to the intentional, bad faith conduct of Landlord or its agents or employees), provided that the foregoing is subject, in any event, to the terms of Section 16(f) below). Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right (but in no event shall Tenant be obligated) to install, operate and maintain, at Tenant's sole cost and expense, a telco room (the "Telco Room") within the Premises, for Tenant's exclusive use, which Telco Room shall contain Tenant's telephone and network communications equipment. Tenant shall install such Telco Room in a location mutually agreed upon by Landlord and Tenant. The installation of the Telco Room shall be included in the Plans for the Tenant's Work pursuant to the Workletter and subject to Landlord's prior written approval, not to be unreasonably withheld. Landlord shall have reasonable access to the Telco Room upon reasonable prior written or oral notice thereof to Tenant.

(d) **Extra or Additional Services**. Tenant may request Landlord to provide services which are extra or additional services to those described in Section 8(a), by delivery to Landlord of an advance written request therefor. If Landlord shall agree to so provide any such

services which are extra or in addition to those services described in Section 8(a), Landlord shall notify Tenant thereof and provide Tenant with a rate quote for such additional service. If Tenant notifies Landlord in writing of its agreement with such rate quote, then Landlord shall provide such service to Tenant and Tenant shall pay for such service in the amount of the rate quote. If Tenant does not promptly notify Landlord of Tenant's agreement with such rate quote, Landlord shall have no obligation to provide the requested additional service. All charges for any such extra or additional services so provided by Landlord shall be deemed to be additional Rent hereunder and shall be due and payable within thirty (30) days after Tenant receives Landlord's bill therefor, or in installments as may be designated by Landlord to Tenant in writing. If Tenant fails to pay when due Landlord's proper charges for any such extra or additional services, Landlord shall have the right, in addition to all other rights and remedies available to Landlord, to discontinue furnishing any such extra or additional services for which Tenant has failed to pay. Notwithstanding anything to the contrary herein or in this Section 8, but subject to the terms of this Lease regarding any work performed by or on behalf of Tenant, Tenant, at Tenant's sole cost and expense, shall have the right at any time to contract directly with a third party contractor for any additional services not described in Section 8(a) which Tenant desires to utilize during the Term (including, without limitation, with a third party vendor (including, without limitation, Iron Mountain) for paper shredding services (which services shall include, without imitation, the placement, maintenance and removal of shredding receptacle bins to be located throughout the Lobby and Premises)). If Landlord discontinues any such extra or additional services as provided in this Section 8(d), no such discontinuance shall be deemed an eviction or disturbance of Tenant's use of the Premises or render Landlord liable for damages or relieve Tenant from performance of Tenant's obligations under this lease. Without limiting the foregoing, if Tenant desires air conditioning or heat during times or on days on which Landlord is not required to provide such service pursuant to Section 8(a)(i) above, Landlord shall provide such service to Tenant provided that (i) Tenant notifies Landlord on or before 5:00 p.m. on any business day on which Tenant desires air conditioning or heat after hours on such business day, or before 5:00 p.m. on the business day immediately preceding any Holiday or weekend day for which Tenant desires such service, and (ii) Tenant shall pay Landlord, Landlord's then after-hours HVAC charges in connection with such after-hours service. Landlord agrees that, as of the Commencement Date, Landlord's established rate for after-hours HVAC is $85.00 per hour, per 40,000 square feet, which hourly rate may increase consistent with increases in HVAC costs incurred by Landlord subsequent to the Commencement Date.

(e) **Holidays**. For purposes of this Section 8, "**Holidays**" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and any other day designated by Landlord customarily designated as a holiday by landlords operating Comparable Buildings (as defined in **Exhibit C**).

(f) **Interruption of Services**. Tenant agrees that neither Landlord, nor any of Landlord's constituent members, nor any of their respective beneficiaries, agents, partners or employees, shall be liable for damage or injury to person, property or business or for loss or interruption of business, or for any other matter, in the event there is any failure, delay, interruption or diminution in furnishing any service. No such failure, delay, interruption or diminution shall be deemed to constitute an eviction or disturbance of Tenant's use or possession of the Premises, in whole or in part, actual or constructive, nor entitle Tenant to any claim for set-off, abatement (except as hereinafter provided in this Section 8(f)) or reduction of Rent, nor

render Landlord liable for damages, nor relieve Tenant from the performance of or affect any of Tenant's obligations under this lease. Notwithstanding anything to the contrary contained in this Section 5.E., if: (i) Landlord ceases to furnish any service in the Building for a period in excess of five (5) consecutive business days after Tenant notifies Landlord of such cessation; (ii) such cessation does not arise as a result of an act or omission of Tenant or its agents, employees or invitees; (iii) such cessation is not caused by a fire or other casualty (in which case Section 17 shall control); (iv) the restoration of such service is reasonably within the control of Landlord; and (v) as a result of such cessation, the Premises, or a material portion thereof, is rendered untenantable and Tenant in fact ceases to use the Premises, or a material portion thereof, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Base Rent and Additional Rent payable hereunder during the period beginning on the sixth (6th) consecutive business day of such cessation and ending on the day when the service in question has been restored. In the event the entire Premises has not been rendered untenantable by the cessation in service, the amount of abatement that Tenant is entitled to receive shall be prorated based upon the percentage of the Premises so rendered untenantable and not used by Tenant.

(g) **Tenant's Cooperation**. Tenant agrees to use commercially reasonable efforts to cooperate fully with Landlord, at all times, in abiding by all reasonable regulations and requirements which Landlord may prescribe for the proper functioning and protection of all utilities and services reasonably necessary for the operation of the Premises or the Project. Landlord and its contractors shall have reasonable free access to any and all mechanical installations in the Premises at all reasonable times and upon reasonable prior written or oral notice to Tenant (provided that no such notice or reasonable time requirement shall be required in the case of an emergency so long as Landlord notifies Tenant of the entry and the work performed by Landlord as soon as possible thereafter); provided, however, that Landlord shall use commercially reasonable efforts not to unreasonably interfere with Tenant's use of the Premises, and Landlord, at its sole cost and expense (but subject to the terms of Section 16), shall repair any damage to the Premises or any of Tenant's personal property, furniture or trade fixtures due to such entry by Landlord or Landlord's contractors. Tenant agrees that there shall be no construction of partitions or other obstructions which might interfere with the moving of the servicing equipment of Landlord to or from the enclosures containing said installations. Tenant further agrees that neither Tenant nor its employees, agents, licensees, invitees or contractors shall at any time tamper with, adjust or otherwise in any manner adversely affect Landlord's mechanical installations in the Premises or the Project, except as may be required in order for Tenant to complete the Tenant's Work or any other Tenant Alteration or for Tenant to perform any of its repair obligations set forth in Section 9(b) hereof.

(h) **Supplemental Heating or Cooling**. Whenever, in Landlord's reasonable judgment, Tenant's use or occupation of the Premises, including lighting, personnel, heat generating machines or equipment, or airborne emissions of smoke or other particulates, individually or cumulatively, causes the design loads for the system providing heat and air-cooling to be exceeded, or otherwise affects adversely the temperature, humidity or air quality otherwise maintained by the heating, ventilating and air handling or conditioning system in the Premises or the Building, Landlord may, following written notice thereof to Tenant and Tenant's failure to remedy the situation causing such conditions within thirty (30) days following such notice (or such longer period as is reasonably necessary if Tenant is diligently attempting to remedy the situation in question), but shall not be obligated to, temper such excess loads by

installing supplementary heating or air handling or conditioning units in the Premises or elsewhere where necessary. In such event, the cost of such units and the expense of installation, including, without limitation, the cost of preparing working drawings and specifications, plus ten percent (10%) of such cost as an overhead and supervision fee, shall be paid by Tenant as additional Rent within ten (10) days after Landlord's demand therefor. Alternatively, Landlord may require Tenant to install such supplementary heating or air handling or conditioning units at Tenant's sole expense. Landlord may operate and maintain any such supplementary units, but shall have no continuing obligation to do so or liability in connection therewith. The expense resulting from the operation and maintenance of any such supplementary heating or air handling or conditioning units, including utility charges, charges for condenser water, repair costs, labor costs and rent for space occupied by any supplementary heating or air handling or conditioning units installed in Rentable Area outside the Premises, shall be paid by Tenant to Landlord as additional rent at rates fixed by Landlord. Alternatively, Landlord may require Tenant to operate and maintain any such supplementary units, also at Tenant's sole expense.

(i) **Excessive Use of Building Systems**. Tenant's use or occupation of the Premises shall not in any manner (i) cause the design loads for the Building or the systems providing exhaust, heating, cooling, ventilation, electrical, life safety, water or sewer services to the Building to be exceeded or (ii) adversely affect the Building or the operation of said systems in the Premises or the Building or cause deterioration or damage to the Building or to such systems. If Landlord determines that Tenant's use or occupancy of the Premises may, in Landlord's reasonable judgment, cause the design loads for the Building or the systems providing exhaust, heating, cooling, ventilation, electrical, life safety, water or sewer services to the Building to be exceeded or will adversely effect the Building or the operation of said systems in the Premises or the Building or cause deterioration or damages to the Building or to such systems, then Landlord shall deliver written notice thereof to Tenant, and Tenant shall temper such excess loads and correct, repair and restore the portion of the Building so affected and such systems, in a timely and expeditious manner by installing supplementary structural support, exhaust, heating, cooling, ventilation, electrical, life safety, water or sewer systems in the Premises or elsewhere in the Building where necessary at the sole cost of Tenant, including, without limitation the cost of preparing working drawings and specifications plus fifteen percent (15%) of such cost as an overhead and supervision fee payable to Landlord from time to time as the work progresses as Additional Rent within ten (10) days after Landlord's written demand therefor, from time to time. In the event of an emergency, Landlord may, but it shall not be required to, without notice to Tenant, correct, repair and restore the portion of the Building so effected. Any expense to Landlord resulting from the operation, repair, maintenance and removal of any such supplementary structural support, exhaust, heating, cooling, ventilation, electrical, life safety, water or sewer systems, including rent for space occupied by any such supplementary structural support, exhaust, heating, cooling, ventilation, electrical, life safety, water or sewer systems installed outside the Premises shall be borne exclusively by Tenant and shall be paid by Tenant to Landlord as Additional Rent at rates fixed by Landlord from time to time.

(j) **Access**. Tenant shall have access to the Building and the Premises on a 24 hour per day, 7 days per week, 365 days per year basis, subject to Landlord's security and admittance requirements and procedures.

9. CONDITION AND CARE OF PREMISES.

(a) **Condition of Premises**. Tenant's taking possession of the Premises or any portion thereof shall be conclusive evidence against Tenant that such portion of the Premises was then in good order and satisfactory condition. Tenant acknowledges that the Premises shall be accepted by Tenant in their "as-is" condition, and that no promise by or on behalf of Landlord, any of Landlord's constituent members, the leasing agent of the Project or any of their respective agents, partners or employees, to alter, remodel, improve, repair, decorate or clean the Premises has been made to or relied upon by Tenant, and that no representation respecting the condition of the Premises or the Project by or on behalf of Landlord, its constituent members, or any of their respective agents, partners or employees has been made to or relied upon by Tenant, except to the extent expressly set forth in this Lease; provided, however, that the foregoing in no way relieves Landlord from any of its repair obligations set forth in this Lease.

(b) **Tenant's Repairs**. Subject to the provisions regarding fire and other casualty losses set forth in Section 17 hereof and to Sections 16 and 18 of this Lease, Tenant, at its expense, shall (i) keep the Premises (including all Tenant's Work and other Tenant Alterations, but excluding any Building structural elements and any portion of any mechanical, plumbing, electrical or other system located within the Premises that does not exclusively serve the Premises) in good order, repair and condition at all times during the Term, and (ii) promptly and adequately repair all damage to the Premises, including damage to interior windows and to any portion of the Building air conditioning, heating, electrical and plumbing systems which run through the Premises and which serve the Premises, caused by Tenant or its contractors, agents, employees or invitees. Tenant shall give prompt notice to Landlord of any material repair, maintenance or replacement items required under this Section 9(b). All work with respect to any such maintenance, repair or replacement shall be performed within a reasonable period after the need for such action arises and shall be subject to the provisions of Section 14 hereof. If Tenant fails to perform such work within a period of thirty (30) days after written notice from Landlord to Tenant (or such longer time period as may be reasonably necessary so long as Tenant commences taking action with respect to such repair work within the first ten (10) days after receiving such notice and diligently pursues completion thereof; provided, further, that no such notice or cure period shall be required in the case of an emergency), Landlord may, in its sole discretion, elect to effect such repairs whether or not Tenant would otherwise be prepared to do so, and, in such case, Tenant shall pay Landlord the cost thereof, plus a coordination and management fee equal to ten percent (10%) of the cost of such repair work, upon Landlord's written demand. Landlord shall also have the right to recover from Tenant, as Rent hereunder, any reasonable cost incurred by Landlord for architectural, engineering or other costs and expenses as a result of such work.

(c) **Landlord's Repairs**. Subject to the provisions regarding fire and other casualty losses set forth in Section 17 hereof, Landlord shall (i) keep the core and shell (as defined in Section 17(e) below), including foundations, roofs, gutters, downspouts, exterior walls, and the structural elements of the Building, the wiring, plumbing, pipes, conduits and equipment of the Building that serve the Premises but are not located within the Premises, and the Common Areas in the Building, exclusive of the Premises and other tenant spaces occupied by or under the control of tenants, in good order, repair and condition at all times during the Term, and (ii) keep in good order, condition and repair all outside windows of the Premises and

the electrical, plumbing, heating, ventilating and air conditioning systems servicing the Premises (other than as set forth in Section 9(b) above). Subject to the provisions regarding fire and other casualty losses set forth in Section 17 hereof and to Sections 16 and 18 of this Lease, Landlord, at its sole cost and expense and not as part of Expenses, will promptly and adequately repair all damage to the Premises caused by Landlord or its contractors, agents or employees. Notwithstanding the foregoing, (A) Landlord shall not be responsible for the maintenance or repair of any floor or wall coverings in the Premises or any of such systems which are located within the Premises and are supplemental or special to the Building's standard systems; and (B) subject to the provisions regarding fire and other casualty losses set forth in Section 17 hereof and to Sections 16 and 18 of this Lease, the cost of performing any of said maintenance or repairs, whether to the Premises or to the Building, caused by the negligence of Tenant, its employees, agents, servants, licensees, subtenants, contractors or invitees, shall be paid by Tenant within thirty (30) days after Landlord's demand therefor. So long as Landlord uses good faith efforts to maintain reasonable access to the Premises and to minimize unreasonable interference with the conduct of Tenant's business, Landlord may, but shall not be required to, enter the Premises at all reasonable times, upon prior written or oral notice to Tenant (except that no such notice or reasonable time requirement shall be required in the case of an emergency), to make repairs, alterations, improvements and additions to the Premises or to the Building (provided that any such alterations, improvements or additions performed within the Premises under this subclause shall only be performed with respect to Building systems, Building structure or core and shell, or other base Building elements located therein or any other items required by applicable Laws, and may be performed during normal Building business hours only so long as such work will not materially and adversely affect Tenant's business operation or the size of the Premises) or to any equipment located in the Building as Landlord shall reasonably desire or deem necessary or as Landlord may be required to make by governmental authority or court order or decree. If Landlord fails to perform its obligations under this Section 9(c) and such failure materially interferes with Tenant's use and occupancy of the Premises such that Tenant cannot reasonably maintain its business operation, Tenant may deliver written notice to Landlord specifying the default in question and stating the action which Tenant believes is required under the terms of this Lease to remedy such failure. If Landlord fails to commence to cure such default within ten (10) business days after receipt of written notice from Tenant, Tenant may give Landlord a second written notice (the "Self-Help Notice") of such default, which notice shall also state Tenant's intention to exercise the self-help remedy set forth in this Section 9(c) and a detailed description of the work to be performed, or actions to be taken, by Tenant to cure Landlord's default, together with a contractor's estimate of the cost to perform such work or take such action. If Landlord fails to commence to cure such default within five (5) business days after receipt of such second notice and to thereafter diligently prosecute such cure to completion, Tenant may engage qualified contractors to perform the work and take the actions described in the Self-Help Notice. In such event, said contractors are hereby granted the right to enter those portions of the Project which are reasonably necessary for the performance of such work and taking of such action. Landlord shall reimburse Tenant for the costs reasonably expended to perform such work and take such actions within thirty (30) days after Tenant's submission to Landlord of invoices for the work performed, evidence of payment of such invoices, and final lien waivers from any contractor which has performed lienable work.

If and to the extent that the Premises or Lobby sustain recurring leakage due to (i) Landlord's activities in or above the Premises or Lobby, (ii) concealed pipes, ducts, wiring,

conduits or appurtenances thereto in and through the Premises or Lobby in walls, below the floor or above the suspended ceiling; or (iii) from a Building condition, and if Tenant is not reasonably satisfied with Landlord's repair of the leakage area or remediation of the condition causing such leakage, then Tenant may, at Tenant's sole cost, engage an expert to analyze the cause of such leakage and the work required to remedy the condition. Landlord agrees to review the written assessment of such expert, to consult in good faith with Tenant regarding the remedial work required and to take such commercially reasonable steps as a prudent owner of Comparable Buildings would take to remediate the leakage problem.

(d) **No Rights to Light, Air or View**. This lease does not grant any rights to light, air or view over or about the real property of Landlord or any other real property. Subject to the conditions and requirements of Section 13(n) below, Landlord specifically excepts and reserves to itself all rights to and the use of any roofs, the exterior portions of the Premises, the land, improvements and air and other rights below the improved floor level of the Premises, the improvements and air and other rights above the improved ceiling of Premises (provided that Landlord shall be responsible, at its cost, for repairing any damage to Tenant's personal property caused by any leakage into the Premises resulting from above ceiling work), the improvements and air and other rights located outside the demising walls of the Premises and such areas within the Premises as are required for installation of utility lines and other installations required to serve the Building or any occupants of the Building, and Landlord specifically reserves to itself the right to use, maintain and repair same, and no rights with respect thereto are conferred upon Tenant, unless otherwise specifically provided herein.

(e) **Hazardous Substances**. Tenant shall comply, at its sole expense, with all Laws relating to the protection of public health, safety and welfare and with all environmental Laws in the use, occupancy and operation of the Premises. Tenant agrees that no Hazardous Substances (as hereinafter defined) shall be used, located, stored or processed on the Premises or be brought into the Building by Tenant, other than normal cleaning or other office supplies (and then, only to the extent such cleaning or other office supplies are stored and used in accordance with all applicable Laws) and no Hazardous Substances will be released or discharged from the Premises (including, but not limited to, ground water contamination). The term "**Hazardous Substances**" for purposes of this Lease shall be interpreted broadly to include, but not be limited to, any material or substance that is defined or classified under federal, state, or local laws as: (a) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), section 311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321, as now or hereafter amended; (b) a "hazardous waste" pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903, 6921, as now or hereafter amended; (c) a toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1); (d) a "hazardous air pollutant" under section 112 of the Clean Air Act, 42 U.S.C. §7412, as now or hereafter amended; (e) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. App. § 1802(4), as now or hereafter amended; (f) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws; or (g) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances, or regulations, as now or as may be passed or promulgated in the future. "Hazardous Substance" shall also mean any substance that after release into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the

environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities. "Hazardous Substance" specifically includes, but is not limited to, asbestos, polychlorinated biphenyls ("PCBs"), lead-based paint, storage containers (including tanks) and their contents, petroleum and petroleum based derivatives, and urea formaldehyde. In the event that Landlord or Tenant is notified of any investigation or alleged violation of any environmental Law arising from Tenant's activities at the Premises or otherwise affecting the Project, the notified party shall immediately deliver to the other party a copy of such notice or other information available regarding the investigation or alleged violation (including but not limited to the nature, extent and contaminants of concern involved). In the event Landlord reasonably believes that a violation of environmental Law was caused solely by Tenant at the Premises in violation of this Lease, and upon seventy-two (72) hours written notice to Tenant (except in emergency), then Landlord may conduct such reasonable and customary tests and studies relating to compliance by Tenant with environmental Laws or the alleged presence of Hazardous Substances upon the Premises. Tenant shall reimburse Landlord for all reasonable costs in conducting such tests and studies within thirty (30) days after demand therefore only if a violation of environmental Laws occurred in the Premises or was caused by Tenant's operation within the Project or if Hazardous Substances are in fact detected above their regulatory or background limits. Landlord shall provide Tenant the results and reports (including drafts) of any testing or investigation at the Premises. Landlord's inspection and testing rights are for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed any responsibility to Tenant or any other party for compliance with environmental Laws, as a result of the exercise, or non-exercise of such rights. Tenant shall indemnify, defend, protect and hold harmless Landlord, its constituent members, and their respective officers, directors, members, partners, agents, employees, successors and assigns (collectively, the "**Landlord Parties**"), from and against any and all loss, claim, expense, liability and cost (including attorneys' fees) arising out of or in any way related to the presence of any Hazardous Substance introduced to the Project during the Term by Tenant, its officers, directors, partners, shareholders, owners, affiliates, agents, employees, contractors, subcontractors, invitees, sublessees or other representatives. Landlord hereby agrees to indemnify, defend and hold Tenant and its agents and employees harmless from and against any and all loss, claim, expense, liability and cost (including attorneys' fees) arising out of or in any way related to the presence of any Hazardous Substance or Biological Toxant existing in the Premises as of the date on which possession of the Premises is delivered to Tenant or introduced into the Project during the Term by Landlord or its agents or employees. In addition, if and to the extent that another Building tenant introduces any Hazardous Substance or Biological Toxant into the Project in violation of its lease, or otherwise violates environmental Laws, Landlord shall use commercially reasonable efforts to enforce provisions of said tenant's lease pertaining to such environmental violations, including any provisions requiring said tenant to remediate any environmental condition which it has caused.

(f) **Americans with Disabilities Act**. Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "**ADA**") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises and the Building depending on, among other things: (1) whether Tenant's business is deemed a "**public accommodation**" or "**commercial facility**", (2) whether such

requirements are "**readily achievable**", and (3) whether a given alteration affects a primary function area or triggers "**path of travel**" requirements. The parties hereby agree that: (a) Landlord shall be responsible for ADA Title III compliance in the Common Areas of the Building, except as provided below, (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this lease, (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "**path of travel**" requirements triggered by alterations in the Premises, and (d) Landlord may perform, or require Tenant to perform, and Tenant shall be responsible for the cost ADA Title III compliance in the common areas of the Building necessitated by the Premises or the Building being deemed to be a "**public accommodation**" instead of a "**commercial facility**" as a result of Tenant's particular use of the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees. Landlord hereby agrees to indemnify, defend and hold Tenant harmless from and against any and all loss, claim, expense, liability and cost (including attorneys' fees) arising out of or in any way related to Landlord's failure to maintain the Common Areas in compliance with ADA Title III, excluding non-compliance caused by any acts or omissions of Tenant or its officers, directors, partners, shareholders, owners, affiliates, agents, employees, contractors, subcontractors, invitees, sublessees or other representatives.

(g) **Landlord Responsibility**. Landlord agrees, as to any Hazardous Substances (as now defined) or Biological Toxant (as defined below) existing in the Premises on the date on which possession of the Premises is delivered to Tenant (and not introduced into the Premises by Tenant or any of its employees, contractors, licensees, invitees, subtenants, assignees or agents), or introduced into the Premises by Landlord or its agents or employees during the Term, to remove or otherwise remediate such Hazardous Substances or Biological Toxant if and to the extent required by Law (as existing on such date of discovery), at Landlord's sole cost and expense. Tenant shall cooperate with Landlord in allowing proper access to the Premises to perform the foregoing removal or remediation activities, and, without limiting Landlord's obligations under this Section 9(g), shall use reasonable efforts not to take any action which may worsen any such environmental condition once discovered. Landlord shall restore any damage caused to the Premises as a result of such access by Landlord under this Section 9(g), to the extent such damage was not caused by Tenant's negligence or willful misconduct or Tenant's breach of its obligations hereunder. In any entry into the Premises under this Section 9(g), Landlord shall use commercially reasonable efforts to minimize interference with Tenant's business operations therefrom. Tenant shall have no claim against Landlord under this Section 9(g), unless such Hazardous Substances materially adversely impact Tenant's use and enjoyment of the Premises in accordance with the terms of this lease. Landlord represents and warrants to Tenant that, as of the date of this Lease, Landlord has not received any written notice of any violation of any environmental Laws at the Project.

(h) **Biological Toxants**. Tenant and Tenant's contractors, licensees, invitees, subtenants, assignees and agents shall not create or permit to exist in or about the Premises (or any other portion of the Building for which Tenant is responsible) any condition conducive to the growth of mold, fungus or other potentially dangerous organisms (collectively, "Biological Toxants"). For this purpose, a condition conducive to the growth of Biological Toxants shall include the presence of wet or damp wood, wet or damp cellulose wallboard or other wet or

damp materials which may constitute a food supply for Biological Toxants, including, but not limited to, waste, food and beverages. In the event that Tenant observes the presence of any Biological Toxant in the Premises or the Building, whether by sight, smell or otherwise, Tenant shall promptly notify Landlord in writing of such presence and the precise location thereof. If such presence is the result of the action or omission of Tenant or of Tenant's contractors, licensees, invitees, subtenants, assignees or agents, Tenant shall promptly, at its sole cost and expense, conduct such remediation work as shall be necessary to completely remove the Biological Toxant from the Premises or the Building, as applicable. Such remediation shall include removal and replacement with new building materials of any infected host materials (i.e., wood, wallboard, etc.), as well as any repairs and refinishing required as the result of such removal and replacement. Any remediation by Tenant shall be in accordance with the following:

(i) The method of remediation shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed;

(ii) Subject to clause (i) above, if the impacted area is less than thirty (30) square feet and does not affect the structural integrity of the Building or the electrical, exhaust, mechanical, plumbing, ventilation, life safety, telecommunications, security, heating or air conditioning systems of the Building, Tenant shall be permitted to use its own personnel to effect such remediation;

(iii) If the impacted area is thirty (30) square feet or more or the required remediation affects the structural integrity of the Building or the electrical, exhaust, mechanical, plumbing, ventilation, life safety, telecommunications, security, heating or air conditioning systems of the Building, Landlord shall have the right to require that the remediation be effected by contractors hired by Landlord;

(iv) All work done by Tenant in connection with the remediation shall be in accordance with Article 10 of this lease and Tenant shall pay Landlord, whether the remediation is performed by Landlord, Landlord's contractors or Tenant or Tenant's contractors, an amount equal to fifteen percent (15%) of the cost of such remediation work;

(v) Landlord shall determine, in its sole and absolute discretion based upon the advice and recommendations of Landlord's consultant, whether any wet materials can be effectively dried out and remain in place or whether such materials must be removed and replaced. Any materials which must be removed shall be disposed of in accordance with all applicable Laws. In the event that Landlord employs a consultant in connection with any Biological Toxant or apparent Biological Toxant which Tenant is responsible to remediate, Tenant shall reimburse Landlord, as Additional Rent, the reasonable costs and fees of such consultant. Such reimbursement shall be made within twenty (20) days after Tenant's receipt of Landlord's invoice therefor.

If Tenant is not responsible for the remediation of such Biological Toxant pursuant to this Section, Landlord shall conduct such remediation and any repairs and refinishing required as the result of such remediation. The cost of such remediation, repair, replacement and refinishing

shall be included in Expenses. Tenant shall cooperate with Landlord as reasonably requested in connection with any such remediation. There shall be no abatement of Rent on account of any remediation of a Biological Toxant for which Tenant is responsible for the remediation of pursuant to this Section. In the event of any remediation (i) for which Landlord is responsible pursuant hereto and (ii) which materially and adversely interferes with Tenant's use of the Premises, Rent shall abate for the period of such remediation to the same degree as the interference with Tenant's use of the Premises. Landlord's right of entry pursuant to the terms and provisions of this lease shall include the right to enter, inspect and test the Premises for the presence of Biological Toxants therein. If any such inspection and/or testing reveals the presence of Biological Toxants in the Premises, Landlord or Tenant shall promptly remediate the same pursuant to the terms and conditions of this Section. Any violation by Tenant of the covenants set forth in this Section shall be deemed to be a Default under this lease.

10. SURRENDER OF PREMISES.

(a) **Surrender**. Upon the termination of this Lease by lapse of time or otherwise or upon the earlier termination of Tenant's right of possession, Tenant shall surrender possession of the Premises to Landlord and deliver all keys, computer cards or codes and other entry devices to the Premises to Landlord and make known to Landlord the combinations of all locks of vaults then remaining in the Premises, and shall, subject to the following subparagraphs, return the Premises and all equipment and fixtures of Landlord therein to Landlord in as good condition as when Tenant originally took possession, except for ordinary wear and tear, and except for loss or damage by fire or other casualty or condemnation (which Tenant is not required to restore pursuant to Section 17 of this Lease), failing which Landlord may, after giving Tenant written notice of Tenant's breach of this Section 10(a) and Tenant's failure to remedy such breach within thirty (30) days after such notice, restore the Premises and such equipment and fixtures to such condition, and Tenant shall pay the cost thereof to Landlord within thirty (30) days after demand therefor.

(b) **Ownership of Improvements**. All installations, additions, partitions, hardware, fixtures and improvements, temporary or permanent (including Tenant's Work and other Tenant Alterations), except movable furniture and equipment and other personal property or trade fixtures belonging to Tenant, in or upon the Premises or Lobby, whether placed there by Tenant or Landlord, shall, upon the termination of this Lease by lapse of time or otherwise or upon the earlier termination of Tenant's right of possession, become Landlord's property and shall remain upon the Premises, all without compensation, allowance or credit to Tenant; provided, however, that if at the time Landlord consents to Tenant's installation of Tenant's Work, other Tenant Alterations or other installations, additions, partitions, hardware, fixtures and improvements, Landlord notifies Tenant in writing that any such items will be required to be removed upon expiration of the Term or earlier termination of this Lease, then Tenant, at Tenant's sole cost and expense, upon termination of this Lease by lapse of time or otherwise or upon the earlier termination of Tenant's right of possession, shall promptly remove such designated items, and Tenant shall thereafter repair any damage to the Premises or the Project caused by such removal, failing which Landlord may remove the same and repair the Premises or the Project, as the case may be, and Tenant shall pay the cost thereof to Landlord on written demand. Without limitation of the foregoing, if any of the Tenant's Work or other Tenant Alterations involved the lowering of ceilings, raising of floors or the installation of specialized

wall or floor coverings or lights, then Tenant, at Landlord's request, shall also be obligated to return such surfaces to their condition prior to the commencement of this lease. Upon being notified by Landlord that Tenant would be required to remove any such designated items, Tenant may elect not to proceed with installation of the items so designated. Except for items required to be removed and/or restored by Tenant as described above (herein, the "Removal Items"), it is understood and agreed that as part of Tenant's request for Landlord's consent to any Tenant Alterations (including, without limitation, any "Tenant's Work"), Tenant may specifically request a waiver of Landlord's right under this Section 10(b) to require removal of any such item or items included as part of said Tenant Alterations. Except with respect to the Removal Items, if Tenant so requests Landlord's waiver, then Landlord's failure to advise Tenant, as part of its consent process, that a given Tenant Alteration is required to be removed upon expiration or earlier termination of the lease or Tenant's right to possession hereunder, shall be construed to mean that Tenant need not so remove same and such determination shall be binding on Landlord at expiration or termination of this Lease. Tenant's failure to perform any work required of Tenant as described in this Section 10 on or before the expiration or earlier termination of this Lease or Tenant's right of possession hereunder, shall, without limitation on other rights or remedies available to Landlord, give rise to the right of Landlord, after thirty (30) days prior written notice thereof, to perform such work, and Tenant shall pay the reasonable costs thereof to Landlord within thirty (30) days after written demand therefor. In no event shall Landlord require Tenant to remove, at the end of the Term or otherwise, any items located at the Premises as of the Commencement Date hereunder. Further, in no event shall Tenant be required to remove any items described in this Section 10 prior to the expiration or earlier termination of the Term or of Tenant's right to possession of the Premises hereunder.

(c) **Removal of Personal Property**. Upon the termination of this Lease by lapse of time or otherwise or upon the earlier termination of Tenant's right of possession, Tenant shall remove from the Premises Tenant's furniture, machinery, safes and other items of movable personal property of every kind and description and Tenant's trade fixtures (excluding any of Tenant's Work or any Tenant Alteration, except as required to be removed pursuant to Section 10(b) above), and Tenant shall restore any damage to the Premises or the Project caused thereby (such removal and restoration to be performed prior to the expiration of the Term or earlier termination of this Lease or Tenant's right of possession), failing which Landlord, after giving Tenant written notice of Tenant's breach of this Section 10(c) and Tenant's failure to remedy such breach within thirty (30) days after such notice, may do so and thereupon the provisions of Section 19(b)(iv) shall apply.

(d) **Survival**. Without limitation of any other obligations of Tenant which shall survive the expiration or termination of this Lease, all obligations of Tenant under this Section 10 shall survive the expiration or earlier termination of this Lease.

11. HOLDING OVER. If Tenant retains possession of the Premises or any part thereof after the termination of the Lease by lapse of time or otherwise or after the earlier termination of Tenant's right of possession, Tenant shall pay to Landlord as Rent during such holdover period an amount equal to one hundred fifty percent (150%) of the Rent (based on the Base Rent plus the most current Additional Rent Estimate owed by Tenant during the most recent year for the entire Premises), for all or any portion of such holding over period, determined on a per diem basis. In addition to and without limiting any other rights and

remedies which Landlord may have on account of such holding over by Tenant, Tenant shall indemnify Landlord from and against any and all damages suffered by Landlord on account of such holding over by Tenant, including any damages and claims by tenants entitled to future possession; provided, however, that Tenant shall not be liable for consequential damages arising out of Tenant's holdover unless such holdover exceeds thirty (30) days. No occupancy by Tenant after the expiration or other termination of this Lease shall be construed to extend the Term. The provisions of this Section 11 shall not be deemed to limit or constitute a waiver of any rights or remedies of Landlord as provided herein or at law or equity.

12. RULES AND REGULATIONS. Tenant agrees to observe and not to interfere with the rights reserved to Landlord contained in Section 13 hereof and elsewhere in this Lease and agrees, for itself, its employees, agents, invitees, licensees and contractors, to accept and comply with the rules and regulations set forth in **Exhibit D** attached to this lease, and elsewhere in this lease, and such other commercially reasonable rules and regulations as may be adopted from time to time by Landlord pursuant to Section 13(o) or any other Section of this Lease. The rules and regulations in **Exhibit D** and all other rules and regulations made in accordance with this lease are intended and shall be construed to supplement and not limit or restrict in any way any of Landlord's rights or Tenant's obligations contained in Section 13 or any other Section of this lease. Nothing contained in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce any of said rules and regulations or the terms, covenants or conditions of any other lease against any other tenant or any other person. The following shall apply to Landlord's rules and regulations described in Exhibit D and any other rules, regulations, directives, controls, procedures, measures, orders or other requirements promulgated by Landlord and governing the Project and which are described in any other provision of this Lease and the Exhibits attached to this Lease, including the Workletter (all of the foregoing, including any modifications and additions thereto, "Rules and Regulations"): (i) Landlord shall not discriminate against Tenant in the enforcement of Rules and Regulations, (ii) the Rules and Regulations shall not be enforceable against Tenant until Tenant has been given reasonable prior written notice of such Rules and Regulations; and (iii) the Rules and Regulations shall not materially and adversely affect Tenant's rights under this Lease.

13. RIGHTS RESERVED TO LANDLORD. Landlord reserves and shall have the following rights, to the fullest extent permitted by applicable Laws, each of which shall, unless expressly provided otherwise, be exercisable without notice and without liability of Landlord, its constituent members, or any of their respective agents, partners or employees, to Tenant for damage or injury to property, person or business or for loss or interruption of business, or for any other matter, and without effecting an eviction or disturbance of Tenant's use or possession, in whole or in part, actual or constructive, or giving rise or entitling Tenant to any claim for set-off, abatement or reduction of Rent or relieving Tenant from the performance of or affecting any of Tenant's obligations under this lease:

(a) To change the name or the street address of the Building, upon not less than sixty (60) days' prior written notice (unless otherwise obligated to do so sooner by the U.S. post office or other governmental or quasi-governmental body).

(b) To install and maintain or remove signs on the exterior and interior of the Building and the Project; provided, however, in no event shall Landlord have the right to

(i) install, maintain or remove any signage on the interior of the Premises or Lobby (so long as such signage has been approved by Landlord); or (ii) maintain or remove any of Tenant's signage on the exterior or any other portion of the Building, Premises or Lobby, unless otherwise permitted under the terms of this Lease.

(c) To prescribe the location and style of the suite number and identification sign or lettering for the Premises.

(d) To retain at all times, and to use in appropriate instances, pass keys and other entry devices for all doors into and within the Premises.

(e) To grant to anyone the right to conduct any business or render any service in any part of the Building, subject to Tenant's expressly stated rights under this Lease.

(f) To enter the Premises for supplying janitor service or other services to be provided to Tenant hereunder, or in the exercise of Landlord's rights hereunder, and upon reasonable prior notice (except for routine services to be performed by Landlord hereunder, or where this lease otherwise permits entry without notice or in the event of an emergency, in which case immediate entry shall be permitted) for other reasonable purposes.

(g) To require all persons entering or leaving the Project or any part thereof during such hours as Landlord may from time to time reasonably determine to identify themselves to security personnel by registration or otherwise and to establish their right to enter or leave in accordance with Landlord's security controls. Landlord shall not be liable in damages or otherwise for any error with respect to admission to or eviction or exclusion from the Project or any part thereof of any person. Notwithstanding anything contained herein to the contrary, in case of fire, casualty, invasion, insurrection, mob, riot, act of terrorism, civil disorder, public excitement or other commotion, or threat thereof, Landlord reserves the right to limit or prevent access to the Project or any part thereof during the continuance of the same, halt elevator service, activate elevator emergency controls, or otherwise take such action or preventive measures reasonably deemed necessary by Landlord for the safety or security of the tenants or other occupants of the Project or the protection of the Project and the property in or about the Project. Tenant agrees to cooperate in any reasonable safety or security program developed by Landlord from time to time; provided that (i) all other Building tenants are required to participate in such reasonable safety or security program; (ii) such safety or security program does not materially and adversely affect any of Tenant's rights hereunder or the performance of the Tenant's Work; and (iii) Tenant receives prior written notice of such safety or security program.

(h) To control, restrict and prevent access to any areas of the Project, provided that reasonable access to the Premises, Lobby, Building parking areas and Receiving Docks shall be maintained at all times throughout the Term, and Landlord shall provide parking spaces as required by Laws, subject to emergency conditions.

(i) To rearrange, relocate, enlarge, reduce or change corridors, exits, elevators, stairs, lavatories, doors, entrances in or to the Building and to decorate and to make repairs, alterations, additions and improvements, structural or otherwise, in or to the Land or the Project or any part thereof, including the Premises (provided that entry into the Premises and the performance of any such work in the Premises shall be conditioned upon (i) Landlord using good faith efforts to maintain reasonable access to the Premises and to minimize unreasonable interference with the conduct of Tenant's business, (ii) Landlord entering the Premises at reasonable times upon prior written or oral notice to Tenant [except that no such notice or reasonable time requirement shall apply in the case of emergency], (iii) such work being performed in the Premises during normal Building business hours only so long as such work will not materially and adversely affect Tenant's business operation or the size of the Premises, and (iv) any alterations, improvements or additions performed within the Premises under this subclause shall only be performed with respect to Building systems, Building structure or core and shell, or other base Building elements located therein or any other items required by applicable Laws), to the extent required to fulfill Landlord's duties under other provisions of this Lease or to make necessary repairs for the benefit of other portions of the Building, and any adjacent building, land, street or alley, including for the purpose of connection with or entrance into or use of the Land or the Project in conjunction with any adjoining or adjacent building or buildings or pedestrian ways, now existing or hereafter constructed, provided that, in the absence of an emergency or as otherwise required by applicable Laws, Landlord shall (A) not take any action under this subclause (i) which will have the affect of materially restricting Tenant's ability to access the Premises, Lobby, Receiving Docks, Auditorium or Building Conference Room in a manner which is consistent with access rights to comparable office premises at other comparable first class office buildings, and (B) use good faith efforts to minimize unreasonable interference with the conduct of Tenant's business or use of the Premises, Lobby, Receiving Docks, Auditorium or Building Conference Room. In that regard, Landlord may erect scaffolding and other structures reasonably required by the character of the work to be performed, and during such operations to enter upon the Premises upon reasonable prior notice and take into and upon or through any part of the Project, including the Premises, all materials that may be required to do such work or make such decorations, repairs, alterations, improvements or additions, and in connection with any of the foregoing, to close public entryways, other public spaces, stairways or corridors and, subject to Section 8(f) above, to interrupt or temporarily suspend any services or facilities agreed to be furnished by Landlord. Landlord may at its option do any such work and make any such decorations, repairs, alterations, improvements and additions in and about the Project and the Premises during ordinary business hours and, if Tenant desires to have the same done during other than ordinary business hours, Tenant shall pay all overtime and additional expenses resulting therefrom.

(j) To establish commercially reasonable controls for the purpose of regulating all property and packages to be taken into or removed from the Building and Premises; provided that Tenant shall have the right to accept deliveries during Tenant's normal business hours.

(k) To regulate delivery of supplies and services in order to ensure the cleanliness and security of the Project and to avoid congestion of the loading docks, receiving areas and freight elevators.

(l) To approve the weight, size and location of safes, vaults, books, files and other heavy equipment and articles in and about the Premises and the Building so as not to exceed the design live load per square foot designated by the structural engineers for the Building, and to require all such items and furniture and similar items to be moved into or out of the Building and Premises only at such times and in such manner as Landlord shall direct in writing. Tenant shall not install or operate machinery or any mechanical devises of a nature not directly related to Tenant's ordinary use of the Premises and of a nature not consistent with customary first-class office usage without the prior written consent of Landlord (which consent shall not be unreasonably withheld).

(m) To show the Premises to prospective tenants at reasonable hours and upon prior written or oral notice to Tenant and accompanied by a Landlord representative or agent during the last twelve (12) months of the Term or to prospective mortgagees, ground lessors or purchasers of the Land or Building or both at any time upon prior written or oral notice to Tenant, and, if Tenant's right of possession of the Premises has been terminated, to show the Premises to prospective tenants at any time and to demolish, alter, remodel or otherwise prepare the Premises for re-occupancy.

(n) Upon reasonable prior notice to Tenant, to erect, use and maintain concealed pipes, ducts, wiring and conduits, and appurtenances thereto, in and through the Premises in walls, below the floor and above the suspended ceiling; provided that, notwithstanding anything to the contrary herein, (i) Landlord shall be responsible for maintaining at all times in good order and repair all such concealed pipes, ducts, wiring and conduits, and appurtenances thereto in and through the Premises or Lobby in walls, below the floor and above the suspended ceiling; (ii) Subject to Section 16, Landlord shall indemnify, defend, protect and hold harmless Tenant, the Tenant Parties, any employees, agents, contractors or other representatives of Tenant from and against any and all loss, claim, expense, liability and cost (including reasonable attorneys' fees) arising out of or in any way related to Landlord's installation, use or maintenance of such concealed pipes, ducts, wiring and conduits, and appurtenances thereto, in and through the Premises or Lobby in walls, below the floor and above the suspended ceiling (and Landlord shall be responsible, at its cost, to repair damage to Tenant's property caused by such work); and (iii) such installation, use and maintenance of such concealed pipes, ducts, wiring and conduits, and appurtenances thereto in and through the Premises or Lobby in walls, below the floor and above the suspended ceiling shall be performed in a manner so as to minimize any interference with Tenant's use of the Premises. Landlord shall repair any damage to the Premises or Lobby, Tenant's Work or any Tenant Alteration caused by Landlord's installation, use or maintenance of such concealed pipes, ducts, wiring and conduits, and appurtenances thereto, in and through the Premises or Lobby in walls, below the floor and above the suspended ceiling within a reasonable time after notice thereof to Landlord.

(o) Upon written notice to Tenant, and subject to Section 6(a) of this Lease, from time to time to make and adopt such reasonable rules and regulations, in addition to or as an amendment to rules and regulations contained in **Exhibit C** attached to this lease or other Sections of this lease, or adopted pursuant to this or other Sections of this lease, for the use, entry, operation or management of the Premises or the Project or for the protection or welfare of the Project or its tenants or occupants, or any property therein, as Landlord may reasonably determine, and Tenant agrees to accept, abide by and comply with all such rules and regulations, all subject to the terms of Section 12 above.

(p) Subject to any conditions set forth in Section 13(n) which apply to such work because such work is within the Premises, to use any roofs, the exterior portions of the Premises, the Land, improvements and air and other rights below the improved floor level of the Premises or above the improved ceiling of the Premises, or outside the demising walls of the Premises, and such areas and risers within the Premises as are used for utility lines and other facilities or equipment required to serve the Building or any occupants of the Building, and the right to use, maintain and repair same; no rights with respect thereto are conferred upon Tenant, unless otherwise specifically provided herein. If any such activities would materially affect Tenant's business operation, Landlord will give Tenant prior notice of such activities.

In exercising its rights under this Section 13, Landlord shall not unreasonably interfere with Tenant's use and occupancy of the Premises or Tenant's use of, and access to, the Lobby, Receiving Docks, Auditorium and Building Conference Room. Additionally, to the extent that any Landlord requires entry into the Premises to perform any work in the Premises or is performing work outside of the Premises which will materially affect Tenant's business operation, Landlord will make commercially reasonable efforts to coordinate scheduling of such work with Tenant, in good faith.

14. ALTERATIONS. The provisions of this Section 14 pertain to Tenant Alterations performed other than the Tenant's Work which is covered by, and subject to, the terms of the Workletter.

(a) **Consent; Conditions**. Tenant shall not perform any Tenant Alterations without first obtaining the prior written consent of Landlord (not to be unreasonably withheld, as provided in Section 14(e) below). Without limitation on the foregoing, and to the extent that Landlord's consent is required under this Section 14, Landlord may impose such reasonable conditions with respect to Tenant Alterations as Landlord deems reasonably appropriate, including, without limitation, requiring Tenant to furnish to Landlord for its approval prior to commencement of any work or entry by Tenant's contractors into the Premises or the Building, insurance against liabilities which may arise out of the Tenant Alterations and plans and specifications and permits necessary for the Tenant Alterations.

(b) **Contractors**. Tenant Alterations shall be done at Tenant's expense by agents or contractors hired by Tenant who are reasonably acceptable to Landlord and whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants, contractors or service providers at the Building, or at Landlord's election, as it relates to work affecting (1) life safety systems, (2) Building risers, (3) Building structure or core and

shell, or (4) any other Building systems which can affect other tenants' operations or any other operations at the Building, by Landlord's employees or contractors hired by Landlord. Before employing any such contractors, Tenant shall submit to Landlord the names and addresses of such contractors.

(c) **Costs; Mechanic Liens**. Tenant shall promptly pay the cost, when due, of all Tenant Alterations. In addition to the cost of such Tenant Alterations, Tenant shall pay to Landlord or to its designated agent, as Landlord shall direct, an amount equal to five percent (5%) of all of the costs of all Tenant Alterations as a coordination and management fee allocable to the Tenant Alterations; provided, however that no such fee shall be payable with respect to any Tenant Alterations project which costs less than $10,000.00. Landlord shall also have the right to recover from Tenant, any reasonable out-of-pocket cost incurred by Landlord for architectural, engineering or other costs and expenses as a result of the Tenant Alterations. Upon completion of any Tenant Alterations, Tenant shall deliver to Landlord, if payment is made directly to contractors, evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services and materials sufficient to waive all rights to liens under the Illinois Mechanic's Lien law arising or from the work done. Tenant shall not permit any lien or claim for lien of any mechanic, labor or supplier or any other lien to be filed against the Building, the Land or the Premises or any part thereof, arising out of any Tenant Alterations or other work performed or alleged to be performed, by or at the direction of Tenant. If any such lien or claim for lien is filed, Tenant shall, within thirty (30) days of receiving notice of such lien or claim, (i) have such lien or claim for lien released of record, or (ii) deliver to Landlord title insurance or other security in form, content, and amount satisfactory to Landlord relative to such lien or claim for lien (whereupon, in the case of this subclause (ii), Tenant shall thereafter diligently contest such lien or claim for lien). Without limitation of the foregoing, Tenant shall indemnify, defend and hold harmless, Landlord and the other Landlord Parties, from and against any such lien or claim for lien, and the foreclosure or attempted foreclosure thereof, and Tenant shall cause any such lien to be released of record or insured over, in any event, prior to final enforcement thereof. If Tenant fails to take the actions described in subclause (i) or subclause (ii) above, then Landlord, without investigating the validity of such lien or claim for lien, but after giving Tenant written notice thereof and Tenant's continued failure to take such actions within five (5) days after such notice, may pay or discharge the same, and Tenant shall, as payment of additional Rent hereunder, reimburse Landlord upon demand for the payment so paid by Landlord, including Landlord's expenses and attorneys' fees related thereto.

(d) **General**. Excepting matters for which the parties have explicitly released each other in this Lease (including, without limitation, the releases contained in Section 16 hereof) or matters which are included within the scope of any indemnities contained in this Lease (including, without limitation, any environmental indemnities contained in Section 9 hereof), Tenant agrees to indemnify, defend by counsel reasonably acceptable to Landlord and hold Landlord and the other Landlord Parties, and the Project, harmless of, from and against any and all losses, damages, liabilities, claims, liens, costs and expenses, including without limitation court costs and reasonable attorneys' fees and expenses, arising in connection with any Tenant Alterations. All Tenant Alterations done by Tenant or its contractors, including work done pursuant to Section 9, shall be performed in a first class workmanlike manner using only good grades of materials and shall comply with all Laws. Within thirty (30) days after substantial completion of any Tenant Alterations by or on behalf of Tenant, Tenant shall furnish to Landlord

“final construction” drawings (marked in the field to reflect all “as built” conditions) of such Tenant Alterations. All Tenant Alterations shall be performed in accordance with Landlord’s standard construction rules and regulations for the Building. In no event shall any supervision or right to supervise by Landlord, nor shall any approvals given by Landlord hereunder, constitute any warranty by Landlord to Tenant of the adequacy of the design, workmanship or quality of the Tenant Alterations, or impose any liability upon Landlord in connection with the performance of such work.

(e) **Reasonable Consent**. With respect to any Tenant Alterations for which Landlord’s consent is required, Landlord agrees not to unreasonably withhold or delay its consent to such Tenant Alterations; provided, however, that Landlord shall not be deemed to have acted unreasonably if it withholds its consent because, in Landlord’s reasonable opinion, such work would adversely affect Building systems, the structure of the Building or the safety of its occupants; would increase Landlord’s cost of repairs, insurance or furnishing services or otherwise adversely affect Landlord’s ability to efficiently operate the Building or furnish services to Tenant or other tenants; involves toxic or hazardous materials in any unlawful manner; or requires entry into another tenant’s premises or use of public areas (other than use of public areas for prompt movement of materials to the Premises). The foregoing reasons, however, shall not be exclusive of the reasons for which Landlord may withhold consent, whether or not such other reasons are similar or dissimilar to the foregoing.

(f) **Non-Structural Alterations**. Notwithstanding the foregoing provisions of this Section 14, Tenant may perform certain interior alterations (collectively, “**Non-Structural Alterations**”) to the Premises such as carpeting, painting (so long as the odors from the same do not materially or unreasonably interfere with any other tenant’s operations), hanging artwork or wall coverings, installing furniture systems, installing non-load bearings partitions, or other similar interior improvements, without (1) obtaining Landlord’s consent therefor, (2) obtaining Landlord’s approval of the contractors/service providers performing the same, or (3) payment of any supervision or other fee to Landlord or any reimbursement of Landlord’s out-of-pocket costs relating thereto (but subject to the remaining requirements of this Section 14, but only if (i) such items do not affect the Building structure or HVAC, electrical or other Building systems, the public areas of the Building or any other tenant space, (ii) Tenant gives prior written notice to Landlord of such items, including a description of the contemplated work and the types of materials being used, (iii) the cost of such alterations do not exceed $25,000 for any one or any series of related Alterations, and (iv) the contractors/service providers performing such work are reputable and do not cause any labor disharmony at the Building. Approval of plans and specifications shall not be required for the foregoing Non-Structural Alterations, where plans and specifications are not reasonably appropriate for the work to be performed.

15. ASSIGNMENT AND SUBLETTING.

(a) **Prohibitions**. Subject to the terms of Section 15(h) below, Tenant shall not, either prior or subsequent to the commencement of the Term, (i) assign, transfer, mortgage, pledge, hypothecate or encumber or subject to or permit to exist upon or be subjected to any lien or charge, this Lease or any interest under it, (ii) allow to exist or occur any transfer of or lien upon this Lease or Tenant’s interest herein by operation of law, (iii) sublet the Premises or any part thereof, or (iv) permit the use or occupancy of the Premises or any part thereof for any

purpose not provided for under Section 6 of this Lease or by anyone other than Tenant and Tenant's employees. Landlord has the absolute right to withhold its consent to any of such acts without giving any reason whatsoever, except with respect to assignment and subletting as herein expressly provided to the contrary in Section 15(d). In no event shall this Lease be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, except as provided by law, and in no event shall this Lease or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency or reorganization proceedings, except as provided by law. Any of the foregoing performed or attempted in violation of the provisions of this Section shall be null and void.

(b) **Continuing Liability**. No assignment, subletting, use, occupancy, transfer or encumbrance by Tenant, including an assignment to a Tenant Affiliate (as hereafter defined), shall operate to relieve Tenant from any covenant, liability or obligation hereunder except to the extent, if any, expressly provided for in any such written consent of Landlord to the foregoing, and none of the foregoing, and no consent to any of the foregoing, shall be deemed to be a consent to or relieve Tenant from obtaining Landlord's consent to any subsequent assignment, subletting, use, occupancy, transfer or encumbrance. Tenant shall pay all of Landlord's reasonable costs, charges and expenses, including, without limitation, reasonable attorneys' fees and expenses (which attorneys' fees shall not exceed $2,000.00 in any one instance), incurred in connection with any assignment, subletting, use, occupancy, transfer or encumbrance made or requested by Tenant.

(c) **Notice of Proposed Assignment or Sublease; Recapture**. Tenant shall, by notice in writing, advise Landlord of its intention from, on and after a stated date (which shall not be less than thirty (30) nor more than ninety (90) days after the date of the giving of Tenant's notice to Landlord) to assign this Lease or sublet all or any part of the Premises for the balance or any part of the Term, and, in such event, Landlord shall have the right, to be exercised by giving written notice to Tenant within twenty (20) days after its receipt of Tenant's notice, (1) so long as the proposed assignee of the Lease or the proposed subtenant, as the case may be, is not a Tenant Affiliate (as hereinafter defined), to terminate this Lease with respect to the space described in Tenant's notice as of the date that is thirty (30) days after Tenant's receipt of such Landlord termination notice (provided, however, that in the event Tenant notifies Landlord within such thirty (30) day period that it is revoking its notice to sublet or assign, then this Lease shall continue in full force and effect and Landlord's termination notice shall be deemed null and void), or (2) to consent or refuse to consent to the proposed assignment or sublease, as described in Section 15(d) below. Tenant's notice shall include the name and address of the proposed assignee or subtenant, a true and complete copy of the proposed assignment or sublease and sufficient information, as Landlord deems reasonably necessary, to permit Landlord to determine (i) the financial responsibility and character and the nature of the business of the proposed assignee or subtenant, and (ii) whether Landlord has the right under this lease to withhold consent to the proposed assignment or sublease. If Tenant's notice covers all of the Premises and if Landlord exercises its right to terminate this Lease as to such space (and Tenant does not revoke its notice to assign or sublease), then the Term of this lease shall expire and end on the date stated in Tenant's notice for the commencement of the proposed assignment or sublease as fully and completely as if that date had otherwise been the Expiration Date. If, however, Tenant's notice covers less than all of the Premises, and if Landlord exercises its right to terminate this lease with respect to such space described in Tenant's notice (and Tenant does not

revoke its notice to assign or sublease), then as of the date stated in Tenant's notice for the commencement of the proposed sublease, the Base Rent and Tenant's Proportionate Share shall be adjusted on the basis of the number of square feet of Rentable Area retained by Tenant, and this Lease as so amended, shall continue thereafter in full force and effect. Landlord shall have no right to terminate this Lease pursuant to this Section 15(c) if the proposed assignee or the proposed subtenant, as the case may be, is a Tenant Affiliate. Notwithstanding anything to the contrary contained herein, if (i) Landlord fails to respond to Tenant's request for consent to an assignment or subleasing within twenty (20) days after Landlord's receipt of such request accompanied by all other information required pursuant to this Section 15 (c), (ii) Tenant sends a second written request for such consent which request states conspicuously "YOUR FAILURE TO RESPOND TO THIS REQUEST WILL RESULT IN A DEEMED APPROVAL", and (iii) Landlord fails to respond to such second request within seven (7) business days after receipt thereof, then Landlord shall be deemed to have consented to the assignment or sublease in question.

(d) **Grounds for Withholding Consent**. If Landlord, upon receiving Tenant's notice with respect to any such space, does not exercise its right to terminate as aforesaid, Landlord will not unreasonably withhold, condition or delay its consent to Tenant's assignment of this Lease or subletting the space covered by Tenant's notice. Landlord shall not be deemed to have unreasonably withheld its consent to a proposed assignment of this lease or to a proposed sublease of part or all of the Premises if its consent is withheld because: (i) Tenant is then in Default hereunder; (ii) any notice of termination of this lease or termination of Tenant's right of possession shall have been given under Section 19; (iii) either the portion of the Premises which Tenant proposes to sublease, or the remaining portion of the Premises, or the means of ingress or egress to either the portion of the Premises which Tenant proposes to sublease or the remaining portion of the Premises is of such nature that it will violate any applicable Law, is of such accessibility, size or irregular shape so as not to be suitable for normal renting purposes as space on a multi-tenant floor within the Building; (iv) the proposed use of the Premises by the proposed assignee or subtenant does not conform with the use set forth in Section 6 hereof, or will violate any applicable Law, will impose any obligation upon Landlord or increase Landlord's obligations under or cost of compliance with any Laws, or will violate any exclusive right Landlord has granted or contemplates granting in the future to any tenant of any part of the Project; (v) in the reasonable judgment of Landlord the proposed assignee or subtenant is of a character or is engaged in a business which would be deleterious to the reputation of the Project, Landlord or any of the constituent members of Landlord; (vi) in the reasonable judgment of Landlord, the proposed assignee or subtenant is not sufficiently financially responsible to perform its obligations under the proposed assignment or sublease; (vii) the proposed assignee or subtenant is a government (or subdivision or agency thereof); or (viii) the proposed assignee or subtenant is an occupant (or affiliate thereof) of the Building or is a person or entity (or affiliate thereof) with whom Landlord is then dealing, or has dealt with during the prior six (6) months with regard to leasing of space in the Building; provided, however, that the foregoing are merely examples of reasons for which Landlord may withhold its consent and shall not be deemed exclusive of any permitted reasons for reasonably withholding consent, whether similar or dissimilar to the foregoing examples, and Landlord may consider all relevant factors in determining whether to give or withhold its consent. Tenant agrees that all advertising by Tenant or on Tenant's behalf with respect to the assignment of this lease or subletting of any part of the Premises must be approved in writing by Landlord prior to publication.

(e) **Excess Rent Payment**. If Tenant (as Tenant or debtor-in-possession) shall sublet the Premises, or any part thereof, at a rental or for other consideration in excess of the Rent or pro rata portion thereof due and payable by Tenant under this Lease, then Tenant shall pay to Landlord as additional Rent (i) on the later of the first day of each month during the term of any sublease, or the day of receipt from such subtenant, one-half (1/2) of the excess of all rent and other consideration paid by the subtenant for such month over the Rent then payable to Landlord pursuant to the provisions of this lease for said month (or if only a portion of the Premises is being sublet, one-half (1/2) of the excess of all rent and other consideration due from the subtenant for such month over the portion of the Rent then payable to Landlord pursuant to the provisions of this lease for said month which is allocable on a Rentable Area basis to the space sublet), and (ii) immediately upon the receipt thereof, one-half (1/2) of any other consideration realized by Tenant from such subletting. Landlord shall not be responsible for any deficiency if Tenant shall assign this Lease or sublet the Premises or any part thereof at a rental less than that provided for herein. Whenever reference is made to the "excess" of rent or other consideration, such excess shall be reduced by charging (i.e., on an amortized basis over the term of the sublease) against the rent or other consideration paid by such subtenant, reasonable brokerage commissions and leasehold improvements and other reasonable out-of-pocket costs (including, without limitation, construction, marketing, legal fees and other concessions) which Tenant has paid in connection with subleasing the applicable portion of the Premises. The terms of this subparagraph (e) shall not apply to any subletting transactions permitted under Section 15(h) below.

(f) **Lease Assumption; Subtenant Attornment**. If Tenant shall assign this Lease, the assignee shall expressly assume all of the obligations of Tenant hereunder in a written instrument provided by Landlord and delivered to Landlord not later than ten (10) days prior to the effective date of the assignment. If Tenant shall sublease any part of the Premises, Tenant shall obtain and furnish to Landlord, not later than ten (10) days prior to the effective date of such sublease and in form reasonably satisfactory to Landlord, the written agreement of such subtenant to the effect that the subtenant will attorn to Landlord, at Landlord's option and written request (at Landlord's sole election), if this Lease terminates before the expiration of the sublease. Tenant shall, not later than fifteen (15) days after the effective date of any such assignment or sublease, deliver to Landlord a certified copy of the instrument of assignment or sublease.

(g) **Corporation, Partnership and Limited Liability Company Transfers**. If Tenant is a corporation, any transaction or series of transactions (including without limitation any dissolution, merger, consolidation or other reorganization of Tenant, or any issuance, sale, gift, transfer or redemption of any capital stock of Tenant, whether voluntary, involuntary or by operation of law, or any combination of any of the foregoing transactions) resulting in the transfer of control of Tenant, other than by reason of death, shall be deemed to be a voluntary assignment of this Lease by Tenant subject to the provisions of this Section 15. If Tenant is a partnership or limited liability company, any transaction or series of transactions (including without limitation any withdrawal or admittance of a partner or member or any change in any partner's or member's interest in Tenant, whether voluntary, involuntary or by operation of law, or any combination of any of the foregoing transactions) resulting in the transfer of control of Tenant, other than by reason of death, shall be deemed to be a voluntary assignment of this Lease by Tenant subject to the provisions of this Section 15. The term "**control**" as used in this lease

means the power to directly or indirectly direct or cause the direction of the management or policies of Tenant, through the ownership of voting or other ownership interests. Notwithstanding any of the foregoing, the provisions of this Section 15(g) shall not apply to the original named Tenant hereunder or any permitted assignee which is a Tenant Affiliate (as defined below).

(h) **Permitted Transfers**. Notwithstanding any of the foregoing, Landlord's consent shall not be required for an assignment to a Tenant Affiliate, and Landlord shall not terminate this Lease with respect to the Premises or any portion of the Premises or otherwise collect any excess rent under subparagraph (e) above as a result of such assignment to a Tenant Affiliate; provided, however, that (i) Tenant shall give reasonable prior notice to Landlord of the proposed assignment, (ii) such assignor shall remain liable for the obligations of Tenant under this Lease, as provided in Section 15(b) above, and (iii) such assignee shall expressly assume the obligations of Tenant under this Lease. As used in this Lease, the term "**Tenant Affiliate**" shall mean any entity (1) which results from a merger or consolidation with the Tenant under this Lease, or (2) which acquires all or substantially all of the assets or ownership interests of the Tenant under this Lease for a purpose other than to circumvent the provisions of this Article 15, or (3) which controls, is controlled by, or is under common control with, the Tenant under this L ease (with "control" or words of similar import meaning the power, whether directly or indirectly, by contract or equity ownership, to control the management and policies of the entity in question).

16. WAIVER OF CERTAIN CLAIMS, INDEMNITY BY TENANT.

(a) **General Waiver**. In addition to and without limiting or being limited by any other releases or waivers of claims in this Lease, but rather in confirmation and furtherance thereof, to the extent not prohibited by law, Landlord and Tenant each releases and waives any and all claims for, and rights to recover, damages against and from the other, and the other's respective agents, members, partners, shareholders, officers and employees (collectively, the "**Released Parties**"), for loss, damage or destruction to any of its property (including the Premises, the Building, the Common Areas and their contents), the elements of which are insured against (with "insured against" meaning coverage over and above the amount of $50,000.00, it being the intent that the cost of a loss, damage or destruction which is less than $50,000.00 shall be borne by the party causing such loss, damage or destruction notwithstanding that such loss, damage or destruction may be within the coverage of the other party's insurance) or which would have been insured against (with "insured against" meaning coverage over and above the amount of $50,000.00, it being the intent that the cost of a loss, damage or destruction which is less than $50,000.00 shall be borne by the party causing such loss, damage or destruction notwithstanding that such loss, damage or destruction may be within the coverage of the other party's insurance) had such party suffering such loss, damage or destruction maintained the property or physical damage insurance policies required under Section 22 hereof. In no event shall this clause be deemed, construed or asserted (i) to affect or limit any claims or rights against any Released Parties other than the right to recover damages for loss, damage or destruction to property, or (ii) to benefit any third party other than the Released Parties.

(b) **Indemnity by Tenant**. Subject to the terms of Section 16(a) above, in addition to and without limiting or being limited by any other indemnity in this Lease, but rather

in confirmation and furtherance thereof, to the extent not prohibited by law, and excluding matters caused by any of the Landlord Parties, Tenant agrees to indemnify, defend by counsel reasonably acceptable to Landlord and hold Landlord and the Landlord Parties, and the Project, harmless of, from and against any and all losses, damages, liabilities, claims, liens, costs and expenses, including court costs and reasonable attorneys' fees and expenses, in connection with injury to or death of any person or with respect to damage to or theft, loss or loss of the use of any property, occurring in or about the Premises or the Project arising from Tenant's occupancy of the Premises, or the conduct of its business or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or the Project, or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or due to any other negligent act or omission or willful misconduct of Tenant, or any of its employees, agents, licensees, invitees or contractors.

(c) **Waiver**. To the extent permitted by law, Tenant releases Landlord and the Landlord Parties from, and waives all claims for, damage or injury to person or property sustained by the Tenant or any occupant of the Building or the Premises resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Project or the Premises or any part of either or any equipment or appurtenance therein, or resulting from any accident in or about the Project or resulting directly or indirectly from any act or neglect of any tenant or occupant of the Building or of any other person, including Landlord's agents and servants, except where resulting from the negligence or willful misconduct of Landlord or any of the Landlord Parties. Tenant hereby waives any consequential damages, compensation or claims for inconvenience or loss of business, rents, or profits as a result of any injury or damage occurring at or about the Building. To the extent permitted by law, Landlord releases Tenant and the Tenant Parties from, and waives all claims for, damage or injury to person or property sustained by the Landlord or any occupant of the Building or the Premises resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Project or the Premises or any part of either or any equipment or appurtenance therein, or resulting from any accident in or about the Project or resulting directly or indirectly from any act or neglect of any tenant or occupant of the Building or of any other person, including Tenant's agents and servants, except where resulting from the negligence or willful misconduct of Tenant or any of the Tenant Parties (as defined below).

(d) **Indemnity by Landlord**. Subject to the terms of Section 16(a) above, in addition to and without limiting or being limited by any other indemnity in this Lease, but rather in confirmation and furtherance thereof, to the extent not prohibited by law, and excluding matters caused by Tenant or its employees, agents, contractors, consultants, vendors, customers, affiliates, invitees and any other person or entity acting on behalf of Tenant or whose presence in the Project is in connection with Tenant's business operation at the Project (all of the foregoing, collectively, the "**Tenant Parties**"), Landlord agrees to indemnify, defend by counsel reasonably acceptable to Tenant and hold Tenant and the constituent partners of Tenant, harmless of, from and against any and all losses, damages, liabilities, claims, liens, costs and expenses, including court costs and reasonable attorneys' fees and expenses, imposed on them in connection with injury to or death of any person, occurring within the common areas of the Building or elsewhere at the Project, or with respect to damage to or theft, loss or loss of the use of property of any person, occurring within the common areas of the Building or elsewhere at the Project, but only

to the extent that the foregoing losses, damages, liabilities, claims, liens, costs and expenses arise from or are caused by any breach or default on the part of Landlord in the performance of any covenant or agreement on the part of Landlord to be performed pursuant to the terms of this Lease, or from any negligent act or omission or willful misconduct of Landlord. No persons or entities other than Tenant or its constituent partners shall be deemed third party beneficiaries of the indemnities set forth in this Section 16(d).

17. DAMAGE OR DESTRUCTION BY CASUALTY.

(a) **Termination of Lease; Repair by Landlord**. If the Premises or the Building, or the Lobby, Receiving Docks and Auditorium, shall be damaged by fire or other casualty and if such damage does not render all or a material portion of the Premises or the Building untenantable, or all or a material portion of the Lobby, Receiving Docks and Auditorium unusable for their intended purposes, then Landlord shall proceed with reasonable promptness to repair and restore the Building and the Premises, and the Lobby, Receiving Docks and Auditorium, so as to render the Premises tenantable and the Lobby, Receiving Docks and Auditorium usable, subject to reasonable delays for insurance adjustments and delays caused by matters beyond Landlord's reasonable control, and also subject to zoning laws and building codes then in effect. If any such damage renders all or a material portion of the Premises or the Building untenantable, or renders the Lobby, Receiving Docks or Auditorium unusable, Landlord shall, with reasonable promptness after the occurrence of such damage, estimate the length of time that will be required to substantially complete the repair and restoration of the Building and the Premises, and the Lobby, Receiving Docks and Auditorium, as the case may be, necessitated by such damage and shall by notice given to Tenant approximately sixty (60) days from the date such damage occurs, advise Tenant of such estimate, and advise Tenant if Landlord has available sufficient insurance and other proceeds to complete the repair and restoration. If it is so estimated that the amount of time required to substantially complete such repair and restoration will exceed two hundred seventy (270) days from the date such damage occurred, or if Landlord will not have available sufficient insurance and other proceeds to complete the repair and restoration, then either Landlord or Tenant shall have the right to terminate this lease as of the date of notice of such election by giving notice to the other at anytime within twenty (20) days after Landlord gives Tenant the notice containing said estimate. Unless this lease is terminated as provided in the preceding sentence, Landlord shall proceed with reasonable promptness to repair and restore the Building or the Premises, and the Lobby, Receiving Docks and Auditorium, so as to render the Premises tenantable (including restoration of reasonable access to the Premises, if such access was destroyed as a result of the subject casualty), and the Lobby, Receiving Docks and Auditorium usable, subject to reasonable delays for insurance adjustments and delays caused by matters beyond Landlord's reasonable control, and also subject to zoning laws and building codes then in effect. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this lease (except as hereinafter provided) if such repairs and restoration are not in fact completed within the time period estimated by Landlord, as aforesaid, or within said two hundred seventy (270) days. However, if such repairs and restoration are not completed by a date ("**Outside Date**") which is twelve (12) months after the date of such fire or other casualty (or ninety-five (95) days after the expiration of the time period estimated by Landlord as aforesaid, if longer than two hundred seventy (270) days and neither party terminated the lease as permitted), which Outside Date shall be extended (as to Tenant's ability to terminate only) by all periods of delay attributable to the acts or

omissions of Tenant or Tenant's agents, employees or contractors, for any reason whatsoever, then either party may terminate this lease, effective as of the date of notice of such election, by giving written notice to the other party within thirty (30) day period after said Outside Date as extended as aforesaid, but prior to substantial completion of repair or restoration. Notwithstanding anything to the contrary herein set forth: (i) Landlord shall have no duty pursuant to this Section 17 to repair or restore any portion of Tenant's Alterations or by other improvements, additions or alterations made by or on behalf of Tenant in the Premises, including improvements performed by Landlord pursuant to this Lease and/or the Workletter, if any; (ii) Landlord shall not be obligated (but may, at its option, so elect) to repair or restore the Premises or Building if the damage is due to an uninsurable casualty or if insurance proceeds are insufficient to pay for such repair or restoration, or if any Mortgagee applies proceeds of insurance to reduce its loan balance, and the remaining proceeds, if any, available to Landlord are not sufficient to pay for such; or (iii) if any such damage rendering all or a material portion of the Premises, Lobby or Building untenantable shall occur during the last year of the Term (and, for the purpose of this clause (iii) only, "material" shall mean that it would take more than sixty (60) to complete restoration of the affected area), either party (but as to Tenant's right, only if all or a substantial portion of the Premises is rendered untenantable) shall have the option to terminate this lease by giving written notice to the other within thirty (30) days after the date such damage occurred, and if such option is so exercised, this lease shall terminate as of the date of such notice. Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage, whether carried by Landlord or Tenant, for damage to those items or decorations which Landlord is obligated to repair, it being agreed that Tenant shall be entitled to the proceeds from any insurance for items which Landlord has no obligation to repair. In no event will Landlord be required to repair or restore any of Tenant's personal property.

(b) **Repair by Tenant**. If this lease is not terminated pursuant to this Section 17, Tenant shall, in accordance with Section 14, proceed with reasonable promptness to repair and restore all Tenant's Alterations and all other alterations, additions and improvements in the Premises, other than any repairs or restoration required to be made by Landlord pursuant to Section 17(a) above, to as near the condition which existed prior to the fire or other casualty as is reasonably possible; provided, however, that Tenant shall have no obligation to commence any repair work unless Landlord is diligently performing its obligations under Section 17(a) above, and Tenant shall not be obligated to commence its repair work until Landlord has substantially completed repair and restoration of the Premises. Tenant agrees and acknowledges that Landlord shall be entitled to the proceeds of any insurance coverage carried by Tenant relating to improvements and betterments to the Premises if this lease terminates (provided that Tenant shall be entitled to all insurance proceeds from insurance which it carries relating to its non-affixed furnishings, non-affixed trade fixtures and other items of non-affixed personalty, irrespective of whether this lease terminates, and Landlord shall have no claim relative thereto).

(c) **Abatement of Rent**. In the event any such fire or casualty damage renders the Premises untenantable and if this lease shall not be terminated pursuant to the foregoing provisions of this Section 17 by reason of such damage, then Rent shall abate during the period beginning with the date of such damage and ending on the date of the 120th day following the date when Landlord substantially completes its repair or restoration required hereunder. Such abatement shall be in an amount bearing the same ratio to the total amount of Rent for such period as the portion of the Rentable Area of the Premises which is untenantable

and not used by Tenant from time to time bears to the Rentable Area of the entire Premises; provided, however that the Premises shall continue to be considered untenantable so long as the Lobby and Receiving Docks are not usable in the manner in which they were used prior to the casualty. In the event of termination of this lease pursuant to this Section 17, Rent shall be apportioned on a per diem basis and be paid to the date of the termination.

(d) **Untenantability**. As used in this lease, the term "**untenantable**" means reasonably incapable of being occupied for its intended use due to damage to the Premises or Building. Notwithstanding anything contained to the contrary in this Section 17, neither the Premises nor any portion of the Premises shall be deemed untenantable if Landlord is not required to repair or restore same (or if Landlord is required to repair or restore same, then 120 days after such time as Landlord has substantially completed the repair and restoration work required to be performed by Landlord under this Section 17), or if Tenant continues to actually occupy the subject portion of the Premises; it being understood that the Premises shall, in any event, be deemed untenantable for so long as portions of the Building necessary to provide access to the Premises are rendered unusable, and to the extent Tenant is unable to conduct its customary business operations from the Premises as a result thereof.

18. EMINENT DOMAIN.

(a) **Substantial Taking**. If the entire Project or the entire Building, or a substantial part of either of them, or any part of the Project which includes all or a material part (meaning more than 20% of the replacement value thereof) of the Premises or Lobby, or a material part of the Receiving Docks, shall be taken or condemned by any competent authority for any public or quasi-public use or purpose, and, in Tenant's reasonable judgment, such taking renders the Premises unsuitable for the operation of Tenant's business therein, Tenant may, within ninety (90) days following the date of such taking, terminate this Lease upon written notice to Landlord. If this Lease is terminated, then all of Tenant's obligations hereunder, including any obligation to pay Rent or other charges, shall end upon the earlier of the date when the possession of the part so taken shall be required for such use or purpose or the effective date of the taking and each party shall be released from further liability hereunder (except for such liability that expressly survives the termination of this Lease) If any condemnation proceeding shall be instituted in which it is sought to take or damage any part of the Project, the taking or damaging of which would, in Landlord's opinion, prevent the economical operation of the Project, or if the grade of any street or alley adjacent to the Land or the Building is changed or any such street or alley is closed by any competent authority, and such taking, damage, change of grade or closing makes it necessary or desirable to remodel the Building to conform to the taking, damage, change of grade or closing, Landlord shall have the right to terminate this lease upon written notice to Tenant given not less than ninety (90) days prior to the date of termination designated in the notice. In either of the events above referred to, Rent shall be apportioned on a per diem basis and be payable to the date of the termination.

(b) **Taking of Part**. In the event a part of the Building or the Premises is taken or condemned by any competent authority and this lease is not terminated as provided in Section 18(a) above, the lease shall be amended to reduce or increase, as the case may be, the Monthly Base Rent and Tenant's Proportionate Share to reflect the Rentable Area of the Premises or Building, as the case may be, remaining after any such taking or condemnation.

Landlord, upon receipt and to the extent of the award in condemnation (or proceeds of sale) shall make necessary repairs and restorations to the Premises (exclusive of any Tenant's Alterations, or any other improvements made by or on behalf of Landlord or Tenant) and to the Building to the extent necessary to constitute the portion of the Building not so taken or condemned as a complete architectural and economically efficient unit. In the event that Landlord does not have sufficient proceeds to make the necessary repairs and restorations to render the Premises and the Building a complete said architecturally and economically efficient unit, Tenant may, within ninety (90) days following the date of such taking, terminate this Lease upon written notice to Landlord.

(c) **Compensation**. Landlord shall be entitled to receive the entire award (or sale proceeds) from any such taking, condemnation or sale without any payment to Tenant, and Tenant hereby assigns to Landlord all of Tenant's interest, if any, in such award; provided, however, Tenant shall have the right separately to pursue against the condemning authority a separate award in respect of Tenant's relocation expenses and the loss, if any, to Tenant Alterations paid for by Tenant without any credit or allowance from Landlord, so long as there is no diminution of Landlord's award as a result, and subject to the rights of any ground lessor or mortgagee of Landlord with respect thereto.

19. DEFAULT; LANDLORD'S RIGHTS AND REMEDIES.

(a) **Default**. The occurrence of any one or more of the following matters constitutes a "**Default**" by Tenant under this Lease:

(i) Failure by Tenant to pay any Rent when due, if such failure continues for ten (10) days after written notice to Tenant of such failure;

(ii) Failure by Tenant to pay any other money required to be paid by Tenant under this Lease when due, if such failure continues for ten (10) business days after written notice to Tenant of such failure;

(iii) Failure by Tenant to observe or perform any of the material covenants in respect of assignment and subletting set forth in Section 15;

(iv) Failure by Tenant to commence to cure as soon as reasonably practicable under the circumstances, after receipt of notice from Landlord, any hazardous condition which Tenant has created or permitted in violation of law or of this Lease;

(v) Failure by Tenant to complete, execute and deliver any estoppel certificate or subordination agreement required to be completed, executed and delivered by Tenant pursuant to Section 20 or Section 24 of this Lease, within the time required for such instrument or document in accordance with such Sections;

(vi) Failure by Tenant to observe or perform any other covenant, agreement, condition or provision of this lease, if such failure shall continue for thirty (30) days after written notice thereof from Landlord to Tenant; provided that such 30-day period shall be extended for the time reasonably required to complete such cure (not to exceed, in any event, an additional 60 day period), if such failure cannot reasonably be

cured within said 30-day period and Tenant commences to cure such failure within the first ten (10) days after receiving said written notice and thereafter diligently and continuously proceeds to cure such failure;

(vii) The levy upon execution or the attachment by legal process of the leasehold interest of Tenant, or the filing or creation of a lien in respect of such leasehold interest, which lien shall not be released or discharged within sixty (60) days from the date of such filing (or, in any event, such earlier date prior to final enforcement of the same);

(viii) Tenant becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for Tenant or for the major part of its property;

(ix) A trustee or receiver is appointed for Tenant or for a major part of its property, without Tenant's application therefor or consent thereto, and is not discharged within sixty (60) days after such appointment;

(x) Any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or other proceeding for relief under any bankruptcy law or similar law for the relief of debtors, is instituted (A) by Tenant, or (B) against Tenant and is allowed against it or is consented to by it or is not dismissed within sixty (60) days after such institution; or

(b) **Landlord's Rights and Remedies**. If a Default occurs, Landlord shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive Landlord of any other right or remedy allowed it at law or in equity:

(i) By written notice to Tenant, Landlord may terminate this Lease, in which event the Term of this Lease shall end, and all right, title and interest of Tenant hereunder shall expire, on the date stated in such notice;

(ii) By written notice to Tenant, Landlord may terminate the right of Tenant to possession of the Premises without terminating this Lease, whereupon the right of Tenant to possession of the Premises or any part thereof shall cease on the date stated in such notice;

(iii) Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, and for the enforcement of any other appropriate legal or equitable remedy, including without limitation distraint for rent, injunctive relief, recovery of all money due or to become due from Tenant under any of the provisions of this Lease and recovery of damages incurred by Landlord by reason of the Default; and

(iv) Landlord may cure or correct such Default or take steps to perform any covenant, agreement, condition or provisions of this lease, and all costs and expenses reasonably incurred by Landlord in so doing (including reasonable attorneys' fees) shall be paid by Tenant to Landlord as additional rent upon demand plus interest at the Default Rate (defined in Section 28(i)) from the date of expenditure. Landlord's proceeding under the rights reserved to Landlord under this Section 19(b)(iv) shall not in any way prejudice or waive any rights as Landlord might otherwise have against Tenant by reason of that or any other Default. Upon any Default of Tenant under this Section 19, to the extent Landlord is seeking damages against Tenant as a result thereof, then Landlord shall be required to use reasonable efforts to mitigate its damages generally, as and to the extent required by applicable Law; provided, however, Landlord shall not be deemed to have failed to mitigate if Landlord leases any other premises in the Project before reletting all or any portion of the Premises. Any failure by Landlord to mitigate with respect to any period of time shall only reduce Rent and any other amount to which Landlord is entitled under this Lease by the reasonable value of the Premises during such period.

(c) **Surrender**. If Landlord exercises any of the remedies provided for in subparagraphs (i) and (ii) of Section 19(b), Tenant shall surrender possession of and vacate the Premises and immediately deliver possession thereof to Landlord, and Landlord may re-enter and take complete and peaceful possession of the Premises, with process of law, full and complete license so to do being hereby granted to Landlord, and Landlord may remove all occupants and property therefrom, using such force as may be necessary and legally permissible, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer, and without relinquishing Landlord's right to Rent or any other right given to Landlord hereunder or by law or in equity.

(d) **Termination of Right of Possession**. If Landlord terminates the right of Tenant to possession of the Premises without terminating this Lease, as provided for by subparagraph (ii) of Section 19(b), then Landlord shall be entitled to recover from Tenant all the fixed dollar amounts of Rent accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Tenant as of such termination date, or for which Tenant is liable or in respect of which Tenant has agreed to indemnify Landlord under any of the provisions of this Lease, which may be then owing and unpaid as of the termination date, and all costs and expenses, including without limitation court costs and reasonable attorneys' fees and expenses incurred by Landlord in the enforcement of its rights and remedies hereunder, and in addition, Landlord shall be entitled to recover from Tenant from time to time, and Tenant shall remain liable for, all Rent and all other additional sums thereafter accruing as they become due under this Lease during the period from the date of such notice of termination of possession to the stated end of the then current Term. In any such case, Landlord shall use reasonable efforts as required by applicable law to relet the Premises for the account of Tenant for such rent, for such time (which may be for a term extending beyond the Term of this Lease), in such portions and upon such terms as Landlord in Landlord's sole discretion (but subject to Landlord's reasonable mitigation obligations as may be required by applicable law) shall determine, and Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant relative to such reletting. Landlord may give priority over leasing the Premises to any other space Landlord desires to lease in the Building and shall

not be required in any case to offer rent, length of terms or other terms for the Premises which are or would be less favorable to Landlord than being offered for comparable space of Landlord in the Building. Also, in any such case, Landlord may make repairs, alterations and additions in or to the Premises and redecorate the same to the extent deemed by Landlord necessary or desirable, and in connection therewith Landlord may change the locks to the Premises, and Tenant shall upon written demand pay the cost thereof together with Landlord's expenses of reletting. Landlord may collect the rents from any such reletting and shall apply the same first to the payment of the expenses of reentry, redecoration, repair, alterations and reletting and second to the payment of Rent herein provided to be paid by Tenant, and any excess or residue shall operate only as an offsetting credit against the amount of Rent, if any, due and owing or as the same thereafter becomes due and payable hereunder, but the use of such offsetting credit to reduce the amount of Rent due Landlord, if any, shall not be deemed to give Tenant any right, title or interest in or to such excess or residue, and any such excess or residue shall belong to Landlord solely; provided that in no event shall Tenant be entitled to such a credit against Rent in excess of the aggregate sum (including Base Rent and Additional Rent) which would have been paid by Tenant for the period for which the credit to Tenant is being determined had no Default occurred. No such re-entry, repossession, repairs, alterations, additions or reletting shall be construed as an eviction or ouster of Tenant or as an election on Landlord's part to terminate this Lease, unless a written notice of such intention is given to Tenant, or shall operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, and Landlord may, at any time and from time to time, sue and recover judgment for any deficiencies from time to time remaining after the application from time to time of the proceeds of any such reletting.

(e) **Termination of Lease**. In the event of the termination of this Lease by Landlord as provided for by subparagraph (i) of Section 19(b), Landlord shall be entitled to recover from Tenant all the fixed dollar amounts of Rent accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Tenant, or for which Tenant is liable or in respect of which Tenant has agreed to indemnify Landlord under any of the provisions of this lease, which may be then owing and unpaid, and all costs and expenses, including without limitation court costs and reasonable attorneys' fees and expenses incurred by Landlord in the enforcement of its rights and remedies hereunder, and in addition, Landlord shall be entitled to recover an amount equal to the present value (calculated using a discount rate equal to eight percent (8%) per annum) of the aggregate Base Rent and Additional Rent payable for the period from the termination date stated in Landlord's notice terminating this lease until the date which would have been the Expiration Date but for such termination, less the present value (calculated using a discount rate equal to eight percent (8%) per annum) of the fair rental value of the Premises for the same period (which fair rental value shall be calculated so as to include a reasonable vacancy period for reletting the Premises and deductions for reasonable expenses and inducements incurred by Landlord to achieve such reletting, including without limitation attorneys' fees and expenses, brokerage fees, advertising costs, rent abatements, tenant improvement allowances and the like). The rights and remedies of Landlord pursuant to this Section 19 shall survive the termination of this lease.

(f) **Tenant's Property**. All property of Tenant removed from the Premises by Landlord or which becomes Landlord's property pursuant to any provisions of this Lease or by law may be handled, removed or stored by Landlord at the cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof.

Tenant shall pay Landlord for all expenses incurred by Landlord in such removal and for storage charges for such property so long as the same shall be in Landlord's possession or under Landlord's control. All property not removed from the Premises or retaken from storage by Tenant on or before the end of the Term, however terminated, or the termination of Tenant's right of possession, shall, at Landlord's option, be conclusively deemed to have been conveyed by Tenant to Landlord as by bill of sale, without further payment or credit by Landlord to Tenant.

(g) **Waiver of Notices Not Provided for in this Lease**. Tenant expressly waives the service of any notice of intention to terminate this Lease or to reenter the Premises (except for any notice expressly provided for in this Lease) and waives the service of any demand for payment of rent or for possession and waives the service of any and every other notice or demand prescribed by any ordinance, statute or other law (except as expressly otherwise provided in this lease or as required by applicable law) and agrees that the breach of any covenants or agreements provided in this lease shall, in and of itself, without the service of any notice or demand whatever (except as expressly otherwise provided in this Lease or as required by applicable law), constitute a forcible detainer by Tenant of the Premises.

(h) **Waiver of Trial by Jury**. Landlord and Tenant hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this lease, the relationship of Landlord and Tenant, Tenant's use of or occupancy of the Premises or any claim of injury or damage and any emergency statutory or any other statutory remedy. If Landlord commences any summary proceeding for non-payment of rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding.

(i) **Landlord Default**. If Landlord shall fail to perform any obligation under this Lease required to be performed by Landlord, Landlord shall not be deemed to be in default hereunder nor subject to any claims for damages of any kind, unless such failure shall have continued for a period of thirty (30) days after written notice thereof is received by Landlord from Tenant (provided, if the nature of Landlord's failure is such that more time is reasonably required in order to cure, Landlord shall not be in default if Landlord commences to cure within such period and thereafter diligently seeks to cure such failure to completion). If Landlord shall default and fail to cure as provided herein following receipt of such notice, Tenant shall have such rights and remedies as may be available to Tenant at law or equity, subject to the other provisions of this Lease; provided, Tenant shall have no right of self-help to perform repairs or any other obligation of Landlord, and shall have no right to withhold, set-off, or abate Rent, or terminate this Lease, except as expressly provided in this Lease.

20. RIGHT'S OF MORTGAGEES AND GROUND LESSORS.

(a) **Subordination of Lease**. Landlord represents and warrants that as of the date hereof, (1) there is no Mortgage (as defined herein) encumbering the Land, Building or Project other than that certain Mortgage, Security Agreement and Fixture Filing (the "**Existing Mortgage**") dated as of August 10, 2004 by and between Landlord and Wilmington Trust of Pennsylvania (the "**Existing Mortgagee**"); (ii) Landlord is the fee simple owner of the entire Project; and (iii) there is no Ground Lease (as defined herein) encumbering the Land, Building or

Project. Landlord shall deliver to Tenant an SNDA (as defined herein) in the form of**Exhibit J** attached hereto executed on behalf of the Existing Mortgagee. Landlord may have heretofore or may hereafter encumber with a mortgage or trust deed the Building, the Land, the Project, any part thereof or any interest therein, may sell and lease back the Land, or any part of the Project, and may encumber the leasehold estate under such a sale and leaseback arrangement with a mortgage or trust deed. (Any such mortgage or trust deed is herein called a "**Mortgage**" and the holder of any such mortgage or the beneficiary under any such trust deed is herein called a '**Mortgagee**." Any such lease of the Land or other part of the Project is herein called a "**Ground Lease**" and the lessor under any such lease is herein called a "**Ground Lessor**.") Provided that the Mortgagee or Ground Lessor in question furnishes a non-disturbance agreement for the benefit of Tenant in commercially reasonable form, this Lease and the rights of Tenant hereunder shall be and are hereby expressly made subject to and subordinate at all times to any Mortgage and to any Ground Lease now or hereafter existing, and to all amendments, modifications, renewals, extensions, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security thereof. Conditioned upon receipt of such non-disturbance agreement, Tenant agrees to execute and deliver to Landlord such further instruments consenting to or confirming the subordination of this lease to any Mortgage and to any Ground Lease and containing such other provisions which may be requested in writing by Landlord within ten (10) business days after Tenant's receipt of such written request.

(b) **Notice of and Opportunity to Cure Defaults**. Tenant agrees that if Landlord defaults in the performance or observance of any covenant or condition of this lease required to be performed or observed by Landlord hereunder, Tenant will give written notice specifying such default by certified or registered mail, postage prepaid, to any Mortgagee or Ground Lessor of which Tenant has been notified in writing, and before Tenant exercises any right to terminate this lease which Tenant may have on account of any such default of Landlord, such Mortgagee or Ground Lessor shall have an additional thirty (30) days after receipt of notice thereof within which to cure such default (or if such default is non-in nature and cannot be cured within that time, then such additional time as may be reasonably necessary, if, within such thirty (30) days, any Mortgagee or Ground Lessor has commenced and is diligently pursuing the remedies necessary to cure such default, including but not limited to commencement of foreclosure proceedings or other proceedings to acquire possession of the mortgaged or leased estate, if necessary to effect such cure). Such period of time shall be extended by any period within which such Mortgagee or Ground Lessor is prevented from commencing or pursuing such foreclosure proceedings or other proceedings to acquire possession of the mortgaged or leased estate by reason of Landlord's bankruptcy. Nothing in this Section 20(b) is intended to impair or delay Tenant's right of self-help as expressly set forth in Section 9(c) of this Lease.

(c) **Rights of Successors**. If any Mortgage is foreclosed, or Landlord's interest under this lease is conveyed or transferred in lieu of foreclosure, or if any Ground Lease is terminated:

(i) So long as no Default then exists, (x) the possession and use by Tenant of the Premises shall not be disturbed by any suit or proceeding for the foreclosure of the Mortgage or any deed in lieu of foreclosure, or by any termination of the Ground Lease (as the case may be); (y) the Mortgagee, Ground Lessor or such other entity that succeeds to the interest of Landlord hereunder shall recognize any and all of

Tenant's rights and privileges under this Lease and under any renewals or modifications thereof; and (z) Tenant shall not be joined as a party to any lawsuit or other proceeding for the foreclosure of the Mortgage or any deed in lieu of foreclosure or any other proceeding related to the Mortgage or Ground Lease.

(ii) No person or entity which as the result of any of the foregoing has succeeded to the interest of Landlord in this Lease (any such person or entity being hereafter called a "**Successor**") shall be liable for any default by Landlord or any other matter which occurred prior to the date such Successor succeeded to Landlord's interest in this Lease (subject to the terms of the then applicable SNDA), nor shall such Successor be bound by or subject to any offsets or defenses which Tenant may have against Landlord or any other predecessor in interest to such Successor.

(iii) Upon request of any Successor, Tenant will attorn to such Successor, as Landlord under this Lease, subject to the provisions of this Section 20(c) and Section 20(e), and will execute and deliver such instruments as may be necessary or appropriate to evidence such attornment within twenty (20) days after receipt of a written request to do so; provided that Tenant receives written notice that such Successor has succeeded to the interest of Landlord.

(iv) No Successor shall be bound to recognize any prepayment by more than thirty (30) days of Base Rent or Additional Rent.

(v) No Successor shall be bound to recognize any material amendment or material modification of this Lease made without the written consent of the Mortgagee or Ground Lessor (as the case may be).

(d) **Subordination of Mortgage**. Notwithstanding anything to the contrary contained herein, any Mortgagee may subordinate, in whole or in part, its Mortgage to this Lease by sending Tenant notice in writing subordinating all or any part of such Mortgage to this Lease, and Tenant agrees to execute and deliver to such Mortgagee such further instruments consenting to or confirming the subordination of all or any portion of its Mortgage to this lease and containing such other provisions which may be reasonably requested in writing by such Mortgagee within ten (10) business days after Tenant's receipt of such written request.

(e) **Liability of Mortgagee and Ground Lessor**. Whether or not any Mortgage is foreclosed or any Ground Lease is terminated, or any Mortgagee or Ground Lessor succeeds to any interest of Landlord under this lease, no Mortgagee or Ground Lessor shall have any liability to Tenant for any security deposit paid to Landlord by Tenant hereunder, unless such security deposit has actually been received by such Mortgagee or Ground Lessor.

(f) **Requests by Mortgagee or Ground Lessor**. Should any prospective Mortgagee or Ground Lessor require execution of a short form of this lease for recording (containing, among other customary provisions, the names of the parties, a description of the Premises and the Term of this lease), Tenant agrees to execute such short form of lease and deliver the same to Landlord within ten (10) business days following the request therefor.

(g) **<u>Immediate Default</u>**. If Tenant fails within ten (10) business days after initial written demand therefor to execute and deliver any instruments as may be necessary or proper to effectuate any of the covenants of Tenant set forth above in this Section 20, and such failure continues for an additional five (5) business days after a second written demand therefor, then such failure shall be deemed an immediate "Default" hereunder, without further notice or cure periods, subject to all rights and remedies of Landlord described in Section 19 hereof or otherwise available at Law or in equity.

21. <u>FURNITURE</u>. For no additional charge, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord those items of furniture (the "Furniture") described on the inventory list attached hereto as **Exhibit E** (the "**Inventory List**"), which, on the date hereof, is located within the Premises. Landlord and Tenant acknowledge that, prior to Commencement Date the parties will conduct a "walk-through" inspection of the Premises in order to confirm the completeness and accuracy of the furniture shown on the Inventory List. Tenant accepts the Furniture in its "as-is" condition and configuration, without any representation or warranty by Landlord. Landlord shall have no obligation to replace or repair, or to pay for the cost to replace or repair, any item of Furniture. LANDLORD SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS AND/OR WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE FURNITURE. During the Term, Tenant shall maintain and repair the Furniture as reasonably necessary, and shall insure the same along with its other personal property pursuant to Section 22 hereof. Upon the expiration or earlier termination of this lease or contraction by Tenant of any portion of the Premises in accordance with this lease, Tenant shall surrender the Furniture to Landlord in the same condition and repair as on the Commencement Date, reasonable wear and tear and damage by casualty excepted.

22. <u>INSURANCE AND SUBROGATION</u>

(a) **<u>Tenant's Insurance</u>**. Tenant shall carry insurance during the entire Term hereof (and any earlier period during which Tenant is entitled to possession of the Premises or any portion thereof or conducting any business or construction related activities at the Project) insuring Tenant, and with respect to the commercial general liability insurance referenced in clause (i) of this Section 22(a), listing as additional insureds, Landlord, Landlord's constituent members and agents (so long as Tenant receives prior written notice of such parties), any property management company engaged by Landlord (so long as Tenant receives prior written notice of such parties), and all Mortgagees and Ground Lessors (so long as Tenant receives prior written notice of such parties), and their respective agents, partners and employees. Such insurance shall be with terms and coverages, and be in companies in good standing and licensed to do business in the State of Illinois and otherwise reasonably satisfactory to Landlord having Best's (or equivalent) ratings of "A-/VIII" or higher, and with such changes in insured parties, coverages and increase in limits as Landlord may from time to time reasonably request, which request shall be consistent with factors such as claims history, actual changes in risk pertaining to the Project, and the practices of prudent landlords of Comparable Buildings. Initially Tenant shall maintain the following coverages in the following amounts:

(i) Commercial general liability insurance with the broad form commercial liability endorsement, including contractual liability insurance covering

Tenant's indemnity obligations hereunder, insuring against claims for death, bodily injury, personal injury and property damage occurring upon, in or about the Premises in an amount not less than $1,000,000.00 per occurrence and having a general aggregate amount on a per location basis of not less than $2,000,000.00, with umbrella liability coverage of $4,000,000.00 per occurrence, $4,000,000.00 aggregate, dedicated for the 1000 Remington Boulevard, Bolingbrook, Illinois location. Landlord, and any such property management company (so long as Tenant receives prior written notice of such parties) and all Mortgagees and Ground Lessors (so long as Tenant receives prior written notice of such parties) shall be named as additional insureds on such policy.

(ii) "Special form" full replacement cost property damage insurance including fire, sprinkler leakage, vandalism and extended coverage for the full replacement cost of all Tenant's Work, other Tenant's Alterations, and all other additions, improvements and alterations to the Premises (providing that Landlord is an additional named insured as its interest may appear) and of all office furniture, inclusive of the Furniture, trade fixtures, office equipment, inventory, merchandise and all other items of Tenant's property on or about the Premises, on a per location basis.

(iii) Workers' Compensation in such limits as are required by applicable Laws and Employers' Liability insurance in an amount of not less than $1,000,000.00.

(iv) Such other insurance or coverage as Landlord reasonably requests; provided that such insurance is requested by prudent landlords of Comparable Buildings.

Tenant shall, prior to the Commencement Date or such earlier date as Tenant or anyone acting on behalf of Tenant is conducting any activity at the Project, and from time to time during the Term (and, in any event, not less than ten days prior to the expiration of any such policy), furnish to Landlord certificates of insurance evidencing the foregoing insurance coverage. Tenant's policies shall state that such insurance coverage may not be cancelled or not renewed without at least thirty (30) days' prior written notice to Landlord and Tenant, and shall further provide that the policy shall not be invalidated should the insured party have waived in writing prior to a loss, any and all rights of the insured party against any other party for losses covered by such policy. Tenant shall have the right to provide the foregoing insurance under a master or blanket policy of insurance covering other properties of Tenant or its affiliates provided that an endorsement insuring segregated amounts sufficient to satisfy said insurance requirements hereunder is provided.

So long as the net worth of Tenant is in excess of $25,000,000.00, Tenant shall have the option to maintain self insurance for the insurance required under subsections 22(a)(ii) above so long as such self-insurance at all times provides the coverage and limits described above and is in compliance with all Laws pertaining to self-insurance programs. Any self-insurance shall contain all of the terms and conditions applicable to such insurance as set forth in this Section 22. If Tenant elects to self-insure, then with respect to any claims which may result from incidents occurring during the Term, such self-insurance obligation shall survive the expiration of the Term or earlier termination of this Lease to the same extent as the insurance required above would so survive. In order to prove satisfaction of the net worth requirement set forth above,

Tenant shall be required to provide audited or certified financial statements (or other evidence of net worth reasonably satisfactory to Landlord) reasonably prior to any time at which Tenant desires to self-insure and annually within ten (10) days after written request therefor by Landlord during the period when Tenant is maintaining self-insurance. The right to self-insure described herein is personal to the original named Tenant and may not be assigned or transferred to any future tenant under this Lease. All net worth or other financial information received or reviewed by Landlord or any representative retained by Landlord is confidential information of Tenant and will not be disclosed by Landlord (or its agents or auditors) to any third parties, and Landlord shall require its agents, attorneys and accountants to enter into a confidentiality agreement with Tenant agreeing to the aforesaid confidentiality requirements. Notwithstanding anything to the contrary contained herein, Landlord may disclose confidential information as required by deposition, interrogatory, request for documents, subpoena or similar legal process or as otherwise required to pursue or defend against any claims or legal proceedings.

(b) **Waiver of Subrogation**. Landlord and Tenant each agree to have all property or physical damage insurance which it may carry endorsed with a clause providing that any release from liability of or waiver of claim for recovery from the other party or any of the parties named in Section 22(a) above or Released Parties described in Section 16(a) entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder. Each of Landlord's and Tenant's policies shall provide further that the insurer waives all rights of subrogation which such insurer might have against either Landlord and the Landlord Parties, or Tenant and the Tenant Parties, as applicable. Landlord and Tenant each further agrees to first seek recovery under any applicable property or physical insurance policy maintained by such party before proceeding against the other.

(c) **Landlord's Insurance**. Landlord shall maintain: (1) commercial general liability insurance in an amount not less than $1,000,000 per occurrence and $5,000,000 in the aggregate covering the Building (including the Common Areas) and (2) fire and extended coverage special form insurance covering the Building on a full replacement cost basis.

23. NONWAIVER. No waiver of any condition expressed in this Lease shall be implied by any neglect of Landlord or Tenant to enforce any remedy on account of the violation of such condition, whether or not such violation be continued or repeated subsequently, and no express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting Landlord's rights under the provisions of Section 11, it is agreed that no receipt of money by Landlord from Tenant after the termination in any way of the Term or of Tenant's right of possession hereunder or after the giving any notice shall reinstate, continue or extend the Term or affect any notice given to Tenant prior to the receipt of such money. It is also agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any money due, and Landlord's receipt and collection of said money shall not waive or affect any said notice, suit or judgment.

24. ESTOPPEL CERTIFICATE. Tenant agrees that from time to time (but no more than three times in any twelve (12) month period), upon not less than fifteen (15) business days' prior request by Landlord, or any existing or prospective Mortgagee or Ground Lessor,

Tenant will, and Tenant will cause any subtenant, licensee, concessionaire or other occupant of the Premises claiming by, through or under Tenant, to complete, execute and deliver to Landlord or Landlord's designee or to any existing or prospective Mortgagee or Ground Lessor, a written estoppel certificate certifying (a) that this Lease is unmodified and is in full force and effect (or if there have been modifications, that this lease, as modified, is in full force and effect and setting forth the modifications); (b) the amounts of the monthly installments of Base Rent and Additional Rent Estimate then required to be paid under this Lease; (c) the date to which Rent has been paid; (d) that to the best of Tenant's knowledge, Landlord is not in default under any of the provisions of this Lease, or if in default, the nature thereof in detail and what is required to cure same; and (e) such other information concerning the status of this Lease or the parties' performance hereunder reasonably requested by Landlord or the party to whom such estoppel certificate is to be addressed. Tenant's failure to complete, execute and deliver such estoppel certificate within the aforesaid 15 business day period, which failure continues for an additional five (5) business days after a second written request from Landlord, shall be deemed to be a Default under Section 19 of this Lease, without further notice or cure periods, giving rise to all rights and remedies available to Landlord under said Section 19 or otherwise available at law or in equity. Without limitation of the foregoing, Tenant hereby agrees to execute and deliver to Landlord, concurrent with Tenant's execution and delivery of this Lease to Landlord, three (3) originals of that certain Lease Estoppel Certificate in the form of Exhibit F attached hereto.

25. TENANT CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP AUTHORITY. In case Tenant is a corporation or a limited liability company, Tenant represents and warrants that this Lease has been duly authorized, executed and delivered by and on behalf of Tenant and constitutes the valid and binding agreement of Tenant in accordance with the terms hereof. Landlord represents and warrants that this Lease has been duly authorized, executed and delivered by and on behalf of Landlord and constitutes the valid and binding agreement of Landlord in accordance with the terms hereof. Also, it is agreed that each and every present and future individual general partner, if Tenant is a partnership, in Tenant shall be and remain at all times jointly and severally liable hereunder, to the extent permitted by law, and that the death, resignation or withdrawal of any such partner shall not release the liability of such partner under the terms of this Lease unless and until Landlord shall have consented in writing to such release.

26. REAL ESTATE BROKERS. Tenant represents and warrants to Landlord that Tenant did not deal with any broker in connection with this lease other than the Broker identified in Section 1(d). Landlord represents and warrants to Tenant that Landlord did not deal with any broker in connection with this lease other than the Broker identified in Section 1(d). Landlord hereby agrees to pay the brokerage commission payable to said Broker in accordance with a written agreement between Landlord and such Broker. Landlord and Tenant each hereby agree to indemnify, defend and hold the other, the other's agents and their respective partners and employees, and the Project, harmless of, from and against any and all losses, damages, liabilities, claims, liens, costs and expenses, including without limitation court costs and reasonable attorneys' fees and expenses, arising from any claims or demands of any other broker or brokers or finders for any commission alleged to be due such other broker or brokers or finders claiming to have dealt with the party making such indemnification in connection with this lease or with whom the party making such indemnification hereafter deals or whom the party making such indemnification employs.

27. NOTICES. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered personally or by same-day courier messenger, when delivered, (b) if sent by nationally required overnight courier, on the first (1st) business day after deposit with said courier, and (c) if mailed, on the third (3rd) business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested.

If to Landlord:	Bolingbrook Investors, LLC c/o BPG Properties, Ltd. 200 South Michigan Avenue Suite 210 Chicago, Illinois 60604 Attention: Asset Manager
With an additional copy to:	BPG Properties, Ltd. 1500 Market Street 3000 Centre Square West Philadelphia, Pennsylvania 19102 Attention: Loretta M. Kelly, General Counsel
If to Tenant:	Ulta Salon, Cosmetics & Fragrance, Inc. Windham Lakes Business Park 1275 Windham Drive Romeoville, IL 60446
With a copy of any notice to terminate this Lease to:	Wachovia Capital Finance Corporation (Central) 150 South Wacker Drive Chicago, Illinois 60606-4401 Attention: Portfolio Manager

or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection or refusal to accept or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

28. MISCELLANEOUS.

(a) **Successors and Assigns**. Each provision of this Lease shall extend to and shall bind and inure to the benefit not only of Landlord and Tenant, but also their respective heirs, legal representatives, successors and assigns, but this provision shall not operate to permit any assignment, subletting, mortgage, lien, charge, or other transfer or encumbrance contrary to the provisions of this Lease.

(b) **Amendment**. No modification, waiver or amendment of this Lease or of any of its conditions or provisions shall be binding upon Landlord unless the same shall be in writing and signed by Landlord.

(c) **Offer**. Submission of this instrument for examination shall not constitute a reservation of or option for the Premises or in any manner bind Landlord, and no lease or obligation on Landlord shall arise until this instrument is signed and delivered by Landlord and Tenant; provided, however, the execution and delivery by Tenant of this lease to Landlord, or its agents, shall constitute an irrevocable offer by Tenant to lease the Premises on the terms and conditions herein contained, which offer may not be revoked for ten (10) days after such delivery.

(d) **Tenant**. The word "Tenant" whenever used herein shall be construed to mean Tenants or any one or more of them in all cases where there is more than one Tenant; and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other organizations, partnerships or other entities, or individuals, shall in all cases be assumed as though in each case fully expressed. In all cases where there is more than one Tenant, (a) the liability of each shall be joint and several and (b) any one person or entity comprising Tenant may give any notice or approval required or permitted to be given by Tenant under this lease and such notice or approval shall be deemed binding upon all persons or entities comprising Tenant and may be relied upon by Landlord as if such notice or approval had been given by all persons or entities comprising Tenant. Notwithstanding anything to the contrary in this Lease, Landlord shall have no recourse personally against any member or officer of Tenant with respect to any liability of Tenant under this Lease.

(e) **Expenses of Enforcement**. The non-prevailing party shall pay within thirty (30) days after demand all of the reasonable costs, charges and expenses (including the court costs and fees and out-of-pocket expenses of counsel, agents and others retained by the prevailing party) incurred by the prevailing party in enforcing the terms of this lease, and a party shall also pay such costs and expenses incurred by the other party in any claim, action or litigation in which said party causes the other party without the other party's fault to become involved or concerned. Any amount due from Tenant to Landlord pursuant to this Section shall be deemed to be additional Rent due under this lease. A party shall be considered the prevailing party if: (i) it initiated the litigation and substantially obtains the relief it sought, either through a judgment or the other party's voluntary action before trial or judgment; (ii) it did not initiate the litigation, and the other party withdraws its action without substantially obtaining the relief it sought; or (iii) it did not, initiate the litigation, and judgment was entered for either party, but without substantially granting the relief sought.

(f) **Exhibits and Riders**. Exhibits and riders, if any, referred to in or affixed to this Lease are made an integral part hereof.

(g) **Approval of Plans and Specifications**. Neither review nor approval by or on behalf of Landlord of any plans and specifications for any Tenant Alterations or any other work shall constitute a representation or warranty by Landlord, any of Landlord's constituent members, or any of their respective agents, partners or employees, that such plans and specifications either (i) are complete or suitable for their intended purpose, or (ii) comply with applicable Laws, it being expressly agreed by Tenant that neither Landlord, nor any of Landlord's constituent members, nor any of their respective agents, partners or employees, assume any responsibility or liability whatsoever to Tenant or to any other person or entity for such completeness, suitability or compliance.

(h) **Time of Essence**. Time is of the essence of this lease and of each and all provisions hereof.

(i) **Due Date; Interest**. If any installment of Monthly Base Rent or any other sum due from Tenant pursuant to any provision of this Lease shall not be received by Landlord or Landlord's designee within five (5) business days following the due date for such installment of Monthly Base Rent or Additional Rent, or within five (5) business days following written notice that such amount was not paid when due for any other sums which may become due under this Lease, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount. The late charge shall be deemed additional rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Monthly Base Rent or Additional Rent owing hereunder which are not paid within five (5) business days following the due date for Base Rent, or within five (5) business days following written notice that such amount was not paid when due for any other sums which may become due under this lease shall bear interest from the date when due until paid at the Default Rate. The term "**Default Rate**" means the rate of interest announced from time to time, by Bank One, Chicago, Illinois (or any successor), as its "prime rate" or "corporate base rate," changing as and when such rate changes, or if such rate is no longer in existence, then such other "prime rate" as may be designated by Landlord (herein, the "**Prime Rate**") plus three (3) percentage points. The provisions of this subparagraph shall in no way relieve Tenant of the obligation to pay Rent or any other sums due hereunder on or before the date on which payment is due, nor shall the collection by Landlord of any amount under this subparagraph impair the ability of Landlord to collect any amount under Section 19 of this Lease. Notwithstanding anything to the contrary set forth in this Section 28(i), the first time in any 12 month period that Tenant fails to pay Rent when due, no late charge or interest shall be charged unless such failure continues for ten (10) days after written notice thereof from Landlord.

(j) **Interpretation**. The invalidity of any provision of this Lease shall not, to the extent commercially reasonable, impair or affect in any manner the validity, enforceability or effect of the rest of this Lease.

(k) **Force Majeure**. Without limiting or being limited by the provisions of Section 8 or Section 13, or any of the other provisions of this Lease, if either party fails to perform timely any of the terms, covenants or conditions of this Lease on its part to be performed, and such failure is due in whole or in part to any strike, lockout, labor trouble, civil disorder, riot, insurrection, act of terrorism, war, accident, fire or other casualty, adverse weather condition, act of God, governmental inaction, restrictive governmental law or regulation, inability to procure materials, electricity, gas, other fuel or water or other utilities at the Building after reasonable effort to do so, act or event caused directly or indirectly by or by default of the other party or any of the other party's employees, agents, licensees, invitees or contractors, concealed subsurface condition not reasonably anticipated from test results obtained prior to commencement of work or any cause beyond the reasonable control of the first party, then the time to perform the term, covenant or condition in question shall be extended on a day-for-day basis for the period of the delay caused by such event; provided, however, that the party claiming the benefit of this Section 28(k) shall, as a condition thereto, give notice to the other party in

writing within ten (10) business days of the incident specifying with particularity the nature thereof, the reason therefor, the date and time such incident occurred and a reasonable estimate of the period that such incident will delay the fulfillment of said term, covenant or condition. Failure to give such notice within the specified time shall render such delay invalid in extending the time for performing the subject term, covenant or condition. This Section shall not apply to (i) the inability to pay any sum of money due hereunder or the failure to perform any other obligation due to the lack of money or inability to raise capital or borrow for any purpose, or (ii) extend the Commencement Date, except and to the extent that the force majeure event is a fire or other casualty not caused by any of the Tenant Parties.

(l) **Cumulative Remedies; Illinois Law**. The rights and remedies of Landlord and Tenant under this Lease are cumulative and none shall exclude any other rights or remedies allowed by law or equity. This Lease is for the lease of space in a building located in the State of Illinois and is declared to be an Illinois contract, and all of its terms shall be construed according to the laws of the State of Illinois.

(m) **Counterparts**. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(n) **Relationship**. Landlord and Tenant disclaim any intention to create a joint venture, partnership or agency relationship.

(o) **Action on Behalf of Landlord or Tenant**. Any service which may be provided by Landlord under this Lease may be provided by Landlord, j any of its constituent members, or any agent or contractor of any of them, and the cost to Landlord of any such agent or contractor shall be included in any charge to Tenant for such service. Except as provided in the following sentence, any right reserved to Landlord under this Lease may be exercised by Landlord, any of its constituent members, or any agent, contractor or designee of any of them (provided that, except for certain indemnities in favor of such parties as expressly described in this Lease, no such party, other than Landlord, shall be deemed a third party beneficiary of the Lease for purposes of bringing an enforcement action against Tenant). Any notice, demand, consent or approval which may be given by Landlord under this Lease may be given only by Landlord, any constituent owner of Landlord, or any agent or attorney of any of them. Any notice, demand, consent or approval which may be given by Tenant under this Lease may be given only by Tenant, any constituent owner of Tenant, or any agent or attorney of any of them.

(p) **Entire Agreement**. This Lease contains the entire agreement between Landlord, and Tenant with respect to its subject matter, and all negotiations, considerations, representations, understandings and agreements, oral or written, which may have been previously made between any of the foregoing parties are incorporated and merged into this Lease. In executing and delivering this Lease, Tenant has not relied on any representation, warranty or statement by Landlord, any of Landlord's constituent members, or any of their respective agents, partners or employees, which is not set forth in this Lease, including without limitation any representation as to the amount of any Additional Rent, or any component thereof, or any representation that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis.

(q) **Financial Statements**. At Landlord's request given at any time that (i) Tenant is in Default, (ii) Tenant is seeking to assign this Lease or sublease the Premises, (iii) Tenant is expanding the Premises, or (iv) Landlord is selling or refinancing the Project, Tenant shall deliver to Landlord, within ten (10) days after written request by Landlord, Tenant's most recent then available quarterly financial statements and any more recent financial statements then available, including balance sheets and income statements. All such financial statements shall be certified by the chief financial officer of Tenant as being true, accurate and complete in all material respects. Landlord shall not disclose such financial information to any third party other than its lenders, partners, members, agents, consultants, advisors, attorneys and accountants (provided that, in any such case, any such persons and entities are advised of the obligation not to disclose such information and agree not to so disclose such information) or as may be otherwise required by a government or governmental agency or pursuant to court order or to enforce Landlord's rights hereunder.

(r) **Landlord Right to Perform Tenant's Duties**. If Tenant fails to timely perform any of its duties under this Lease, then Landlord shall have the right (but not the obligation), upon reasonable prior written notice to Tenant (except that no such notice shall be required in the case of an emergency) and Tenant's failure to promptly take action to remedy such failure within a reasonable time under the circumstances, and without limiting any other rights or remedies available to Landlord, to perform such duty on behalf and at the expense of Tenant without further notice to Tenant, and all sums expended or expenses incurred by Landlord in performing such duty, together with interest thereon at the Default Rate accruing from and after the time so expended or incurred by Landlord until repaid by Tenant, shall be deemed to be additional Rent under this lease and shall be due and payable upon demand by Landlord. Any specific notice and cure period set forth elsewhere in this Lease shall govern and control over the "reasonable time under the circumstances" language set forth in this Section 28(r).

(s) **Public Safety**. Notwithstanding anything contained in this Lease to the contrary, Tenant and all persons within the Premises or within or under Tenant's control shall comply with any and all orders and directives that may be given by Landlord (or its agents, including for these purposes only, building management and lobby attendants) to Tenant in connection with Landlord's reasonable, good faith belief that there exists an emergency or other safety concerns which affect the Building and/or the Premises. Such orders and directives may require, among other things, for Tenant and its agents, employees, contractors and those under Tenant's control, to vacate the Premises and/or the Building, and/or not enter or re-enter the Premises and/or the Building. Without limiting the foregoing: (a) Tenant shall designate, in writing, a person or persons who shall serve as its emergency contact for purposes of this Section; (b) notices and directives under this Section may be given orally or in writing or by any other reasonable means (including, if applicable, the public address system of the Building); (c) if so directed by Landlord or its agents, all persons within the Premises and persons outside the Premises and within Tenant's control shall immediately vacate the Building and/or not enter or re-enter the Premises and/or the Building in accordance with Landlord's direction; (d) Landlord shall have the right with or without advance notice to Tenant to conduct a reasonable number of "fire drills" in any calendar year, and Tenant shall comply with the direction given by Landlord or its agents in connection with such "fire drills" as if a real emergency existed; (e) Tenant's failure to comply with the provisions of this Section shall

constitute a default under this lease; and (f) without limiting Landlord's rights and remedies in connection with Tenant's obligations under this Section, (i) Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless Landlord and Landlord's agents, employees, contractors, officers, directors and partners from and against any and all loss, claim, expense, suit, damage, injury and/or liability (including reasonable attorneys' fees and court costs) which arise out of or in connection with any failure by Tenant or any person within the Premises or within Tenant's control to comply with the provisions of this Section, and (ii) Tenant on its behalf and on behalf of its employees, officers, directors and partners waives and releases Landlord and Landlord's agents, employees, contractors, officers, directors and partners from and against any and all claims expenses, suits, damages, injuries and/or liabilities (including, without limitation, reasonable attorneys' fees and court costs) that arise out of any actions by Landlord in connection with enforcement of this Section or the failure by Tenant to comply with this Section.

(t) **Notice to Tenant**. Wherever under this Lease oral notice is permitted to be given by Landlord to Tenant, said notice shall be given by means of a personal visit or a telephone call to Director of Loss Prevention (initially Dominick K. Archer) (Telephone no.: *{Tenant shall provide such number to Landlord as soon as it is available}*, which person and number may be changed by Tenant at any time during the Term upon prior written notice to Landlord and the property manager for the Project.

29.RIGHT OF FIRST REFUSAL. Landlord hereby grants to Tenant a one-time option to lease, upon the terms and conditions hereinafter set forth, leasable space in the High Bay area shown on the Floor Plan of Building attached hereto as Exhibit A (the "**Refusal Space**") which becomes "available for leasing" (as determined in accordance with subsection (i) below) and which may be first floor or second floor space or a combination thereof.

(i) A portion of the Refusal Space shall be deemed to be "available for leasing" upon the occurrence of all of the following events:

(A) such portion of the Refusal Space is not the subject of an Existing Lease (as hereinafter defined);

(B) one (1) year prior to the expiration of an Existing Lease of such portion of the Refusal Space, if such portion of the Refusal Space is not then subject to a right or option to lease such space granted in another Existing Lease;

(C) if such portion of the Refusal Space is subject to a right or option granted in an Existing Lease (whether to extend/renew or to expand), all of which rights or options are not exercised, the expiration of the last of such unexercised right or option; and

(D) if such portion of the Refusal Space is subject to a right or option granted in an Existing Lease, which right or option is exercised, the expiration of the term of such Existing Lease or any later date upon which the term of the demise of such portion of the Refusal Space created by the exercise of such right or option expires (including any renewals or extensions thereof granted in such Existing Lease).

(ii) At such time as Landlord has submitted a lease proposal to a third party prospective tenant or received a lease proposal from a third party prospective tenant, in either case, which proposal sets forth the basic material terms of a lease for any portion of the Refusal Space which is or will be available for leasing, Landlord shall give Tenant a written notice (the "**Refusal Notice**") setting forth (i) the location, (ii) the net rentable area, (iii) the availability date (the '**Refusal Space Commencement Date**"), (iv) the rental rate, and (v) the other agreed upon economic terms with respect to such Refusal Space. The Refusal Space Commencement Date shall not be less than thirty (30) business days after the date such notice is given by Landlord.

(iii) Tenant's right to lease such portion of the Refusal Space on the terms described in the applicable Offer Notice shall be exercisable by ;written notice (the "Acceptance Notice") from Tenant to Landlord given not later than ten (10) business days after the Offer Notice is delivered, time being of the essence. If such right is not so exercised, Tenant's right of first refusal shall thereupon terminate as to such portion of the Refusal Space described in the Refusal Notice, and Landlord may thereafter rent all or any part of such portion of the Refusal Space described in the Refusal Notice without further notice to Tenant and free of any right of Tenant. Tenant may not elect to lease less than the entire area of the Refusal Space described in the Refusal Notice.

(iv) Tenant may only exercise its right to lease a portion of the Refusal Space, and an exercise thereof shall only be effective, if at the time of Tenant's exercise of said right and on the applicable Refusal Space Commencement Date, this ;Lease is in full force and effect and no uncured Default by Tenant, and, inasmuch as this right of first offer is intended only for the benefit of the original Tenant named in this Lease, the entire Premises are then occupied by Ulta Salon, Cosmetics & Fragrance, Inc. or a Tenant Affiliate, and Ulta Salon, Cosmetics & Fragrance, Inc. has not assigned this Lease or sublet any portion of the Premises, other than to a Tenant Affiliate pursuant to one or more assignments and/or subleases in effect as of the time Tenant gives an Acceptance Notice or on the Refusal Space Commencement Date, as the case may be. Notwithstanding anything herein to the contrary, Landlord shall have the right, at its election, to waive any of the conditions precedent to Tenant's valid exercise of its rights under this Section 29, as such conditions are described in this Section 29, whereupon Tenant's prior exercise of such renewal rights shall be valid and in full force and effect in all respects. Any such waiver by Landlord must be in writing in order to be effective for purposes of the preceding sentence. Without limitation of the foregoing, no sublessee or assignee, other than a Tenant Affiliate, shall be entitled to exercise any right hereunder and no exercise of any right hereunder, by Ulta Salon, Cosmetics & Fragrance, Inc. shall be effective in the event said Tenant assigns this lease or subleases all or part of the Premises prior to the applicable Refusal Space Commencement Date, other than to a Tenant Affiliate.

(v) If Tenant has validly exercised its right to lease the Refusal Space in question, then, effective as of the applicable Refusal Space Commencement Date, such Refusal Space shall be included in the Premises, subject to all of the terms, conditions and provisions of this lease except that:

(A) the rent per square foot of net rentable area for such Refusal Space shall be equal to the rental rate quoted by Landlord to Tenant in the Refusal Notice;

(B) the net rentable area of the Premises shall be increased by the net rentable area of such portion of the Refusal Space and such rentable area of the Premises as increased shall be utilized in calculating the increases in Tenant's Proportionate Share;

(C) the term of the demise covering such portion of the Refusal Space shall commence on the applicable Refusal Space Commencement Date and shall expire simultaneously with the expiration or earlier termination of the Term (subject to any rights which Tenant has to extend the Term); and

(D) the Refusal Space shall be rented in its "as is" condition as of the applicable Refusal Space Commencement Date.

(vi) If Tenant has validly exercised its right to lease all or any portion of the Refusal Space in accordance with the terms hereof, Landlord and Tenant shall enter into a written amendment to this Lease confirming the terms, conditions and provisions applicable to such portion of the Refusal Space as determined in accordance herewith.

(vii) In the event Landlord is unable to deliver to Tenant possession of any portion of the Refusal Space on or before the applicable Refusal Space Commencement Date for any reason whatsoever, Landlord shall not be subject to any liability for such failure to deliver possession. Such failure to deliver possession shall not affect either the validity of this Lease or the obligations of either Landlord or Tenant hereunder or be construed to extend the expiration of the Term of this Lease either as to such portion of the Refusal Space or the balance of the Premises; provided, however, that under such circumstances, rent shall not commence as to such portion of the Refusal Space until Landlord does so deliver possession to Tenant.

(viii) In the event any portion of the Refusal Space is leased to Tenant other than pursuant to the right of first offer described herein, such portion of the Refusal Space shall thereupon be deleted from the Refusal Space.

(ix) As used herein, the following terms shall have the following meanings:

The term "**Existing Lease**" shall mean a lease (other than this Lease) of any space in the Building in effect as of the date hereof (including extensions and renewals thereof pursuant to options granted therein), whether or not the term of such lease has yet commenced. In the event two leases are in effect for any portion of the Refusal Space (for example, the term of a lease which is now in effect for a portion of the Refusal Space will soon expire, and another lease covering part or all of such space has already been executed with a new tenant for a term commencing after the expiration of the term of the former lease), only one of such leases shall be an Existing Lease. In such case, the Existing Lease shall be determined by comparing the dates

upon which the respective terms of such two leases end, and the lease with the later expiration date shall be deemed to be the Existing Lease and the other lease shall be disregarded;

30. RENEWAL OPTION. Subject to the terms and conditions set forth in this Section 30, Landlord grants to Tenant the right and option to renew this Lease (the "**Renewal Option**") for one (1) option period of five (5) years (the '**Renewal Period**"). The Renewal Period shall commence on the day immediately following the Initial Term (the "**Renewal Period Commencement Date**"), and end five (5) Lease Years thereafter, unless this lease is earlier terminated or further renewed as provided in this lease.

(a) **Right to Renew**. The Renewal Option shall be exercisable by written notice (a '**Renewal Notice**") from Tenant to Landlord of Tenant's election to exercise said Renewal Option given by Tenant to Landlord not later than two hundred seventy (270) days prior to the Renewal Period Commencement Date, time being of the essence. If such Renewal Option is not so exercised, said Renewal Option shall expire.

(b) **Conditions to Exercise**. Tenant may only exercise the Renewal Option, and an exercise thereof shall only be effective, if, at the time Tenant gives a Renewal Notice, and on the Renewal Period Commencement Date, this Lease is in full force and effect, and Tenant is not in Default under this Lease, and (inasmuch as said option is intended only for the benefit of the original Tenant named in this Lease or a Tenant Affiliate), as of the time of Tenant's exercise of said right and as of the Renewal Period Commencement Date, the Premises are occupied by Ulta Salon, Cosmetics & Fragrance, Inc. or a Tenant Affiliate, and Ulta Salon, Cosmetics & Fragrance, Inc. or Tenant Affiliate has not assigned this Lease (other than to a Tenant Affiliate) or sublet the Premises (other than to a Tenant Affiliate) pursuant to one or more assignments and/or subleases in effect as of either such dates. Without limitation of the foregoing, no sublessee or assignee (other than a Tenant Affiliate) shall be entitled to exercise the Renewal Option under this Section 30, and no exercise of said option by Ulta Salon, Cosmetics & Fragrance, Inc. or by a Tenant Affiliate shall be effective, in the event Ulta Salon, Cosmetics & Fragrance, Inc. or Tenant Affiliate has assigned this lease (other than to a Tenant Affiliate), or subleased the Premises (other than to a Tenant Affiliate) pursuant to one or more assignments and/or subleases in effect as of the time Tenant gives a Renewal Notice or as of the subject Renewal Period Commencement Date. Notwithstanding anything herein to the contrary, Landlord shall have the right, at its election, to waive any of the conditions precedent to Tenant's valid exercise of its renewal rights under this Section 30, as such conditions are described in this Section 30(b), whereupon Tenant's prior exercise of such renewal rights shall be valid and in full force and effect in all respects. Any such waiver by Landlord must be in writing in order to be effective for purposes of the preceding sentence.

(c) **Base Rent During Renewal Period**. Base Rent per square foot of Rentable Area of the Premises payable during the first Lease Year of the Renewal Period shall be $28.00 per square foot with respect to all space included in the Premises as of the Renewal Period Commencement Date, and shall escalate annually at the rate of $0.50 per Lease Year. The Base Year for the Renewal Period shall be the calendar year in which the Renewal Period commences.

(d) **Written Amendment**. If Tenant has validly exercised said option, within thirty (30) days after determination of the Market Rate of Base Rent, Landlord and Tenant shall enter into a written amendment to this Lease confirming the terms, conditions and provisions applicable to the Renewal Period as determined in accordance herewith, with such revisions to the rental provisions of this lease as may be necessary to conform such provisions to the Market Rate of Base Rent.

(e) **No Further Revisions**. Tenant shall have no right to renew or extend the Term of this lease beyond the expiration of the Renewal Period.

31.SIGNAGE. Tenant shall have the signage rights described below for so long as Tenant is not in Default under the terms of this Lease and, with respect to the Tenant Exterior Building Signage (as defined below), for so long as Ulta Salon, Cosmetics & Fragrance, Inc. leases and occupies no less than 80,000 rentable square feet and has not assigned this Lease or sublet any portion of the Premises (provided that Tenant shall have the right to install the Tenant Exterior Building Signage for the period between the Commencement Date and the Phase III Commencement Date notwithstanding that Tenant will not be leasing and occupying at least 80,000 square feet during that period). The rights set forth in this Section 31 are personal to Ulta Salon, Cosmetics & Fragrance, Inc. and may not be assigned to any other party.

(a) **Exterior Building Signage**. Tenant shall have the non-exclusive right to install its corporate identity signage on the exterior of the Building in the location set forth on **Exhibit L** (the "**Tenant Exterior Building Signage**"). The size, type, color, material composition and location of the Tenant Exterior Building Signage shall comply with all applicable governmental signage requirements and shall be subject to Landlord's prior written approval, not to be unreasonably withheld or delayed; provided, however, that Landlord hereby approves the Tenant Exterior Building Signage in substantially the form attached hereto and made a part hereof as **Exhibit L** to the extent of the actual detail shown on **Exhibit L**. It shall be Tenant's responsibility to obtain all required governmental approvals for the Tenant Exterior Building Signage. Tenant shall, at its own expense, have the right to change or replace the Tenant Exterior Building Signage at any time or from time to time during the Term so long as such change in its signage is in compliance with all applicable Laws, and subject to Landlord's prior written approval, not to be unreasonably withheld or delayed. Tenant shall be solely responsible, at Tenant's sole cost, for installing, maintaining and repairing the Tenant Exterior Building Signage and, upon expiration of the Term or earlier termination of this Lease, or at such time occurring after the Phase III Commencement Date as Ulta Salon, Cosmetics & Fragrance, Inc. is not leasing and occupying 80,000 rentable square feet in the Building, Tenant shall, at Tenant's cost, remove all Tenant Exterior Building Signage from the Building and restore the exterior of the Building to substantially the same condition as existed prior to the installation of the Tenant Exterior Building Signage. If Tenant fails to remove such Tenant Exterior Building Signage at any of such times, then Landlord may do so upon thirty (30) days prior written notice thereof and charge Tenant for the reasonable costs thereof which shall be due and payable within thirty (30) days after request therefor.

(b) **Lobby Signage**. Tenant, at Tenant's sole cost and expense, shall have the exclusive right from time to time during the Term to install, change and replace such signage as Tenant shall desire in the Lobby (collectively, the "**Tenant Lobby Signage**") so long as such

Tenant Lobby Signage complies with all applicable Laws and subject to Landlord's prior written approval, not to be unreasonably withheld or delayed; provided, however, that notwithstanding the foregoing, Landlord hereby approves of and agrees that Tenant shall have the right to install the following signage in the Lobby: (i) the signage in substantially the form attached hereto and made a part hereof as **Exhibit M** to the extent of the actual detail shown on Exhibit M (the '**North Wall Signage**"), which North Wall Signage shall contain "pinned" letters and have a height of no more than two feet (2') and a length of no more than five feet (5') and shall be located on the north wall of the lobby in a location mutually acceptable to both Landlord and Tenant (which location the parties agree shall either be in the center of the north wall or to one side of the North Wall Glass Doors (as defined herein) (in the event Tenant elects to install such North Wall Glass Doors); and (ii) silk screen letters on the South Wall Glass Door (as defined herein) identifying Tenant's name and its conference room entrance, in such location, font and size as reasonably acceptable to the parties. Tenant shall be solely responsible, at Tenant's sole cost, for installing, maintaining and repairing the Tenant Lobby Signage and, upon expiration of the Term or earlier termination of this Lease, or at such time as Ulta Salon, Cosmetics & Fragrance, Inc. is not leasing and fully occupying the Phase I Premises, Tenant shall, at Tenant's cost, remove all Tenant Lobby Signage from the Lobby and restore the Lobby to substantially the same condition as existed prior to the installation of the Tenant Lobby Signage. If Tenant fails to remove such Tenant Lobby Signage at any of such times, then Landlord may do so upon thirty (30) days prior written notice thereof and charge Tenant for the reasonable costs thereof which shall be due and payable within thirty (30) days after request therefor.

(c) **Interior Premises Signage**. Tenant, at Tenant's sole cost and expense, shall have the exclusive right from time to time during the Term of this Lease to install, change and replace such signage as Tenant shall desire in the interior of the Premises (including, without limitation, any suite number or other tenant signage on the interior and exterior of the vestibule doors leading to the Premises) (collectively, the "**Tenant Interior Signage**") so long as such Tenant Interior Signage complies with all applicable Laws and, with respect to any signage visible from the exterior of the Premises, such signage has been approved in writing by Landlord, such approval not to be unreasonably withheld or delayed. Tenant shall be solely responsible, at Tenant's sole cost, for installing, maintaining and repairing the Tenant Interior Signage and, upon expiration of the Term or earlier termination of this Lease, Tenant shall, at Tenant's cost, remove all Tenant Interior Signage from the Premises and restore the Premises to substantially the same condition as existed prior to the installation of the Tenant Interior Signage. If Tenant fails to remove such Tenant Interior Signage as of the expiration of the Term, then Landlord may do so upon thirty (30) days prior written notice thereof and charge Tenant for the reasonable costs thereof which shall be due and payable within thirty (30) days after request therefor.

(d) **Monument Signage**. Tenant shall have the right to be identified with a sign panel ("Tenant Sign Panel") on the existing monument sign located within the Project (the "Monument Sign"). The Tenant Sign Panel shall be in the Building standard size, color and font. Landlord shall cause the Tenant Sign Panel to be fabricated and installed at Tenant's cost, provided that Tenant shall approve such cost in advance. If Tenant approves said cost, the Tenant Sign Panel shall be installed on the Monument Sign prior to September 1, 2007.

For purposes of Lease interpretation, this Section 31 governs and controls over any other signage provisions in this Lease which may be inconsistent with the specific provisions of this Section 31.

32. LANDLORD. The term "Landlord" as used in this Lease means only the owner of Landlord's interest in the Project from time to time. In the event of any assignment, conveyance or sale, once or successively, of Landlord's interest in the Project or any assignment of this Lease by Landlord, said Landlord making such assignment, conveyance or sale shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder accruing after such assignment, conveyance or sale, and Tenant agrees to look solely to such assignee, grantee or purchaser with respect thereto provided that Tenant is given written notice of said assignment, conveyance or sale. The holder of a Mortgage (or assignment in connection with a Mortgage) shall not be deemed such an assignee, grantee or purchaser under this Section 31 unless and until the foreclosure of the Mortgage or the conveyance or transfer of Landlord's interest under this lease in lieu of foreclosure, and then subject to the provisions of Section 20. This Lease shall not be affected by any such assignment, conveyance or sale, and Tenant agrees to attorn to the assignee, grantee or purchaser provided that Tenant is given written notice of said assignment, conveyance or sale.

33. TITLE AND COVENANT AGAINST LIENS. Landlord's title is and always shall be paramount to the title of Tenant, and nothing in this lease contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord. Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon Landlord's title or interest in the Premises or any part of the Project, and any and all liens and encumbrances created by Tenant shall attach to Tenant's interest only.

34. COVENANT OF QUIET ENJOYMENT. Landlord agrees that so long as Tenant is not in default beyond any applicable notice and cure periods, that Tenant shall peaceably and quietly have, hold and enjoy the Premises (including, without limitation, the non-exclusive right to use the Common Areas and the rights set forth in this Lease to use the Lobby, Receiving Docks, Cafeteria, Building Conference Room and Auditorium), subject to the terms, covenants, conditions, provisions and agreements of this Lease, free from hindrance by Landlord or any person claiming by, through or under Landlord.

35. EXCULPATORY PROVISIONS. The liability of any Landlord under this Lease or any amendment to this lease, or any instrument or document executed in connection with this Lease, shall be limited to and enforceable solely against the assets of such Landlord constituting an interest in the Land or Building and not other assets of such Landlord. Assets of a Landlord which is a partnership or limited liability company do not include the assets of the partners or members of such Landlord, and any negative capital account of a partner or member in a partnership or limited liability company which is a Landlord, and any obligation of a partner or member to contribute capital to the partnership or limited liability company which is Landlord, shall not be deemed to be assets of the partnership or limited liability company which is the Landlord. No directors, officers, employees, managers, members, or shareholders of any corporation or limited liability company which is Landlord shall have any personal liability arising from or in connection with this Lease. At any time during which Landlord is trustee of a

land trust, all of the representations, warranties, covenants and conditions to be performed by it under this Lease or any documents or instruments executed in connection with this Lease are undertaken solely as trustee, as aforesaid, and not individually, and no personal liability shall be asserted or be enforceable against it or any of the beneficiaries under said trust agreement by reason of any of the representations, warranties, covenants or conditions contained in this lease or any documents or instruments executed in connection with this Lease.

36. PARKING. Landlord agrees that, throughout the Term, there shall be available to Tenant parking spaces in the Building parking areas in number corresponding to the ratio of four (4) spaces for each 1,000 square feet of Rentable Area leased by Tenant, which spaces shall be available to Tenant in accordance with Landlord's direction on a non-exclusive, unreserved, first-come, first-served basis, without any separate rent or other fees for such spaces. Landlord agrees that, as of the Commencement Date, such Building parking areas contain at least 1,726 parking spaces, including 40 parking spaces designated as handicapped accessible. Landlord specifically reserves the right to make reasonable changes to the size, configuration, design, layout and all other aspects of the Project parking areas and improvements at any time, and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this lease, from time to time, temporarily close-off or restrict access to portions of the Project parking areas for purposes of permitting or facilitating any such construction, alteration or improvements. Landlord may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of parking area control attributed hereby to the Landlord. Notwithstanding anything contained herein, Tenant and Tenant's employees use of such parking spaces shall not exceed the number corresponding to the ratio of four (4) spaces for each 1,000 square feet of Rentable Area leased by Tenant at any given time during the Term.

37. CERTAIN COMMON AREAS. Tenant has been granted certain rights under this Lease with respect to certain Common Areas within the Project, including the Lobby, the Receiving Docks, the Cafeteria, the Auditorium and the Building Conference Room, all of which areas (other than the Receiving Dock) are shown on Exhibit A attached to this Lease. Tenant shall be entitled to shared exclusive use of the Lobby, together with one other tenant of the Building; provided, however, that Tenant shall have the exclusive right to use the reception desk located in the Lobby and to have Tenant's personnel occupy said reception desk; provided, however, that Landlord shall at all times retain the right to have Building personnel (e.g., security guard, property management employee) stationed at the reception desk. Tenant acknowledges that it has been advised by Landlord that it is Landlord's intention to relocate the Receiving Docks within approximately twelve to eighteen months after the date of this Lease. Tenant will at all times have access from the Premises to the Receiving Docks internally through the Building. Landlord is responsible for the maintenance of the Receiving Docks. With respect to the Auditorium and the Building Conference Room, such areas are for the non-exclusive use of all Building tenants and may be reserved on a first come-first served basis in the Building management office for no more than one day per reservation. The charge for use of the Auditorium, as of the date of this Lease, is $125 per use. The charge for use of the Building Conference Room, as of the date of this Lease, is $50 per use. Such charges are subject to change from time to time during the Term. Notwithstanding the foregoing, Tenant shall not be charged for the use of the Building Conference Room for the first Lease Year. The Cafeteria will be open and operational by January 1, 2008. The hours for the Cafeteria will be 7:30 A.M.

to 2:30 P.M. Monday through Friday. The Cafeteria will have a separate exhaust system and Landlord will use reasonable efforts to prevent Cafeteria odors from entering the Lobby or the Premises. Landlord shall have the right to relocate all or any of the Receiving Docks, the Cafeteria, the Auditorium and the Building Conference Room to other areas in the Building provided that any such new Common Area shall be substantially comparable to the substituted area and Tenant's rights of access and use of such Common Areas as described in this Lease shall not be materially modified or impaired.

In addition to the Building Conference Room, there are small conference rooms located on the second floor of the Building. Tenant shall be entitled to the nonexclusive use of these conference rooms, for the Building standard charge in effect from time to time, but which charge shall be abated as to Tenant during the first and second Lease Years. With respect to any use of such second floor conference rooms, Tenant shall be responsible for cleaning each such room after its use by Tenant. As of the Phase III Commencement Date, all of said second floor conference rooms located within the Premises shall be deemed part of the Premises and shall be for Tenant's exclusive use.

Tenant shall have the right, at Tenant's sole cost and expense, to install a wireless network system in the Auditorium and Cafeteria. Any such system shall be installed only in accordance with plans and specifications previously approved in writing by Landlord, such approval not to be unreasonably withheld. All installation, operation, maintenance and repair of such system shall be performed by Tenant in compliance with all applicable Laws. Tenant shall pay all taxes and other fees or charges that may be payable with respect to the installation and operation of such system (exclusive of any charges imposed on individual users of such system).

Tenant shall at all times have access to the Receiving Dock by means of a corridor which satisfied the requirements of all applicable codes with respect to height and width and which, in any event, will be of reasonable height and width.

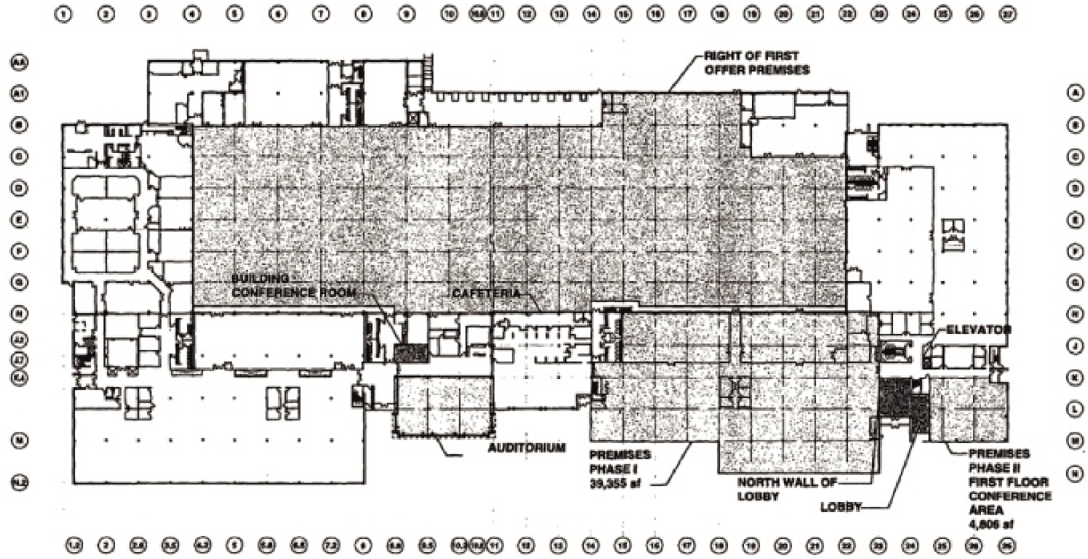
[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date first written above.

LANDLORD:	**TENANT:**
BOLINGBROOK INVESTORS, LLC, an Illinois limited liability company	**ULTA SALON, COSMETIC & FRAGRANCE, INC.,** a Delaware corporation
By: /s/ Joseph I. Neverauskas	By: /s/ Alex J. Lelli, Jr.
Name: Joseph I. Neverauskas	Alex J. Lelli, Jr. Senior Vice President, Growth & Development
Its: Senior Vice President	

EXHIBIT A

FLOOR PLAN OF BUILDING



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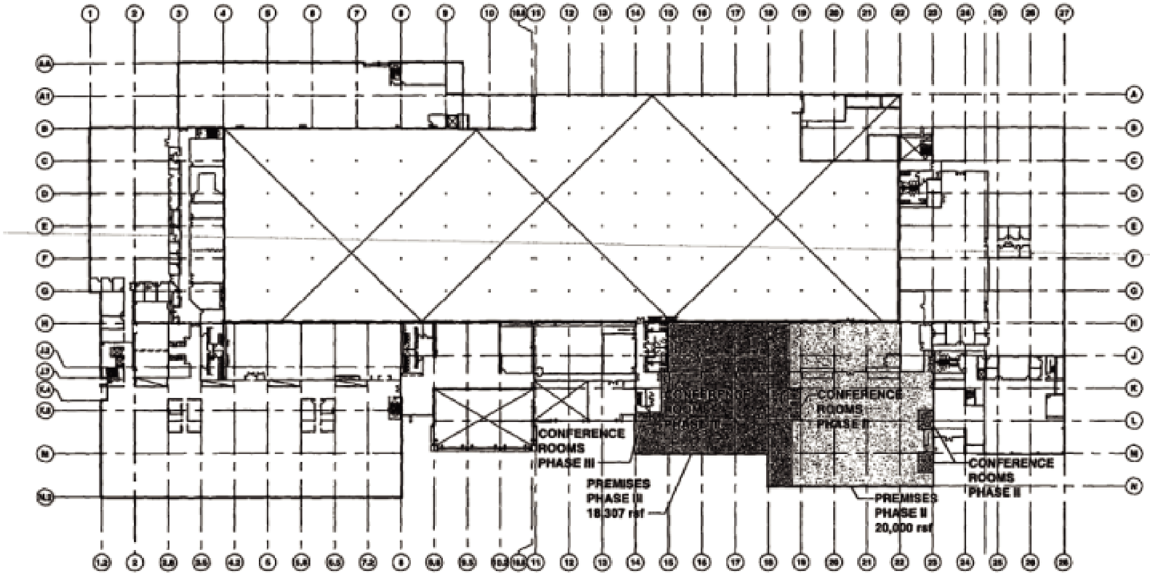
DRAWING TITLE: FIRST FLOOR

PROJECT NAME: TALLGRASS CORPORATE CENTER

SK-01R2



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DRAWING TITLE: SECOND FLOOR DATE: 4.4.07

PROJECT NAME: TALLGRASS CORPORATE CENTER PROJ. #: 2007506.001 SK-02R2

Architecture Planning Interior Design 625 N. Michigan Ave. Chicago, IL 60611

EXHIBIT A-1

SITE PLAN OF PROJECT

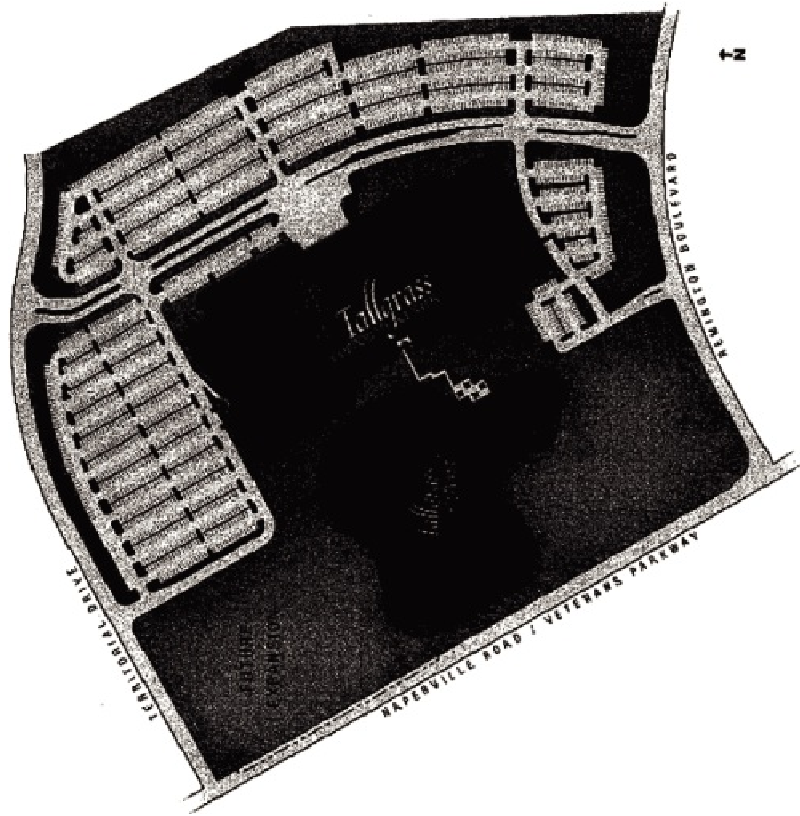

Tallgrass
TERRITORIAL DRIVE
REMINGTON BOULEVARD
NAPERVILLE ROAD / VETERANS PARKWAY
N

EXHIBIT B

WORKLETTER

THIS WORKLETTER AGREEMENT ("**Workletter**") is hereby incorporated as part of that certain Office Lease ("**Lease**") made and entered into by and between **BOLINGBROOK INVESTORS, LLC**, an Illinois limited liability company ("**Landlord**"), and **ULTA SALON, COSMETICS & FRAGRANCE, INC,** a Delaware corporation ("**Tenant**"), for certain leased premises at the Building described below.

WITNESSETH:

WHEREAS, Landlord and Tenant are hereby entering into the above-described Lease to which this Workletter is being attached, which lease demises certain Premises (as defined in the Lease; all capitalized terms used but not otherwise defined herein shall have the meaning as set forth in the Lease) in the office building known as 1000 Remington Boulevard, Bolingbrook, Illinois (the "Building"); and

WHEREAS, certain tenant improvement work is to be completed on the Premises and Tenant is initially leasing the Phase I Premises and Tenant is leasing the Phase II Premises and the Phase III Premises at later dates;

NOW, THEREFORE, for and in consideration of the agreement to lease the Premises and pay rent and the mutual covenants contained herein, the parties agree as follows:

1. **TURNOVER DATE AND LANDLORD'S WORK**. Landlord shall deliver the Phase I Premises to Tenant for the construction of Tenant's Work (as hereinafter defined) promptly following full execution of the Lease provided that Tenant has delivered any security deposit required under the Lease, as described in the Lease. Landlord shall deliver the Phase II Premises to Tenant for construction of Tenant's Work upon the first day of the second Lease Year. Landlord shall deliver the Phase III Premises to Tenant for the construction of Tenant's Work upon the first day of the third Lease Year. It is the parties' intention that Tenant's Work, as used in this Workletter and in the Lease, shall refer only to the construction of improvements to the Phase I Premises initially and, subsequently, to the construction of improvements to the Phase II Premises and the Phase III Premises at such times as Tenant undertakes such portion of Tenant's Work.

Landlord shall, at Landlord's sole expense, perform the following work ("Landlord's Work"), which shall be completed in accordance with all applicable laws and with building standard finishes similar to other portions of the Building at least ninety (90) days prior to the Phase II Commencement Date: (i) construct a demising partition approximately 50 to 60 lineal feet near the southwest corner of the Premises on the first floor to create a public corridor; and (ii) construct a new demising partition approximately 30 to 40 feet near the north end of the Premises on the second floor which will provide Tenant with access to the stairwell and washrooms. The Landlord's Work is depicted on Exhibit N attached hereto and incorporated by this reference and is shown as the items numbered "1" on Exhibit N.

2. **TENANT'S WORK**. Tenant, at its sole cost and expense, but subject to payment of the Allowance (as hereinafter defined) as provided under Paragraph 9 below, shall perform, or cause to be performed, all work described in the lease as the "Tenant's Work" and desired by Tenant for its initial occupancy of the Premises (herein also referred to as the "Tenant's Work"), all in accordance with the Plans (as hereafter defined) submitted to and approved by Landlord (which approval shall not be unreasonably withheld or delayed as described in Paragraph 3(b) below). The Tenant's Work shall be constructed in a good and workmanlike fashion, in accordance with the requirements set forth herein and in compliance with all applicable statutes, laws, ordinances, orders, codes, rules, regulations, building and fire codes and other governmental requirements, including, without limitation, the ADA and all Building-related construction rules and regulations. Landlord's review and approval of the Plans or any other submission of Tenant shall create no responsibility or liability on the part of Landlord for such compliance or for their completeness or design sufficiency. Tenant shall commence the construction of the Tenant's Work promptly following completion of the pre-construction activities provided for in Paragraph 3 below. Tenant shall coordinate the Tenant's Work so as avoid material or unreasonable interference with any activities being conducted by or on behalf of Landlord and/or other tenants at the Building from time to time.

Notwithstanding anything to the contrary herein, as part of Tenant's Work, Landlord hereby agrees that Tenant shall have the right, at Tenant's sole election, to install the following in the Lobby: (a) double glass doors with building standard glass located on the north wall of the Lobby (the "**North Wall Glass Doors**") and (b) a single glass door located on the south wall of the Lobby (the "**South Wall Glass Door**"). Landlord and Tenant hereby agree that each of Landlord and Tenant shall be responsible for one-half (1/2) of the reasonable costs incurred by Tenant in manufacturing and installing the North Wall Glass Doors. Landlord shall reimburse Tenant for its one-half of such reasonable costs within thirty (30) days after demand therefore, along with copies of paid invoices.

3. **PRE-CONSTRUCTION ACTIVITIES**.

(a) Prior to commencing any of the Tenant's Work, Tenant shall submit the following information and items to Landlord for Landlord's review and approval (which approval shall not be unreasonably withheld or delayed as described in Paragraph 3(b) below):

(i) The names and addresses of Tenant's contractors (and the contractor's subcontractors and vendors) to be engaged by Tenant for the Tenant's Work and of any construction manager proposed to be engaged by Tenant for the Tenant's Work (collectively, "**Tenant's Contractors**").

(ii) Certificates of insurance policies as hereinafter described. Tenant shall not permit Tenant's Contractors to commence work until the required insurance has been obtained and certified copies of policies or certificates have been delivered to Landlord.

(iii) The Plans for the Tenant's Work, which Plans shall be subject to Landlord's approval in accordance with Paragraph 3(b) below.

(iv) Tenant will update such information and items by notice to Landlord of any material changes. Landlord shall promptly (or as otherwise required by this Workletter) review all submissions made by Tenant.

(b) As used herein the term "Plans" shall mean full and detailed architectural and engineering plans and specifications covering the Tenant's Work (including, without limitation, architectural, mechanical, electrical, and plumbing working drawings for the Tenant's Work). The Plans shall include drawings and specifications relating to the telecommunications and related equipment and HVAC facilities and requirements to be installed to or to service Tenant's computer/telecommunications room(s). The Plans shall include the minimum information shown on Attachment 1 attached hereto and incorporated herein. Subject to Landlord's payment of the Allowance, Tenant shall pay all costs and expenses of preparing the Plans. The Plans shall be subject to Landlord's approval (not to be unreasonably withheld or delayed, as hereinafter described) and the approval of all local governmental authorities requiring approval, if any. Landlord shall give its approval or disapproval of the Plans within seven (7) business days after their delivery to Landlord. Landlord agrees not to unreasonably withhold its approval of said Plans; provided, however, that Landlord shall not be deemed to have acted unreasonably if it withholds its consent because, in Landlord's reasonable opinion: (i) the Tenant's Work is likely to adversely affect Building systems, the structure of the Building or the safety of the Building and its occupants; (ii) the Tenant's Work would adversely affect Landlord's ability to furnish services to Tenant or other tenants; (iii) the Tenant's Work would increase the cost of operating the Building; (iv) the Tenant's Work would violate any governmental laws, rules or ordinances; (v) the Tenant's Work contains or would require the use of hazardous or toxic material in any unlawful manner; (vi) the Tenant's Work would adversely affect the appearance of the Building; or (vii) the Tenant's Work would adversely affect another tenant's premises. The foregoing reasons, however, shall not be exclusive of the reasons for which Landlord may withhold consent, whether or not such other reasons are similar or dissimilar to the foregoing. If Landlord fails to give its approval or disapproval within said seven (7) business day period, and if Tenant sends a second written request for approval of Plans which states conspicuously, "YOUR FAILURE TO RESPOND TO THIS REQUEST WILL RESULT IN A DEEMED APPROVAL OF THE SUBMITTED PLANS," and if Landlord fails to respond to said second request within five (5) business days after receipt thereof, then Landlord shall be deemed to have approved the Plans which were submitted with the initial request. Landlord shall cooperate with Tenant by discussing or reviewing preliminary plans and specifications at Tenant's request prior to completion of the full, final detailed Plans in order to expedite the preparation of and the subsequent approval process concerning the final Plans. If Landlord notifies Tenant that changes are required to the final Plans submitted by Tenant, Tenant shall submit to Landlord, for its approval, the Plans amended in accordance with the changes so required. Such submission of revised Plans shall be accompanied by a written point by point response from Tenant specifically responding to any disapprovals or other responses delivered by Landlord to Tenant. Landlord shall give its approval or disapproval (giving reasons in case of disapproval) of any such revised Plans within five (5) business days after their delivery to Landlord. The Plans shall also be revised, and the Tenant's Work shall be changed, to incorporate any work required in the Premises by any local governmental field inspector. The Plans shall be prepared at Tenant's sole cost and expense, and Tenant shall pay all fees and costs for the Plans; provided, however, Landlord shall reimburse Tenant an amount equal to $.08 per square foot of the Rentable Area of the Phase I Premises initially, and subsequently, the Phase II

Premises, and subsequently thereafter, the Phase III Premises, towards Tenant's cost for the Plans. Such reimbursement shall be paid within thirty (30) days after Landlord's receipt of Tenant's request therefor accompanied by documentation evidencing Tenant's payment of such costs.

Tenant shall use reasonable efforts to utilize MEP and structural engineering drawing consultants recommended by Landlord for all design and engineering services necessary for preparation of the Plans. Landlord shall provide to Tenant CAD base sheets of all "as built" drawing (to the extent such CAD base sheets are in Landlord's possession).

Landlord's approval of the Plans, or any revisions thereto, shall in no way constitute a representation or warranty by Landlord as to the adequacy or sufficiency of such Plans, or any revisions thereto or the improvements to which they relate for any use, purpose or condition, or be deemed to be acceptance or approval of any element therein contained which is in violation of any applicable statutes, laws, ordinances, orders, codes, rules, regulations, building or fire codes or other governmental requirements. Tenant shall have no authority to deviate from the Plans in performance of the Work, except as authorized by Landlord and its designated representative in writing.

Tenant shall reimburse Landlord, as additional rent under the lease: (i) for Landlord's architectural and engineering costs with respect to Tenant's pre-construction activities and Landlord's review and approval of the Plans, or any revisions thereto, and as may otherwise arise out of or be in connection with, Tenant's performance of Tenant's Work (which costs shall not exceed $10,000.00 in the aggregate); (ii) for Landlord's cost to pay overtime to Landlord's employees and contractors; and (iii) keying charges.

(c) No Tenant's Work shall be undertaken or commenced by Tenant in the Premises until:

(i) The Plans for the Premises have been submitted to and approved by Landlord (which approval shall not be unreasonably withheld or delayed as provided in Paragraph 3(b) hereinabove).

(ii) All necessary building permits have been obtained by Tenant (or, in the alternative, until Tenant has filed for all necessary building permits and has documented proof thereof from Will County, Illinois, so long as Tenant is using all reasonable efforts to obtain the same as soon as reasonably practicable; provided that such Tenant's Work may only so proceed on the basis of filings for applicable permits, as opposed to actual issuance of the same, if fully lawful to do so and if consistent with the practices at Comparable Buildings, and Tenant shall remain fully and solely responsible for compliance with all laws relating to Tenant's Work and the performance of Tenant's Work throughout the entire performance of Tenant's Work hereunder and shall cease performance of Tenant's Work if Will County or other applicable governmental authority at any time does not allow construction to proceed without full building permit issuance).

(iii) All required insurance coverages have been obtained by Tenant, it being understood that failure of Landlord to receive evidence of such coverage upon

commencement of the Tenant's Work shall not waive Tenant's obligations to obtain such coverages.

(iv) Items required to be submitted to Landlord prior to commencement of construction of the Tenant's Work have been so submitted and have been approved, where required (which approval shall not be unreasonably withheld or delayed, as provided herein).

4. **DELAYS**. In the event Tenant fails to complete the Tenant's Work on or before the Commencement Date, Tenant shall be responsible for Rent and all other obligations as set forth in the Lease from the Commencement Date, subject to any abatement of Rent as expressly set forth in the Lease, regardless of the degree of completion of the Tenant's Work on such date, and no such delay in completion of the Tenant's Work shall affect the Commencement Date, or relieve Tenant of any of its obligations under the lease.

5. **CHARGES AND FEES**. Subject to Paragraph 3(b) above and Paragraph 9 below and except as otherwise expressly provided in this Workletter, Tenant shall be responsible for all costs and expenses attributable to the Tenant's Work, including any and all fees payable to Landlord hereunder.

6. **CHANGE ORDERS**. All changes to the final Plans requested by Tenant must be approved by Landlord in advance of the implementation of such changes as part of the Tenant's Work, which approval shall not be unreasonably withheld, in accordance with the same standards as described in Paragraph 3(b) above. Landlord shall give its approval or disapproval (giving reasons in case of disapproval) of any proposed changes to the Plans within three (3) business days after their delivery to Landlord. Subject to Paragraph 9 below, Tenant shall be responsible for all costs and expenses attributable to any changes (including, without limitation payment to Landlord of out-of-pocket costs for review of the changes. All delays caused by Tenant initiated change orders, including, without limitation, any stoppage of work during the change order review process, are solely the responsibility of Tenant and shall cause no delay in the Commencement Date, or payment of Rent and performance of other obligations set forth in the lease.

7. **STANDARDS OF DESIGN AND CONSTRUCTION AND CONDITIONS OF TENANT'S PERFORMANCE**. All work done in or upon the Premises by Tenant shall be done according to the standards set forth in this Paragraph 7, except as the same may be expressly modified in the lease or in the Plans approved by both Landlord and Tenant.

(a) Tenant's Plans and all design and construction of the Tenant's Work shall comply with all applicable statutes, ordinances, regulations, laws, codes and industry standards, including, but not limited to, requirements of Landlord's fire insurance underwriters and the requirements of the ADA, and with all Building-related construction rules and regulations in effect from time to time. Approval by Landlord of the Plans shall not constitute a waiver of this requirement or assumption by Landlord of responsibility for compliance. Where several sets of the foregoing laws, codes and standards must be met, the strictest shall apply where not prohibited by another law, code or standard.

(b) Tenant shall, at its own cost and expense, but subject to payment by Landlord of the Allowance under Paragraph 9 below, obtain all required building permits and, when construction has been completed, shall, at its own cost and expense, to the extent legally required for occupancy of the Premises, obtain an occupancy permit for the Premises, a copy of which shall be delivered to Landlord. Tenant's failure to obtain such permits shall not cause a delay in the payment of Rent and performance of other obligations under the lease.

(c) Tenant's Contractors shall be licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with Landlord's contractors and subcontractors and with other contractors, subcontractors and service providers in the Building. All work shall be coordinated with any other construction or other work in the Building in order not to materially adversely affect construction work being performed by or for Landlord or its tenants, provided, however, Landlord shall not unreasonably inhibit Tenant's Contractors from performing their work and Landlord shall cooperate with Tenant and Tenant's Contractors in all reasonable respects relative to work coordination matters.

(d) Landlord shall have the right, but not the obligation, and after reasonable prior notice to Tenant (which, in the case of clauses (iii) and (iv) below shall mean at least 24 hours notice), to perform, on behalf of and for the account of Tenant, subject to reimbursement by Tenant (but subject to application of the Allowance to the extent thereof), any work (i) which Landlord deems necessary to be done on an emergency basis, (ii) which pertains to structural components, building systems, the general utility systems for the Building or connecting the Tenant's Work with any other work in the Building, (iii) which pertains to the erection of temporary safety barricades or signs during construction, or (iv) which pertains to patching of Tenant's Work and other work in the Building.

(e) Tenant shall use only new, quality materials in the Tenant's Work, except where explicitly shown in the Plans approved by Landlord and Tenant. Tenant shall obtain, promptly after completion of the Tenant's Work, warranties of at least one (1) year duration from the completion of the Tenant's Work against defects in workmanship and materials on all work performed and equipment installed in the Premises as part of the Tenant's Work, a copy of which warranties shall be delivered to Landlord upon Tenant's receipt of the same. Tenant shall furnish to Landlord "as-built" drawings of the Work within ninety (90) days after completion of Tenant's Work.

(f) Tenant and Tenant's Contractors, in performing work, shall do so in conformance with the construction rules and regulations in effect for the Building from time to time. Tenant and Tenant's Contractors shall make all reasonable efforts and take all reasonable steps appropriate to the level of professional standards in the industry so as not to interfere with the operation of the Building and the Project and of other tenants in the Building or the Project, and shall, in any event, comply with all other reasonable rules and regulations existing from time to time at the Building. Tenant and Tenant's Contractors shall take all reasonable precautionary steps to minimize dust, noise and construction traffic, and to protect their facilities and the facilities of others affected by the Tenant's Work and to properly police same. Tenant shall not permit noise from construction of Tenant's Work to disturb other tenants in the Building. Tenant's Work which does so disturb other tenants shall be performed after regular working hours. Construction equipment and materials are to be kept within the Premises and delivery and

loading of equipment and materials shall be done at such locations and at such time as Landlord shall reasonably direct so as not to burden the construction or operation of the Building. All work shall be coordinated with any other construction or other work in the Building in order not to affect adversely construction work being performed by or for Landlord or its tenants, it being understood that, in the event of any conflict, Landlord and its contractors and subcontractors shall have priority over Tenant and Tenant's Contractors. Electrical service will be made available for the performance of the Tenant Work.

(g) Upon not less than twenty-four (24) hours' written or oral notice to Tenant and Tenant's failure to cure such matter within such 24-hour period, Landlord shall have the right to order Tenant or any of Tenant's Contractors who violate the requirements imposed on Tenant or Tenant's Contractors in performing work to cease work and remove its equipment and employees from the Building, to the extent Landlord determines that such violation is likely to have an adverse affect on the Building systems, structure or operations, the safety of the Building's occupants, or to otherwise create any other type of hazardous condition. A violation will be curable unless the particular violation by the particular Tenant's Contractor has previously been the basis for a notice to cease work. The foregoing cure period shall not limit the Landlord's right to require that violations cease immediately. No such action by Landlord shall delay the lease Commencement Date, or the payment of Rent and performance of other obligations under the lease.

(h) Tenant shall not be required to pay for utility costs or charges for electricity for that portion of the duration of Tenant's Work occurring prior to the lease Commencement Date; provided, however, Tenant acknowledges that no air-conditioning services will be available for the Premises during such period. Tenant's use of the freight elevators and the passenger elevators during the construction of Tenant's Work shall be free of charge for both the normal business hours and overtime hours of the Building, subject to Landlord's reasonable scheduling requirements. Tenant shall not use the passenger elevators in connection with the moving of construction material or personnel or the performance of the Tenant's Work, or for Tenant's initial move into the Premises. Landlord shall provide Tenant, at no cost, with an exclusive area near the Building loading dock for Tenant's Contractor's placement of a rubbish dumpster during the duration of Tenant's Work, initial installation of Tenant's furniture, fixtures and equipment and move to the Premises. Tenant shall arrange and pay for the cost of the dumpster and for removal of construction debris at Tenant's sole cost. Tenant shall not place debris in the Building's waste containers.

(i) Tenant shall permit Landlord access to the Premises, and the Tenant's Work shall be subject to inspection, by Landlord and Landlord's architects, engineers, contractors and other representatives, at all times during the period in which the Tenant's Work are being constructed and installed and within a reasonable period following completion of the Tenant's Work.

(j) Tenant shall proceed with its work expeditiously, continuously and efficiently, from the date Landlord tenders possession of the Premises to Tenant for the construction of the Tenant's Work. Tenant shall notify Landlord upon completion of the Tenant's Work and shall furnish Landlord and Landlord's title insurance company with such further documentation as may be reasonably necessary under Paragraph 9 below.

(k) Except as otherwise expressly provided herein, Tenant shall have no authority to deviate from the Plans in performance of the Tenant's Work, except as authorized by Landlord and its designated representative in writing (which authorization shall not be unreasonably withheld or delayed in accordance with the same standards for approval as described in Paragraph 3(b) above). Tenant shall furnish (or cause Tenant's general contractor to furnish) to Landlord "as-built" drawings of any components of the Tenant's Work affecting Building systems or for any electrical, plumbing or other system components of the Tenant's Work, consisting of record drawings of the installed condition of each such component of the Tenant's Work completed from the Plans marked up daily in the field by the various trades. Such record drawings shall be submitted in a final package by Tenant's general contractor to Landlord within ninety (90) days after completion of the Tenant's Work. Final disbursement of any remaining amounts of the Allowance will not occur until such record drawings have been received by Landlord.

(l) Landlord shall have the right to require Tenant to install and maintain proper access panels to utility lines, pipes, conduits, duct work and component parts of mechanical and electrical systems existing or installed in the Premises to the extent required by applicable laws or otherwise identified by Landlord as part of its approval of the Plans.

(m) Tenant shall impose on and enforce all applicable terms of this Workletter against Tenant's Architect, Tenant's Engineer (as hereinafter defined) and the other Tenant's Contractors.

(n) Landlord shall provide coordination and access by Tenant after normal business hours, at Tenant's cost (including the cost of security and monthly clean-up) to other tenant spaces on the floor in which the Premises are located as may be necessary for the proper design and construction of the construction of Tenant's Work.

(o) Landlord shall allow Tenant to engage non-union movers for Tenant's physical move, so long as use of such non-union movers does not cause any labor unrest in the Building or the Project.

8. **<u>INSURANCE AND INDEMNIFICATION</u>**.

(a) In addition to any insurance which may be required under the lease, Tenant shall secure, pay for and maintain or cause Tenant's Contractors to secure, pay for and maintain during the continuance of construction and fixturing work within the Building or Premises, insurance in the following minimum coverages and limits of liability:

(i) Worker's Compensation in accordance with applicable Laws and Employer's Liability Insurance with limits of not less than $1,000,000.00, or such other amounts as may be required from time to time by any employee benefit acts or other statutes applicable where the work is to be performed.

(ii) Commercial General Liability Insurance including Broad Form Contractual, Broad Form Property Damage, Personal Injury, Completed Operations and Products coverages (such Completed Operations and Products shall be provided for a period of three (3) years after the date of final acceptance of the Tenant's Work), and

deletion of any exclusion pertaining to explosion, collapse and underground property damage hazards, with limits of not less than $1,000,000.00 per occurrence and having a general aggregate amount on a per location basis of not less than $2,000,000.00, with umbrella coverage of $4,000,000.00 per occurrence, $4,000,000.00 aggregate.

(iii) Comprehensive Automobile Liability Insurance including Owned (if applicable), Non-Owned and Hired Car coverages, with limits of not less than $1,000,000.00 combined single limit for both bodily injury and property damage, with $1,000,000.00 umbrella coverage.

(iv) “All-risk installation floater” builder’s risk insurance upon the entire Tenant’s Work to the full insurable value thereof. This insurance shall include the interests of Landlord and Tenant (and their respective contractors and subcontractors of any tier to the extent of any insurable interest therein) in the Tenant’s Work and shall insure against the perils of fire and extended coverage and shall include “all-risk” builder’s risk insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. If portions of the Tenant’s Work are stored off the site of the Building or in transit to said site and are not covered under said “all-risk” builder’s risk insurance, then Tenant shall secure and maintain similar property insurance on such portions of the Tenant’s Work. Any loss insured under said “all-risk” builder’s risk insurance for the Tenant Work is to be made payable jointly to Landlord and Tenant, as their interests may appear.

All policies (except the worker’s compensation policy) shall be endorsed to include as additional insured parties Landlord and its agents, Landlord’s contractors, Landlord’s architects, Landlord’s mortgagee, and such additional persons as Landlord may designate. The waiver of subrogation provisions contained in the lease shall apply to all insurance policies (except the worker’s compensation policy) to be obtained by Tenant pursuant to this paragraph. The insurance policy endorsements shall also provide that all additional insured parties shall be given thirty (30) days’ prior written notice of any reduction, cancellation or non-renewal of coverage (except that ten (10) days’ notice shall be sufficient in the case of cancellation for non-payment of premium) and shall provide that the insurance coverage afforded to the additional insured parties thereunder shall be primary to any insurance carried independently by said additional insured parties. Additionally, where applicable, each policy shall contain a cross-liability and severability of interest clause.

(b) Without limitation of the indemnification provisions contained in the Lease, to the fullest extent permitted by law, but subject to matters relating to property damage for which the parties released each other under Section 16 of the Lease, Tenant agrees to indemnify, protect, defend and hold harmless Landlord, Landlord’s contractors and Landlord’s architects and their partners, directors, officers, employees and agents, from and against all claims, liabilities, losses, damages and expenses of whatever nature arising out of or in connection with the Tenant’s Work or the entry of Tenant or Tenant’s Contractors into the Building and the Premises, including, without limitation, mechanic’s liens or the cost of any repairs to the Premises or Building necessitated by activities of Tenant or Tenant’s Contractors and bodily injury to persons or damage to the property of Tenant, its employees, agents, invitees, licensees or others, except and to the extent that such claims, liabilities, losses, damages and

expenses arise out of the willful misconduct or negligent act or omission of Landlord, or from Landlord's breach of its obligations hereunder or under the lease. It is understood and agreed that the foregoing indemnity shall be in addition to the insurance requirements set forth above and shall not be in discharge of or in substitution for same or any other indemnity or insurance provision of the lease.

9. **ALLOWANCE; PERIODIC PAYMENTS**.

(a) Landlord shall make a contribution (the "Allowance") towards the cost of Tenant's Work (including, the costs of construction, design, engineering, and other professional/consultant fees, furniture, reconfiguration and installation and wiring of phone and data processing equipment) and towards moving costs, in an amount equal to the product of the Rentable Area of the portion of the Premises as to which Tenant's Work is then being performed (i.e. 39,355 square feet with respect to the initial build-out of the Phase I Premises) multiplied by $10.00 (with the remaining Allowance as to the Phase II Premises and the Phase III Premises to be contributed by Landlord at such times as Tenant builds out the Phase II Premises and the Phase III Premises, respectively) on the terms and conditions hereinafter set forth. If the cost of the Tenant's Work exceeds the Allowance required to be disbursed hereunder, Tenant shall have sole responsibility for the payment of such excess cost, and Tenant shall pay any such excess when due from time to time (i.e., based upon the most recent estimates of the cost of the Tenant's Work delivered by Tenant under Paragraph 3 above or otherwise furnished by Tenant, in certified form, upon Landlord's request from time to time therefor) prior to disbursement or further disbursement of the Allowance, and in such event, Landlord shall have no obligation to disburse or further disburse any portion of the Allowance until all such excess costs have been paid by Tenant, and Tenant shall have delivered to Landlord the documentation described in Paragraph 9(b) below evidencing the payment of such excess costs by Tenant. Landlord shall not be obligated to disburse any portion of the Allowance which is to be disbursed to or as directed by Tenant in response to any request for disbursement which is submitted by Tenant more than one hundred twenty (120) days following the Commencement Date, except as otherwise provided in Paragraph 9(f) below. If the cost of Tenant's Work and such other items for which the Allowance may be applied should for any reason be less than the full Allowance, Tenant shall not be entitled to the unapplied portion of the Allowance or any credit against Rent in the amount any such unapplied portion, except as otherwise provided in Paragraph 9(f) below.

(b) Periodically, but not more frequently than once per month, commencing at any time following the date of the lease, Tenant may submit to Landlord a payment request for costs of the Tenant's Work incurred and not previously paid naming the parties to be paid and the respective amounts of such payments, which payment request shall be accompanied by:

(i) A customary "owner's sworn statement" in writing signed by Tenant stating the various contracts entered into by Tenant for the Tenant's Work and with respect to each: the total contract price of all labor, work, services and materials; the amounts theretofore paid thereon; the amount requested for the current disbursement; and the balance due for such labor, work, services and materials, after payment of the current disbursement, to complete the Tenant's Work in accordance with the Plans;

(ii) A written application for payment from each of Tenant's Contractors disclosed in the aforesaid sworn Tenant's statement wherein each of Tenant's Contractors certifies completion and the cost of that portion of the Tenant's Work for which payment is requested and further certifies that the cost to complete the Tenant's Work remaining to be done under said contract will not exceed the balance due thereunder (without including in such balance any required retainages) and a customary "contractor's sworn statement" in writing signed by each of Tenant's Contractors stating: the names of all persons, firms, associations, corporations or other parties by whom labor, materials, services or work will be rendered or furnished pursuant to the contract with Tenant's Contractor; the nature of labor, work, services and materials to be rendered or furnished by each of the foregoing; the amounts (in the case of firm subcontracts) and estimated amounts (in other cases) to be paid for such labor, work, services and materials; the amounts theretofore paid thereon; the amount requested for the current involved in each of those three phases of construction, respectively, shall be made in three corresponding phases so that there will be, in effect, three "final" distributions of the Allowance, one for each phase of the construction of the Tenant's Work.

10. **MISCELLANEOUS**.

(a) Except as herein expressly set forth herein, in the lease, Landlord has no agreement with Tenant and has no obligation to do any work with respect to the Premises.

(b) Time is of the essence under this Workletter.

(c) If Tenant fails to make any payment relating to the Tenant's Work as required hereunder, Landlord, at its option, may complete the Tenant's Work pursuant to the approved Plans and continue to hold Tenant liable for the costs thereof.

(d) Notices under this Workletter shall be given in the same manner as under the lease.

(e) The liability of Landlord hereunder or under any amendment hereto shall be limited as provided in Section 29.12 of the lease.

(f) The headings set forth herein are for convenience only.

(g) This Workletter, together with the lease, sets forth the entire agreement of Tenant and Landlord regarding the Tenant's Work. This Workletter may only be amended if in writing, duly executed by both Landlord and Tenant. All capitalized terms used in this Workletter shall have the respective meanings ascribed to them in the lease, unless this Workletter otherwise provides.

(h) Tenant has designated the following entities as Tenant's architects for purposes of preparing the architectural portions of the Plans for the Tenant's Work (collectively, the "**Tenant's Architect**"): (i) with respect to general construction, VOA, located at 224 South Michigan Avenue, Suite 1400, Chicago, Illinois 60604 Attention: Don Dorsh, telephone 312.554.1400 and (ii) with respect to Tenant's IT Data Center and network/telephone cables,

Technology Management, Inc., located at 1911 Rohlwing Road, Suite E, Rolling Meadows, IL 60008, Attention: Daniel J. McGrath, telephone 847-394-8900 x222.

(i) This Agreement shall not be deemed applicable to any additional space added to the original Premises at any time or from time to time, whether by any options under the lease or otherwise, or to any portion of the original Premises or any additions thereto in the event of a renewal or extension of the original term of the lease, whether by any options under the lease or otherwise, except as expressly provided in the lease or in any amendment or supplement to the lease.

11. **DESIGNATED REPRESENTATIVES; COOPERATION**.

(a) Landlord and Tenant shall each appoint one or two qualified and readily available representatives with the authority to give and receive notices, other materials and information relating to the Tenant's Work, and approvals under this Agreement. Initially, Landlord's representative shall be Jeff Venable, whose address is 1000 Remington Boulevard, Bolingbrook, Illinois 60440, and whose telephone number is 630-679-1241, and Tenant's representatives shall be (a) with respect to general construction, Rick Myers, whose address is Ulta Salon, Cosmetics & Fragrance, Inc., Windham Lakes Business Park, 1275 Windham Drive, Romeoville, Illinois, and whose telephone number is (630) 226-8214; and (b) with respect to construction of Tenant's IT Data Center and installation of Tenant's network/telephone cables, Jeff Pillers, whose address is Ulta Salon, Cosmetics & Fragrance, Inc., Windham Lakes Business Park, 1135 Arbor Drive, Romeoville, Illinois, and whose telephone number is (630) 771-4837.

(b) Tenant and Landlord agree to make their respective architects and engineers available to the other to answer questions and provide clarifications and additional information as is reasonable for the timely progress and completion of the Tenant's Work.

[END OF WORKLETTER PROVISIONS –
ATTACHMENT TO WORKLETTER FOLLOWS]

ATTACHMENT 1 TO WORKLETTER

MINIMUM INFORMATION FOR PLANS

Plans and specifications (including architectural, engineering and structural, as applicable, working drawings) required for the supply, installation and finishing of the Tenant's Work and including, without limitation: finish schedule; material submittals; graphics and signage; interior and demising partitions; doors, frames and hardware; ceilings; wiring; lights and switches; telephone and electrical outlets; floor coverings; wall coverings; all millwork and built-ins; appliances; plumbing fixtures; HVAC systems and equipment; refrigeration equipment; reflected ceiling plans; and other equipment, equipment connections and facilities attached to and forming a part of the Building.

Tenant shall pay its costs associated with the installation of Tenant's network and other cabling, telecommunications infrastructure, and all of its moving costs incurred in connection with Tenant's occupancy of the Premises.

<u>**EXHIBIT C**</u>

<u>**OTHER DEFINITIONS**</u>

1. "**ADA**" shall have the meaning described in Section 9(f).

2. "**Additional Rent**" shall have the meaning described in Section 5.

3. "**Additional Rent Estimate**" shall have the meaning described in Section 5(b).

4. "**Allowance**" shall have the meaning described in the Workletter.

5. "**Calculation Date**" means January 1, 2009 and each January 1 thereafter falling within the Term.

6. "**Calculation Year**" means each calendar year during which a Calculation Date falls.

7. "**Comparable Buildings**" means office buildings which are comparable to the Building in terms of age, quality of construction, level of service and amenities, size and appearance and are located within the Chicago Suburban East-West Corridor.

8. "**Default**" shall have the meaning described in Section 19.

9. "**Default Rate**" shall have the meaning described in Section 28(i).

10. "**Expense Adjustment**" shall have the meaning described in Section 5(a).

11. "**Expenses**" shall mean all costs, expenses and disbursements of every kind and nature paid or incurred by or on behalf of Landlord for or in connection with owning, managing, operating, maintaining, replacing and/or repairing the Building, the Common Areas, the Land and the personal property used in conjunction therewith, including without limitation: the cost of maintaining adjoining pedestrian tunnels and walkways and related lighting, the cost of security and security devices and systems, snow and ice and trash removal, cleaning and sweeping, planting and replacing decorations, flowers and landscaping; the cost of all utilities for the Building, such as water, sewer, power, fuel and heating (or hot water for heating), lighting, air-conditioning (or chilled water for cooling) and ventilating, to the extent not specifically directly allocated to or paid by Tenant; maintenance, repair and replacement of utility systems, telephone building riser cable, elevators and escalators; electricity, gas, steam, water, sewers, fuel, heating, lighting, air conditioning; window cleaning; janitorial service; insurance (including but not limited to, fire, extended coverage, all risk, liability, worker's compensation, elevator, or any other insurance carried by the Landlord and applicable to the Project); painting; management fees; supplies; sundries; sales or use taxes on supplies or services; rent, telephone service, postage, office supplies, maintenance and repair of office equipment and similar costs related to operation of the building manager's office; licenses, permits and similar fees and charges related to ownership, management, operation, repair, replacement and/or maintenance of the Project; the share of costs and expenses allocated to the Building and the Land relating to the management, maintenance, operation and repair of any common lobby or other facilities connecting the

Building or any of its facilities to any other adjoining building, facilities or land; cost of wages and salaries of all persons engaged in the operation, management, maintenance and repair of the Project, and so-called fringe benefits (including social security taxes, unemployment insurance taxes, cost for providing coverage for disability benefits, cost of any pensions, hospitalization, welfare or retirement plans, or any other similar or like expenses incurred under the provisions of any collective bargaining agreement, or any other cost or expense which Landlord pays or incurs to provide benefits for employees so engaged in the operation, management, maintenance and repair of the Project); the charges of any independent contractor who, under contract with the Landlord or its representatives, does any of the work of operating, managing, maintaining, replacing and/or repairing of the Project; legal and accounting expenses (including, but not limited to, such expenses as relate to preparation of statements of Expenses and Taxes and seeking or obtaining reductions in and refunds of real estate taxes); sales and excise taxes; expenses allocated to the Project under any easements, conditions, covenants or restrictions from time to time affecting the Project, or any other expense or charge which would be considered as an expense of owning, managing, operating, maintaining, replacing and/or repairing the Project.

Expenses shall not include: costs or other items included within the meaning of the term "Taxes" (as hereinafter defined); costs of alterations and relocations of the premises of tenants of the Building; costs of capital improvements to the Building or Common Areas other than those specifically included in Expenses as set forth below; depreciation charges; interest and principal payments on mortgages and other financing costs and charges; ground rental payments; legal fees in connection with negotiating leases with other tenants in the Building or in connection with enforcing lease obligations of other tenants in the Building; fines and penalties on late payments; real estate brokerage and leasing commissions; any expenditures for which Landlord has been reimbursed by tenants (other than pursuant to rent escalation or tax and operating expense reimbursement provisions in leases); salaries, wages or other benefits paid to any executive employee above the grade of regional building manager and regional building engineer (which are includable only to the extent that such regional building manager and regional building engineer, as the case may be, is engaged in servicing the Building); legal fees, space planners' fees, leasing commissions and advertising expenses incurred in connection with leasing space in the Building; expenses for repairs, maintenance or replacements for which Landlord is reimbursed from or pursuant to insurance or condemnation proceeds or construction warranties; appraisal and accounting fees, disbursements and charges incurred in connection with disputes with tenants or other occupants of the Building; costs for which Landlord has received the direct actual reimbursement from any source (other than reimbursement through payment by tenants of operating expenses and taxes, such as Expenses and Taxes); rental costs relating to leasing Building systems, elevators or other equipment ordinarily considered to be of a capital nature, except to the extent such amounts would otherwise have been included as Expenses under Paragraph (a) below had such systems, elevators or other equipment been purchased by Landlord; marketing or advertising costs for the Project; market study fees; costs of sculptures, paintings or other artwork in the Common Areas; management fees in excess of the market rate management fee charged at Comparable Buildings; costs incurred by Landlord by reason of its default under any lease or other agreement; the cost of containing, removing or otherwise remediating any contamination of the Land or other portions of the Project or other environmental liability (including any expenses of removal or remediation of any underground storage tank on the Premises or the Project); costs of Landlord's general overhead and costs incurred in connection with Landlord's "home" or "branch" office costs incurred in connection

with any sale or transfer of the Project or any interest therein by Landlord; any amount the Landlord pays a contractor or vendor because of a special relationship in excess of the amount which would have been paid in the absence of said special relationship; and fines or penalties incurred as a result of any violation by Landlord of any Law, provided the same is not caused by or the result of any acts or failures to act on the part of Tenant.

Notwithstanding anything contained in the above definition of Expenses to the contrary:

(a) The cost of any capital improvements to the Building (i) which are intended to reduce Expenses, or (ii) which are required under changes in the ADA effective subsequent to the Commencement Date, or (iii) which are required under any other governmental laws, regulations or ordinances (collectively, the "Governmental Laws"), or (iv) which are intended to enhance the safety of the Building or its occupants, shall be included in Expenses in the year of installation and subsequent Calculation Years as hereinafter set forth; provided that if the Building is in violation of the ADA or any such Governmental Laws (as existing on the Commencement Date (i.e., meaning that the Building was obligated to take action to comply with such Governmental Laws on or before the Commencement Date, and has failed to do so)), then the costs of any capital improvements made to the Building after the date of this lease in order to cure such violations of the ADA or Governmental Laws shall not be so included in Expenses. In any Calculation Year, the portion includable in Expenses shall be the annual amortization of such cost using as the amortization period such reasonable period as Landlord shall determine, together with interest on the unamortized cost of any such improvements (at an annual rate equal to the greater of (i) 11%, or (ii) 2% over the "Prime Rate" described in Section 28(i) of the lease calculated as of the date the cost of such improvements was incurred) (or if applicable, such other interest rate as may actually be charged to Landlord for acquisition financing or leasing of such capital improvement). In the case of loss or damage to the Project due to fire or other casualty, the costs of repairing, restoring or replacing any portion of the Project which constitute capital improvements shall be included in Expenses to the extent of deductible amounts under insurance policies.

(b) If the office area of the Building is not fully (at least 95% for the purposes of this paragraph) occupied by tenants during all or a portion of the Base Year or any Calculation Year, or if during all or a portion of any Calculation Year, Landlord is not furnishing to any tenant or tenants any particular service, the cost of which, if furnished by Landlord, would be included in Expenses, then Landlord shall (in the case of the Base Year) and may (in the case of any Calculation Year), elect to make an appropriate adjustment in Expenses for the year, by adjusting those components of Expenses which vary with the occupancy level of the Building, to reflect the Expenses that would have been paid or incurred by Landlord for such year had the office area of the Building been 95% occupied by tenants and services been furnished to all such tenants during such entire Calculation Year. Any such adjustments shall be deemed costs and expenses paid or incurred by Landlord and included in Expenses for such year. The parties intend that Tenant pay Tenant's Proportionate Share of increase in Expenses for any Calculation Year over Expenses for the Base Year on the basis that the Building was at least 95% occupied during the Base Year.

(c) If any item of Expenses, though paid or incurred in one calendar year, relates to more than one calendar year, at the option of Landlord, such item may be proportionately allocated among such related calendar years.

12. "**Ground Lease**" and "**Ground Lessor**" shall have the meanings described in Section 20.

13. "**Hazardous Substances**" shall have the meaning described in Section 9(e).

14. "**Holidays**" shall have the meaning described in Section 8(e).

15. "**Landlord Parties**" shall have the meaning described in Section 9(e).

16. "**Landlord's Expense Statement**" shall have the meaning described in Section 5(c)(i).

17. "**Landlord's Tax Statement**" shall have the meaning described in Section 5(c)(ii).

18. "**Laws**" shall mean all statutes, laws, ordinances, codes, rules and regulations, orders and directions of public officials or other acts having the force or effect of law, of all federal, state, county, municipal and other agencies, authorities or bodies having jurisdiction over the Premises.

19. "**Monthly Base Rent**" shall have the meaning described in Section 4(a).

20. "**Mortgage**" and "**Mortgagee**" shall have the meanings described in Section 20(a).

21. Intentionally Omitted.

22. "**Outside Date**" shall have the meaning described in Section 17(a).

23. "**Projection Notice**" shall have the meaning described in Section 5(b)(i).

24. "**Projections**" shall have the meaning described in Section 5(b)(i)(A).

25. "**Released Parties**" shall have the meaning described in Section 16(a).

26. "**Rent**" shall have the meaning described in Section 3(a).

27. "**Rentable Area**" with respect to the Building means the rentable area of office space at the Building, on a rentable square footage basis, measured generally in accordance with the Building Owners and Managers Association International method of measurement ("**BOMA**") existing as of the date of this lease (with certain deviations therefore as deemed appropriate by Landlord and with such changes to said measurement standards as may be adopted by BOMA from time to time and as may be utilized, at Landlord's election, for measurement calculations at the Building).

28. “**Rentable Area**” with respect to any tenant space at the Building means rentable area of the applicable tenant space, on a rentable square footage basis, measured generally in accordance with the BOMA method of measurement existing as of the date of this lease (with certain deviations therefore as deemed appropriate by Landlord and with such changes to such measurement standards as may be adopted by BOMA from time to time and as may be utilized, at Landlord’s election, for measurement calculations at the Building). The Rentable Area of the Premises as of the date hereof shall be deemed to be the number of square feet set forth in Section 1(i) of this lease.

29. “**Successor**” shall have the meaning described in Section 20(c).

30. “**Tax Adjustment**” shall have the meaning described in Section 5(a)(i).

31. “**Taxes**” shall mean real estate taxes, assessments (whether they be general or special), sewer rents, rates and charges (to the extent not included as Expenses), transit taxes, taxes based upon leases or the receipt of rent, and any other federal, state or local governmental charge, general, special, ordinary or extraordinary (but not including (i) income or franchise taxes or any other taxes imposed upon or measured by the Landlord’s income or profits, except as provided herein, or (ii) any correction of or supplement to any tax or assessment which accrues or is for any period prior to the Commencement Date), which may now or hereafter be levied, assessed or imposed against the Land or the Building or Landlord as a result of its ownership of the Project. Taxes “for” any calendar year or partial calendar year occurring within the Term shall mean Taxes levied, assessed or imposed during such calendar year, regardless of when such Taxes are due and payable.

Notwithstanding anything contained in the above definition of Taxes to the contrary:

(a) If at any time the method of taxation then prevailing shall be altered so that any new or additional tax, assessment, levy, imposition or charge or any part thereof shall be imposed upon Landlord in place or partly in place of any Taxes or contemplated increase therein, or in addition to Taxes, and shall be measured by or be based in whole or in part upon the Project, the rents or other income therefrom or any leases of any part thereof, then all such new taxes, assessments, levies, impositions or charges or part thereof, to the extent that they are so measured or based, shall be included in Taxes levied, assessed or imposed against the Project to the extent that such items would be payable if the Project were the only property of Landlord subject thereto and the income received by Landlord from the Project were the only income of Landlord.

(b) Notwithstanding the year for which any such taxes or assessments are levied, (i) in the case of special taxes or assessments which may be payable in installments, the amount of each installment, plus any interest payable thereon, paid during a Calculation Year shall be included in Taxes for that year and (ii) if any taxes or assessments payable during any Calculation Year shall be computed with respect to a period in excess of twelve (12) calendar months, then taxes or assessments applicable to the excess period shall be included in Taxes for the Calculation Year when payable. Except as provided in the preceding sentence, all references to Taxes “for” a particular

Calculation Year shall be deemed to refer to Taxes levied, assessed or otherwise imposed during such Calculation Year without regard to when such Taxes are payable.

(c) Taxes shall also include any personal property taxes (attributable to the Calculation Year in which paid) imposed upon the furniture, fixtures, machinery, equipment, apparatus, systems or appurtenances used in connection with the Building or the operation thereof.

32. "**Tenant's Proportionate Share**" shall mean a fraction, the numerator of which is the Rentable Area of the Premises from time to time, and the denominator of which is the Rentable Area of the Building. Landlord and Tenant hereby acknowledge that, for purposes of this lease, the Rentable Area of the Building, as of the Commencement Date is 548,130. If changes are made by the parties to this Lease, changing the Rentable Area of the Premises, Landlord may make an appropriate adjustment to Tenant's Proportionate Share (i.e., based upon the formula used in calculating Tenant's Proportionate Share as described in the preceding sentence). Notwithstanding anything contained herein to the contrary, if at any time and from time to time, the Project and/or the Building or any development of which either is a part, contains non-office uses (i.e., warehouse uses) or shall be subdivided or condominiumized, Landlord shall have the right to determine and recompute, in accordance with sound management principles, Tenant's Proportionate Share for only the office portion of the Project and/or the Building or of such development, in which event Tenant's Proportionate Share shall be based on the ratio of the rentable square footage of the Premises to the rentable square footage of such office portion. In the event that the Project and/or the Building shall, from time to time, contain tenants, owners or other parties, as the case may be, who do not participate in all or certain categories of Expenses or Taxes, Landlord may include or exclude, in accordance with sound accounting and management principles, the amount of Expenses or Taxes, or such categories of the same, as the case may be, attributable to such tenants, owners or other parties, as the case may be, and exclude the rentable square footage of their premises in computing Tenant's Proportionate Share. In the alternative, Landlord shall have the right, from time to time, to determine and re-compute, in accordance with sound management principles, Tenant's Proportionate Share of Expenses and Taxes based upon the totals of each of the same for all such buildings and structures, the land on which the same are located, and all related facilities, including common areas and easements, corridors, lobbies, sidewalks, elevators, loading areas, parking facilities and driveways and other appurtenances and public areas, in which event Tenant's Proportionate Share shall be based on the ratio of the rentable square footage of the Premises to the rentable square footage of all such buildings. Except as provided expressly to the contrary herein, "rentable square footage" shall include all rentable area of all office space leased or available for lease at the Project and the Building, which Landlord may reasonably re-determine from time to time, to reflect re-configuration, additions or modifications to the Project and/or the Building.

EXHIBIT D

RULES AND REGULATIONS

(1) Except with respect to the signage rights expressly granted to Tenant under the terms of the Lease, no sign, lettering, picture, notice or advertisement shall be placed on any outside window or in a position to be visible from outside the Premises and if visible from the outside or public corridors within the Building shall be installed in such manner and be of such character and style as Landlord shall approve in writing.

(2) Tenant shall not use the name of the Building for any purpose other than Tenant's business address; Tenant shall not use the name of the Building for Tenant's business address after Tenant vacates the Premises; nor shall Tenant use any picture or likeness of the Building in any circulars, notices, advertisements or correspondence.

(3) No article which is explosive or inherently dangerous is allowed in the Building.

(4) Tenant shall not represent itself as being associated with any company or corporation by which the Building may be known or named.

(5) Sidewalks, entrances, passages, courts, corridors, halls, elevators and stairways in and about the Premises shall not be obstructed.

(6) No animals (except for dogs in the company of a blind person), pets, bicycles or other vehicles shall be brought or permitted to be in the Building or the Premises.

(7) Room-to-room canvasses to solicit business from other tenants of the Building are not permitted; Tenant shall not advertise the business, profession or activities of Tenant conducted in the Building in any manner which violates any code of ethics by any recognized association or organization pertaining to such business, profession or activities.

(8) Tenant shall use commercially reasonable efforts not waste electricity, water or air-conditioning and shall cooperate fully with Landlord to assure the most effective and efficient operation of the Building's heating and air-conditioning systems.

(9) No locks or similar devices shall be attached to any door except by Landlord and Landlord shall have the right to retain a key to all such locks. Tenant may not install any locks without Landlord's prior approval.

(10) Tenant shall not make any use of the Premises which may be dangerous to person or property or which shall increase the cost of insurance or require additional insurance coverage; provided, however, that Tenant shall have the right to use the Premises for all of the uses permitted hereunder and exercise all of Tenant's rights hereunder.

(11) Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

(12) Tenant shall cooperate and participate in all reasonable security programs affecting the Building.

(13) Tenant assumes full responsibility of protecting the Premises from theft, robbery and pilferage; the Indemnitees shall not be liable for damage thereto or theft or misappropriation thereof. Except during Tenant's normal business hours, Tenant shall keep all doors to the Premises locked and other means of entry to the Premises closed and secured. All corridor doors shall remain closed at all times. If Tenant desires telegraphic, telephones, burglar alarms or other electronic mechanical devices, then Landlord will, upon request, direct where and how connections and all wiring for such services shall be installed and no boring, cutting or installing of wires or cables is permitted without Landlord's approval.

(14) Except with the prior approval of Landlord, all cleaning, repairing, janitorial, decorating, painting or other services and work in and about the Premises shall be done only by authorized Building personnel.

(15) Furniture, equipment, machines and other large or bulky articles shall be brought to the Building and into and out of the Premises at such times and in such manner as the Landlord shall reasonably direct and at Tenant's sole risk and cost. Prior to Tenant's removal of any of such articles from the Building, Tenant shall obtain written authorization of the Office of the Building and shall present such authorization to a designated employee of Landlord.

(16) Tenant shall not overload the safe capacity of the electrical wiring of the Building and the Premises or exceed the capacity of the feeders to the Building or risers.

(17) To the extent permitted by law, Tenant shall not cause or permit picketing or other activity which would interfere with the business of Landlord or any other tenant or occupant of the Building, or distribution of written materials involving its employees in or about the Building, except in those locations and subject to time and other limitations as to which Landlord may give prior written consent.

(18) Tenant shall not cook, otherwise prepare or sell any food or beverages in or from the Premises or use the Premises for housing accommodations or lodging or sleeping purposes except that Tenant may install and maintain vending machines, coffee/beverage stations and food warming equipment and eating facilities for the benefit of its employees or guests, provided the same are maintained in compliance with applicable laws and regulations and do not disturb other tenants in the Building with odor, refuse or pests.

(19) Tenant shall not permit the use of any apparatus for sound production or transmission in such manner that the sound so transmitted or produced shall be audible or vibrations therefrom shall be detectable beyond the Premises; nor permit objectionable odors or vapors to emanate from the Premises

(20) No floor covering shall be affixed to any floor in the Premises by means of glue or other adhesive without Landlord's prior written consent.

(21) Tenant shall at all time maintain the window blinds in the lowered position, though Tenant may keep the louvers open.

(22) Tenant shall only use the freight elevator for mail carts, dollies and other similar devices for delivering material between floors that Tenant may occupy.

(23) No smoking, eating, drinking, loitering or laying is permitted in the common areas of the Building except in designated areas.

(24) Landlord may require that all persons who enter or leave the Building identify themselves to security guards, by registration or otherwise. Landlord, however, shall have no responsibility or liability for any theft, robbery or other crime in the Building. Tenant shall assume full responsibility for protecting the Premises, including keeping all doors to the Premises locked after the close of business.

(25) Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency and shall cooperate and participate in all reasonable security and safety programs affecting the Building.

(26) Tenant shall cooperate and participate in all recycling programs established for the Building by Landlord or any governmental agency.

EXHIBIT E

INVENTORY LIST

PANELS	
42x24	2
42x30	2
42x36	
42x48	
64x18	9
64x24	88
64x30	4
63x36	117
64x48	23
WORKSURFACES	
36x18	2
48x18	5
54x18	1
66X18	2
72X18	8
24X24	15
36X24	13
42x24	1
48X24	22
54x24	4
58x24	1
60x24	12
72x24	9
84x24	8
42x30	1
24/36/36/24	32
30/48/72/24	1
63x30 round end	11
OVERHEADS	
24	1
30	1
36	29
48	34
60	1
BBF	32
FF	10
LF 30	53
LF 36	1
CABINETS	

LF - (3F) 30”	2
LF - (3F) 36”	4
LF - 48”	1
LF - (5F) 30”	1
LF - (5F) 36	6
Hinged (5C) 36”	5
Hinged (W/CS)	1
DDC 30	8
CHAIRS	
Task	33
Side	23
Lobby	6

B2

PANELS	
42x24	5
42x30	
42x36	7
42x48	
64x18	38
64x24	445
64x30	1
63x36	507
64x48	163
WORKSURFACES	
36x18	
48x18	24
60X18	48
72X18	24
24X24	128
36X24	48
48X24	165
60x24	
72X24	91
84X24	48
24X36X36X24	176
30/48/72/24	
63X30 round end	48
OVERHEADS	
24	
36	176
48	176
60	
BBF	176

FF	48
LF	352
TABLES	
72” x 30”	4
144” x 48”	
120” x48”	1
CABINETS	
LF - (3F) 36”	42
(5F) - 36”	23
Hinged (5C)	40
Hinged (W/CS)	10
Hinged (CC/36/24)	
CHAIRS	
Task	176
Side	159
Conference	15

A2

PANELS	
42x24	13
42x30	
42x36	7
42x48	3
64x18	35
64x24	402
64x30	4
63x36	465
64x48	154
WORKSURFACES	
36x18	
48x18	12
60X18	24
72X18	12
24X24	104
36X24	24
48X24	188
60x24	24
72X24	116
84X24	24
24X36X36X24	164
30/48/72/24	
63X30 round end	24

OVERHEADS	
24	
36	164
48	164
60	
BBF	164
FF	24
LF	328
TABLES	
72” x 30”	3
144” x 48”	1
120” x48”	1
CABINETS	
LF - (3F) 36”	36
(5F) - 36”	
Hinged (5C)	27
Hinged (W/CS)	18
Hinged (CC/36/24)	
CHAIRS	
Task	164
Side	118
Conference	45

EXHIBIT F

FORM OF LEASE ESTOPPEL CERTIFICATE

Landlord: BOLINGBROOK INVESTORS, LLC

Tenant: ULTA SALON, COSMETICS & FRAGRANCE, INC.

Lender: WILMINGTON TRUST OF PENNSYLVANIA

Premises: Suite #____________________

Area: 82,468 Sq. Ft.

Lease Date:______________________________

The undersigned Landlord and Tenant of the above-referenced lease (the "Lease") hereby ratify the Lease and certify to Lender as mortgagee of the Real Property of which the premises demised under the Lease (the "Premises") is a part, as follows:

1. All initial capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Lease.
2. That the term of the Lease shall commence on (the "Commencement Date") the earlier of either (a) the date on which Tenant occupies the Premises for the operation of its business or (b) September 1, 2007.
3. That as of the Commencement Date, the Lease calls for monthly base rent installments in the amount of $57,392.71, subject to the Abatement (as defined in the Lease).
4. That no rental has been made more than one month in advance and there is no "free rent" or other concession under the remaining term of the Lease, except as set forth in the Lease.
5. That a security deposit in the amount $0.00 is being held by Landlord, which amount is not subject to any set-off or reduction or to any increase for interest or other credit due to Tenant.
6. That the Lease is a valid lease and in full force and effect and represents the entire agreement between the parties; that as of the date hereof, there is no existing default beyond applicable notice and cure periods on the part of the Landlord or the Tenant in any of the terms and conditions thereof and as of the date hereof, no event has occurred which, with the passing of time or giving of notice or both, would constitute an event of default beyond applicable notice and cure periods; and that said Lease has: (initial one)

   ☑ not been amended, modified, supplemented, extended, renewed or assigned.

   ☐ been amended, modified, supplemented, extended, renewed or assigned as follows by the following described agreements:

7. That the Lease provides for a primary term of 11 Lease Years; and that: (initial all applicable subparagraphs)

- ☐ neither the Lease nor any of the documents listed above in Paragraph 6, (if any), contain an option for any additional term or terms or an option to terminate the Lease prior to the expiration date set forth above.

- ☑ the Lease and/or the documents listed above in Paragraph 6 contain an option for one (1) additional term(s) of five (5) year(s) at a rent to be determined as follows:

  Base Rent per square foot of Rentable Area of the Premises payable during the first Lease Year of the Renewal Period shall be $28.00 per square foot with respect to all space included in the Premises as of the Renewal Period Commencement Date, and shall escalate annually at the rate of $0.50 per Lease Year.

- ☐ the Lease and/or the documents listed above in Paragraph 6 contain an option to terminate the Lease prior to the date set forth as follows:

8. As of the date hereof, the Landlord has not rebated, reduced or waived any amounts due from Tenant under the Lease, either orally or in writing, nor has Landlord provided financing for, made loans or advances to, or invested in the business of Tenant.

9. As of the date hereof, there are no actions, voluntary or involuntary, pending against the Tenant under the bankruptcy laws of the United States or any state thereof.

10. That this certification is made knowing that Lender is relying upon the representations herein made.

LANDLORD:		**TENANT:**	
BOLINGBROOK INVESTORS, LLC		ULTA SALON, COSMETIC & FRAGRANCE, INC., a Delaware corporation	
By:	______________________		
Name:	______________________		
Its:	______________________	By:	______________________
		Name: Alex J. Lelli, Jr.	
		Its: Senior Vice President, Growth & Development	

EXHIBIT G

FORM OF MEMORANDUM CONFIRMING TERM

THIS MEMORANDUM (“**Memorandum**”) is made as of ____________________, between ____________________ a __________ limited liability company (“**Landlord**”), and ____________________, a __________ (“**Tenant**”), pursuant to that certain Office Lease between Landlord and Tenant dated as of ___, 200___(as amended from time to time, the "**Lease**”) for certain leased premises (the ‘**Premises**”) located at the building (the ‘**Building**”) known as __________, Illinois and more particularly described in the Lease. All initial-capitalized terms used in this Memorandum have the meaning ascribed to them in the Lease.

1. Landlord and Tenant hereby confirm that:

(a) The Commencement Date of the term is ___, 200___;

(b) The Expiration Date of the Initial Term is ___, 200___;

2. Tenant hereby confirms that:

(a) The Premises and all improvements and other work to be performed by Landlord therein or elsewhere at the Building have been completed and furnished in accordance with the provisions of the Lease, except as follows: ____________________; and

(b) Tenant has accepted and is in full possession of the Premises.

3. This Memorandum has been entered into for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, and this Memorandum may be relied upon by both Landlord and Tenant in accordance with its terms, and shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first set forth above.

[Signature Page Follows]

LANDLORD:		**TENANT:**	
By:	____________________	By:	____________________
Name:	____________________	Name:	____________________
Its:	____________________	Its:	____________________

EXHIBIT H

HVAC SPECIFICATIONS

Heating, Ventilating and Air Conditioning:

Summer Design Conditions	Winter Design Conditions
Outdoor Temperature: 95°F. Dry Bulb	Outdoor Temperature: -6°F. Dry Bulb
Outdoor Temperature: 75°F. Wet Bulb	Indoor Temperature: 70°F. ± 2°F
Indoor Temperature: 75°F. ± 2°F	

All occupied spaces will be air-conditioned with the exception of toilet rooms, storage rooms, and the mechanical room.

Air-conditioning systems will be designed on the basis of occupancy of one (1) person per one hundred (100) square feet in the rentable area of the Premises and maximum electrical lighting and receptacle load of five (5) watts per square foot of the rentable area of the Premises.

All special HVAC requirements shall be subject to Landlord's approval.

EXHIBIT I

CLEANING SPECIFICATIONS

Frequency	Task
Daily	Police litter
Daily	Empty trash baskets & carry to collection areas, replace liners as needed
Daily	Spot clean carpet to remove stains
Daily	Spot vacuum to remove visible soil.
Weekly	Fully vacuum all carpet corners, edges, and hidden areas.
Daily	Dust mop all hard surface floors.
Daily	Mop all stains and spills.
Daily	Spot clean all partitions, glass
Daily	Spot clean and dust all horizontal & vertical areas removing fingerprints, stains and smudges (below 6ft).
Daily	Pick up desk-side recycled paper
Daily	Vacuum all carpet areas
Bi-weekly	Buff all hard surface floors
Weekly	Pick up aluminum cans
Weekly	Clean telephones
Monthly	Clean or dust all surfaces above normal reach
Monthly	Detail clean baseboards
Monthly	Vacuum all fabric furniture.
Quarterly	Dust all HVAC louvers
Quarterly	Clean office partition glass
Quarterly	For vinyl and terrazzo floor surfaces- machine scrub & topcoat.
Daily	Cleaning of restrooms in Common Areas

EXHIBIT J

FORM OF SUBORDINATION, NON-DISTURBANCE

AND ATTORNMENT AGREEMENT

Prepared by and

return after recording to:

Ulta Salon Cosmetics & Fragrance, Inc.
Windham Lakes Business Park
1275 Windham Drive
Romeoville, IL 60446
Attn: Alison M. Richter, Esq.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT made the ___day of ___, 2007 by and among BOLINGBROOK INVESTORS, LLC, an Illinois limited liability company ("Landlord"), ULTA SALON, COSMETICS & FRAGRANCE, INC., a Delaware corporation ("Lessee"), and WILMINGTON TRUST OF PENNSYLVANIA, a Pennsylvania bank and trust company ("Lender").

WITNESSETH:

A. Landlord is the owner of certain premises ("Premises") described in Exhibit "A" attached hereto and made a part hereof which is encumbered by a certain Mortgage, Security Agreement and Fixture Filing dated August 5, 2004 given by Landlord to Lender and recorded August 10, 2004 as Document R20044148156 with the Recorder of Deeds in and for Will County, Illinois ("Mortgage"). The Mortgage secures Landlord's indebtedness to Lender evidenced by Landlord's $17,025,000 Mortgage Note dated August 5, 2004 ("Note"). The Mortgage and Note, together with all other documents evidencing and/or securing the same, as they have been or may be modified from time to time, are hereinafter collectively referred to as "Loan Documents".

B. Landlord entered into a lease for a portion of the Premises ("Leased Premises") with Lessee dated ___, 2007 (together with all amendments, renewals and extensions thereof collectively referred to as the "Lease").

C. The parties desire to set out their understanding as to certain of their respective rights and obligations in the transactions above described.

NOW, THEREFORE, the parties hereto, in consideration of the premises and their mutual covenants herein contained and intending to be legally bound hereby agree as follows:

1. Warranties and Representations.

(a) Landlord and Lessee warrant and represent that as of the date hereof (i) neither Landlord nor Lessee is in default under the terms of the Lease beyond applicable

notice and cure periods, (ii) the Lease is in full force and effect, (iii) no payments under the Lease have been collected, anticipated, waived, released, discounted or otherwise discharged or compromised, except as pursuant to the terms of the Lease, (iv) Landlord has not received any funds or deposits from Lessee other than security deposits under the Lease, if any, and (v) Lessee has no setoff or counterclaim against Landlord under the Lease, (vi) Landlord and Lessee have made no agreements concerning, and Lessee is not entitled to, any free rent, partial rent, rebate of rental payments or any other type of rental concession, except as set forth in the Lease, (vii) the fixed minimum rent payable under the Lease as of the Commencement Date (as defined in the Lease) will be $57,392.71 per month, except as may be abated in accordance with Section 4(b) of the Lease and (viii) no actions, whether voluntary or involuntary, are pending against Lessee under the bankruptcy laws of the United States or any state thereof.

2. Assignment. Lessee acknowledges that all of the interest of Landlord in and to the Lease, including the rents and other sums payable thereunder, have been assigned to Lender and that pursuant to the terms of such Assignment, until the Mortgage is satisfied of record, all rents and other payments now or hereafter due Landlord under the Lease shall be paid to or at the direction of Lender. Until further notice from Lender, Lessee is directed by Lender to pay all such sums to Landlord. Landlord hereby agrees that upon receipt of a written notice from Lender (and without any duty of inquiry and despite any knowledge or notice to the contrary of the validity of any such notice), (i) all rents and other payments due from Lessee to Landlord under the Lease shall be paid by Lessee to Lender and (ii) Lessee shall have no liability to Landlord for any such sums paid directly to Lender.

3. Lease not to be Modified, etc. Landlord and Lessee agree that, without the prior written consent of Lender, no material modification affecting term, Leased Premises, rent or any provision increasing Landlord's obligations or decreasing Tenant's obligations may be made to the Lease.

4. Nonlimitation of Lender's Rights under Loan Documents. Except as set forth in Paragraph 7 of this Agreement, nothing in this Agreement contained shall prejudice or be construed to prejudice the right of Lender to commence and prosecute, or to prevent Lender from commencing and prosecuting any action which it may deem advisable, or which it may be entitled to commence and prosecute under the terms of the Loan Documents; nor shall this Agreement be construed to waive any defaults now existing or which may occur under said Loan Documents; nor shall this Agreement be construed as granting a forbearance or extension of time for payment.

5. Nonassumption of Liability by Lender Prior to Foreclosure of Mortgage. Except to the extent Lender succeeds to the interest of Landlord under the Lease, Lender does not by execution and acceptance of this Agreement or making demand on or collecting monies under the Lease assume any liability or become liable in any manner whatsoever for the performance of any of the terms and conditions thereof.

6. Subordination. Subject to Paragraph 7 hereof, Lessee acknowledges, covenants and agrees that the Lease, including any and all options to purchase, rights of first refusal or other rights to purchase the Leased Premises, the Premises or any portion thereof, now is and

shall at all times continue to be subject and subordinate in each and every respect to the Mortgage and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal, interest and other sums secured thereby. Lessee, upon request, shall execute and deliver any certificate or other instrument reasonably acceptable to Lessee whether or not in recordable form which Lender may reasonably request to confirm said subordination. The foregoing notwithstanding, in no event shall any of Lessee's trade fixtures, inventory, equipment, furniture and furnishings, accounts, books or records or other assets be or become subject or subordinate to the lien in favor of Lender.

7. Non-Disturbance. As long as no event of default has occurred and is continuing under the Lease beyond applicable notice and cure periods, Lender shall not name Lessee as a party defendant to any action for foreclosure or other enforcement of the Mortgage (unless required by law), nor shall the Lease be terminated by Lender in connection with, or by reason of, foreclosure or other proceedings for the enforcement of the Mortgage, or by reason of a transfer of Landlord's interest under the Lease pursuant to the taking of a deed or assignment in lieu of foreclosure (or similar device), nor shall Lessee's use or possession of the Leased Premises, Lobby (as defined in the Lease), Receiving Docks (as defined in the Lease) or the Common Areas (as defined in the Lease) be interfered with by Lender and all rights and privileges of Tenant under the Lease, or any renewals, modifications, or extensions thereof, shall be recognized by Lender and any Successor (as defined herein).

8. Non-liability of Lender and Successors. Neither Lender nor any other person acquiring or succeeding to the interests of Landlord as a result of any foreclosure or other proceeding for the enforcement of the Mortgage, or by reason of a transfer of Landlord's interest under the Lease, pursuant to the taking of a deed in lieu of foreclosure (or similar device), nor such person's successors and assigns (all of the foregoing, including Lender, being hereinafter referred to as the "Successor"), shall be:

(a) subject to any credits, offsets, defenses or claims which Lessee might have against any prior landlord with respect to the payment of rent or other performance under the Lease except for credits, offsets or claims arising under the Lease with respect to costs and expenses (but not damages) incurred by Lessee after Lessee has notified Lender and given Lender an opportunity to cure as provided in this Agreement; or

(b) bound by any prepayment of rent more than one month in advance and not actually delivered to the Successor; or

(c) liable for any act or omission of any prior landlord; or

(d) required to account or be liable for any security deposits, or any other monies owing by or on deposit with any prior landlord to the credit of Lessee, which are not actually delivered to the Successor; or

(e) bound by any material amendment or modification of the Lease affecting the term, Leased Premises, rent or any provision increasing Landlord's obligations or decreasing Tenant's obligations made without Lender's consent; or

(f) bound by any covenant to undertake or complete, or to make any contribution toward, any improvement to or expansion or rehabilitation of the Leased Premises, the Premises or any portion thereof, except that such Successor shall be liable for the following: (i) all of Landlord's obligations with respect to maintenance, repairs, casualty and condemnation of the Leased Premises, Lobby, Receiving Docks, Common Allowance; (iii) the payment of the design allowance set forth in Exhibit B, Paragraph 3(b) of the Lease; (iv) the completion of Landlord's obligations with respect to the separation of the electricity metering as provided in Section 8(b) of the Lease; (v) the completion of Landlord's obligations with respect to the demising of Tenant's space as provided in Exhibit B, Paragraph 1; and (vi) the payment of Landlord's portion of the costs with respect to the North Wall Glass Doors as set forth in Exhibit B, Paragraph 2. Lender's obligations under this subparagraph 8(f) are expressly conditioned in each instance on Tenant having given Lender written notice of Landlord's default within fifteen (15) days following notice of such default to Landlord.

Notwithstanding the foregoing Subparagraphs 8(a) through (f), nothing herein shall excuse Lender or any Successor Landlord from liability or responsibility for, or limit any right or remedy of Lessee with respect to, any breach or default that continues from and after the date when Lender or such Successor Landlord obtains title to or takes possession or control of the Premises.

9. Further Subordination. Except as otherwise may be required pursuant to the terms of the Lease, so long as the Mortgage is in effect, Lessee covenants and agrees not to subordinate or permit the subordination of the Lease to any mortgage or other lien encumbering the Premises at any time, other than the Mortgage and any replacement, renewal, consolidation, substitution, extension, modification, spreader and splitter thereof. Notwithstanding anything to the contrary herein, Tenant shall have the right to place a lien on its personal property, trade fixtures, inventory, equipment, furniture and furnishings, accounts, books or records and other assets.

10. Notice of Default. Lessee covenants and agrees that Lessee will notify Lender in writing of any default of Landlord under the Lease and agrees that notwithstanding any provisions of the Lease, no notice by Lessee of any cancellation shall be effective unless Lender has received notice as aforesaid, and has failed to cure the default within the applicable time periods set forth in the Lease for the cure of any Landlord default.

11. Attornment. If the interest of Landlord under the Lease shall be transferred by reason of foreclosure or other proceedings for enforcement of the Mortgage, pursuant to the taking of a deed in lieu of foreclosure (or similar device) or as a result of the exercise of any power of sale under the Mortgage, Lessee shall be bound to the Successor, and, except as provided herein, the Successor shall be bound to Lessee, under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, with the same force and effect as if the Successor were the landlord, and Lessee does hereby (i) agree to attorn to the Successor, including Lender if it be the Successor, as its landlord, (ii) affirm its obligation under the Lease, and (iii) agree to make payments when due of all sums due under the Lease to the Successor, said attornment, affirmation and agreement to be effective and self-operative, without the execution of any further instruments, upon Lessee and the Successor succeeding to the

interest of Landlord. Lessee shall, at the request of Successor, execute, acknowledge and deliver such further instruments reasonably acceptable to Lessee evidencing such attornment as are desired by the Successor. Lessee waives the provisions of any statute or rule of law now or hereafter in effect that may give or purport to give it any right or election to terminate or otherwise adversely affect the Lease or the obligations of Lessee thereunder by reason of any foreclosure or similar proceeding. Anything in the Lease to the contrary notwithstanding, in the event that a Successor shall succeed to the interests of Landlord under the Lease, the Successor shall have no obligation, nor incur any liability, beyond its then interest, if any, in the Premises and Lessee shall look exclusively to such interest of the Successor, if any, in the Premises for the payment and discharge of any obligations imposed upon the Successor hereunder or under the Lease. Lessee agrees that with respect to any judgment which may be obtained or secured by Lessee against the Successor, Lessee shall look solely to the estate or interest owned by the Successor in the Premises and Lessee will not collect or attempt to collect any such judgment out of any other assets of the Successor.

12. Lease Requirements. Lessee agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a Non-Disturbance agreement with respect to the Mortgage.

13. Modification. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the parties hereto or their respective successors in interest.

14. Notices. Any notice given pursuant to this Agreement shall be valid only if given in writing, and shall be deemed sufficiently given if sent by hand-delivery, recognized overnight courier service (i.e., Federal Express) or postpaid, registered or certified mail, return receipt requested. Notice to the parties to this Agreement shall be addressed as follows:

Landlord: Bolingbrook Investors, LLC
770 Township Line Road
Suite 150
Yardley, PA 19067
Attention: ____________________

Lessee: Ulta Salon, Cosmetics & Fragrance, Inc.
Windham Lakes Business Park
1275 Windham Parkway
Romeoville, Illinois 60446
Attention: Senior Vice President, Growth & Development

Lender: Wilmington Trust of Pennsylvania
One Liberty Place – Suite 3150
Philadelphia, PA 19103
Attention: Commercial Real Estate Lending Department

Notices shall be effective upon receipt.

15. Captions. It is agreed that the captions of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

16. Benefit and Binding Effect; Governing Law. This Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

17. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signature thereto and hereto were on the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

WITNESS: BOLINGBROOK INVESTORS, LLC

____

By: ______________________________

Name: Scott A. Williams

Title: Senior Vice President

WITNESS/ATTEST: ULTA SALON, COSMETICS & FRAGRANCE, INC.,

____

By: ______________________________

Name: Alex J. Lelli, Jr.

Title: Senior Vice President, Growth & Development

ATTEST: WILMINGTON TRUST OF PENNSYLVANIA

____

By: ______________________________

Name:

Title:

STATE OF ILLINOIS :
: SS.
COUNTY OF DUPAGE :

On this ___day of ___, 200___, before me, a Notary Public, personally appeared Alex J. Lelli, Jr. who acknowledged himself/herself to the Senior Vice President, Growth & Development of Ulta Salon, Cosmetics & Fragrance, Inc., and that he/she as such Senior Vice President, Growth & Development, being authorized to do so, executed the foregoing Subordination, Non-Disturbance, and Attornment Agreement for the purposes therein contained by signing the name of the corporation by himself/herself as such Senior Vice President, Growth & Development.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

____

Notary Public

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF PHILADELPHIA : SS.

On this ___day of ___, 200___, before me, a Notary Public, personally appeared Scott A. Williams, who acknowledged himself to be a Senior Vice President of BOLINGBROOK INVESTORS, LLC, an Illinois limited liability company, and that he as such Officer, who I am satisfied is the person who executed the foregoing instrument, being authorized to do so by virtue of the resolution of the sole Member of the limited liability company acknowledged that he executed the foregoing instrument on behalf of the limited liability company, and delivered same, as the voluntary authorized act and deed of the limited liability company, for the purpose therein contained by signing the name of the limited liability company by himself as such officer.
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

____
Notary Public

Commission expires:__________

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF PHILADELPHIA :

On this ___day of ___, 200___, before me, ___, a Notary Public, personally appeared ___, ___of WILMINGTON TRUST OF PENNSYLVANIA, who I am satisfied is the person who executed the foregoing instrument, being authorized to do so, acknowledged that he executed the foregoing instrument on behalf of the ___, and delivered same, as the voluntary authorized act and deed of the ___, for the purpose herein contained by signing the name of the ___by himself as such officer.
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

____

Notary Public

Commission expires: __________

EXHIBIT K

FORM OF LANDLORD'S WAIVER AND CONSENT

THIS LANDLORD'S WAIVER AND CONSENT ("Waiver and Consent") is made and entered into as of this ___day of ___2007, by and between **Bolingbrook Investors, LLC**, an Illinois limited liability company ("Landlord"), and **Wachovia Capital Finance Corporation (Central)**, an Illinois corporation ("Lender"), in its capacity as Collateral Agent ("Agent") for various lenders ("Lenders").

A. Landlord is the owner of the real property commonly known as 1000 Remington boulevard, Bolingbrook, Illinois (the "Premises").

B. Landlord has entered into a certain Lease Agreement (together with all amendments and modifications thereto and waivers thereof, the "Lease") with Ulta Salon, Cosmetics & Fragrance, Inc. ("Company"), with respect to the Premises.

C. Agent and the Lenders have entered into a certain Second Amended and Restated Loan and Security Agreement with Company (as amended from time to time, the "Credit Agreement"), and to secure the obligations arising under such Credit Agreement, Company has granted to Agent for its benefit and the benefit of the Lenders a security interest in and lien upon certain assets of Company which assets may from time to time be located at the Premises, including, without limitation, all of Company's goods, inventory, machinery, equipment, and furniture and trade fixtures (such as equipment bolted to floors), together with all additions, substitutions, replacements and improvements to, and proceeds of, the foregoing, but excluding building fixtures (such as plumbing, lighting and HVAC systems and other fixtures not constituting trade fixtures) (collectively, the "Collateral").

NOW, THEREFORE, in consideration of any financial accommodations extended by Agent and the Lenders to Company at any time, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Landlord acknowledges that (a) the Lease is in full force and effect and (b) Landlord is not aware of any existing default under the Lease.

2. Landlord will use commercially reasonable efforts to provide Lender with written notice of any default by Company under the Lease resulting in termination of the Lease (a "Default Notice"). No action by Agent pursuant to this Waiver and Consent shall be deemed to be an assumption by Agent or any Lender of any obligation under the Lease, and, except as provided in paragraphs 5, 6, 7 and 8 below, neither Agent nor any Lender shall have any obligation to Landlord hereunder.

3. Landlord acknowledges the validity of Lender's lien on the Collateral and, until such time as the obligations of Company to Agent and the Lenders are indefeasibly paid in full, Landlord waives any interest in the Collateral and agrees not to distrain or levy upon any Collateral or to assert any landlord lien, right of distraint or other claim against the Collateral for any reason, provided that the foregoing provision shall not prevent Landlord from suing the Company for rent or other charges owing under the Lease.

4. Landlord agrees that the Collateral consisting of trade fixtures such as equipment bolted to the floor, which can be removed without material damage (unless company or Agent promptly repairs such damage) shall not be deemed a fixture or part of the real estate but shall at all times be considered personal property.

5. Prior to a termination of the Lease, Agent or its representatives or invitees may enter upon the Premises at any time without any interference by Landlord to inspect or remove any or all of the Collateral. Lender will use commercially reasonable efforts to provide Landlord with prior written notice of its intention to enter onto the Premises to remove any of the Collateral.

6. Upon a termination of the Lease, Landlord will permit Agent and its representatives and invitees to access the Premises;provided, that such access period (the "Access Period") shall not exceed up to 30 days following receipt by Agent of a Default Notice or, if the Lease has expired by its own terms (absent a default thereunder) and the Company has failed to remove all of the Collateral from the Premises, up to 30 days following Agent's receipt of written notice from Landlord of such failure.

7. During any Access Period, (a) Agent and its representatives and invitees may inspect, repossess and remove the Collateral, in each case without interference by Landlord or liability of Agent to Landlord, and (b) Agent shall make the Premises available for inspection by Landlord and prospective tenants and shall cooperate in Landlord's reasonable efforts to re-lease the Premises. In no event shall Agent disturb or interfere with other tenants' rights of quiet enjoyment of their leased space and no auction or other sale shall be held by Agent at the Premises. Upon request by the Landlord, Agent shall promptly provide Landlord with evidence that commercially reasonable insurance is in force throughout Agent's period of possession.

8. Agent shall promptly repair, at Agent's expense, or reimburse Landlord for any physical damage to the Premises actually caused by the conduct or activities of Agent or any of its representatives or invitees with respect to the removal or other disposition of Collateral by or through Agent (ordinary wear and tear excluded). Agent shall not be liable for any diminution in value of the Premises caused by the absence of Collateral removed, and Agent shall not have any duty or obligation to remove or dispose of any Collateral or any other property left on the Premises by Company. Agent shall indemnify, defend and hold harmless Landlord and its employees and agents from and against any loss, damage, claim, liability and expense incurred or sustained by said indemnified parties and arising out of the conduct or activities of Agent or any of its representatives or invitees with respect to the removal or other disposition of the Collateral.

9. All notices hereunder shall be in writing, sent by overnight courier to the respective parties and the addresses set forth on the signature page or at such other address as the receiving party shall designate in writing.

10. This Waiver and Consent may be executed in any number of several counterparts, shall be governed and controlled by, and interpreted under, the laws of the state in which the Premises are located and shall inure to the benefit of Agent and its successors and assigns and shall be binding upon Landlord and its successors and assigns (including any transferees of the

Premises); provided that this Waiver and Consent shall be rendered null and void if Landlord does not receive a fully executed original thereof within ten (10) business days after Landlord's execution and delivery of this Waiver and Consent to Tenant.

IN WITNESS WHEREOF, this Landlord's Waiver and Consent is entered into as of the date first set forth above.

"LANDLORD"

Bolingbrook Investors, LLC, an Illinois limited liability company

Attention: ______________________________

Telephone: ______________________________

By: ______________________________

Name: ______________________________

Title: ______________________________

Landlord's Notice Address:

c/o BPG Properties, Ltd.
200 South Michigan Avenue, Suite 210
Chicago, Illinois 60604

"AGENT"

Wachovia Capital Finance Corporation (Central), an Illinois corporation

Attention: ______________________________

Telephone: ______________________________

By: ______________________________

Name: ______________________________

Title: ______________________________

Lender's Notice Address:

Wachovia Capital Finance
Corporation (Central), as agent
150 South Wacker Drive
Chicago, IL 60606-4401
Attn: Portfolio Manager

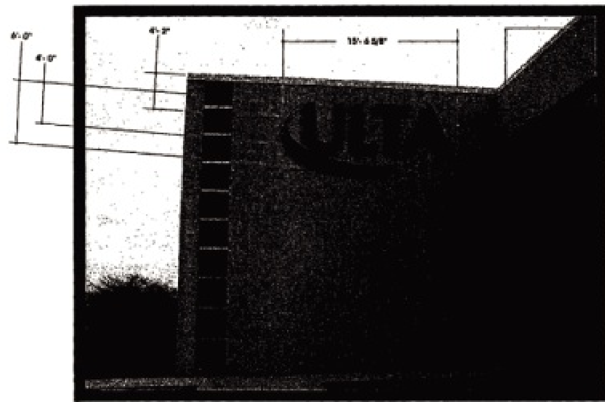
EXHIBIT L

TENANT BUILDING SIGNAGE

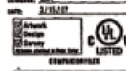
{Details and location}

Site Identification

INDIVIDUAL BACK-LIT LETTERS
Reference Drawing B54590A for fabrication & color specifications.



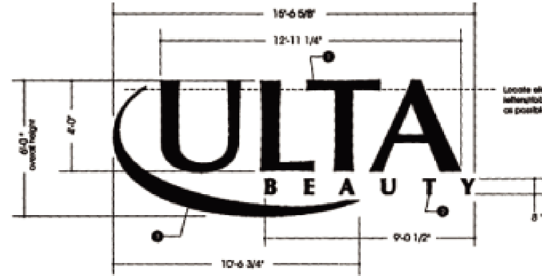
PROPOSED SIGN ON ELEVATION



Landlord Signature: ____________ Printed Name: ____________ Company: ____________ Date: ________

B54590

Individual Back-Lit Letters

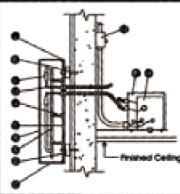


Locate electric out back of letters/ribbon as near top of letters as possible.

Letter Set Layout

Scale: 3/8" = 1'-0"

REMOTE BACK-LIT LETTERS



A Illumination	Color	[illegible]		H Transformer	Type	Standard
	Diameter	15mm			MA	30
B Face	Thickness	.150"		I Raceway	Material	N.A.
	Color	[illegible]			Height	N.A.
	Type	Aluminum		J [illegible]	Size	[illegible]
C Returns	Depth	5"			Color	To match returns
	Color	[illegible]		K Mounting	Internal	5/16" [illegible]
	Thickness	.063" x 5.5" coil			External	5/16" [illegible]
D Standoffs	Size	2" stand-off		L [illegible]	Insulator	Standard
	Type	Aluminum				
E Backs	Material	Clear Polycarbonate		M [illegible]	Insulator	Standard
	Thickness	3/16"				
F Wireway	Size	Standard		N Switch	Type	Disconnect/Toggle
	Type	Aluminum				
G Tube Support	Type	Glass				

[illegible]

NOTE: All electrical and mounting are mechanically fastened to letter return (C) by aluminum straps.

Electrical to be out the top back side of the letters & ribbon.

(2) "BEAUTY" LETTERS will be flat cut out of 1/2" aluminum plate. Letters will have a urethane enamel finish matching #[illegible] Slate Gray as noted.

Landlord Signature: ____________ Printed Name: ____________ Company: ____________ Date: ________

CUSTOMER: ULTA

B54590A

EXHIBIT M

TENANT LOBBY SIGNAGE

ULTA BEAUTY — *Interior Non-Illuminated Letters*

5'-0"

2'-0" overall height

1'-4"

2 5/8"

3'-0 1/4"

3'-6 3/8"

Letter Set Layout

Scale: 1" = 1'-0"

FLAT CUT OUT LETTERS

A F.C.O.	MATERIAL	3/8" CHEMETAL
	FACE COLOR	SILVER METAL [illegible]
	RETURN COLOR	MATCH FACE
B MOUNTING	TYPE	8-32 THREADED ROD
	FASTENER	N/A

Landlord Signature: ____________ Printed Name: ____________ Company: ____________ Date: ____________

Kieffer & CO., INC.

CUSTOMER: ULTA

SALESMAN: LC

DESIGNER: MAK

Artwork
Design
Survey

COMPANION FILES

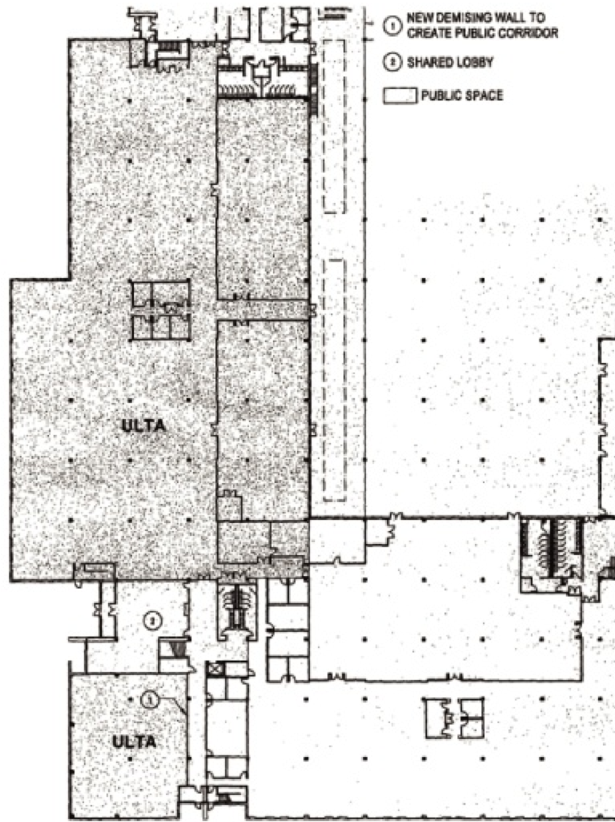
PRODUCTION PROCESSING

Job #

B54590B

EXHIBIT N

LANDLORD'S WORK



© 2007 Solomon Cordwell Buenz

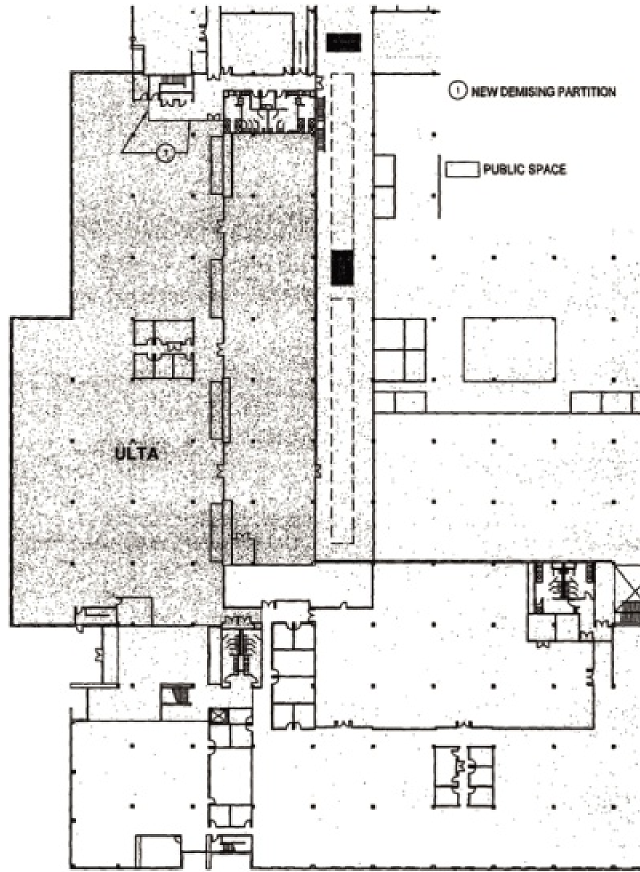
1ST FLOOR

TALL GRASS CORPORATE CENTER
Bolingbrook, Illinois

03/30/07

2007508.01

N.T.S.



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2ND FLOOR

TALL GRASS CORPORATE CENTER

Bolingbrook, Illinois

03/30/07

2007506.01

N.T.S.

ASK-15

EXHIBIT 10.15

THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

by and among

LASALLE BANK NATIONAL ASSOCIATION,
as Administrative Agent, Syndication Agent, Co-Arranger,
Lead Manager and LC Issuer,

WACHOVIA CAPITAL FINANCE CORPORATION (CENTRAL),
as Collateral Agent and Co-Arranger,

JPMORGAN CHASE BANK, N.A.,
as Documentation Agent,

THE FINANCIAL INSTITUTIONS FROM TIME TO TIME PARTY HERETO,
as Lenders,

and

ULTA SALON, COSMETICS & FRAGRANCE, INC.
as Borrower

Dated: as of June 29, 2007

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THIRD AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT

This Third Amended and Restated Loan and Security Agreement (as amended, restated or otherwise modified from time to time, the "Agreement") dated as of June 29, 2007 is entered into by and among ULTA SALON, COSMETICS & FRAGRANCE, INC., a Delaware corporation ("Borrower"), the financial institutions from time to time parties hereto as lenders ("Lenders"), LASALLE BANK NATIONAL ASSOCIATION, in its capacity as administrative agent for Lenders (in such capacity, "Administrative Agent"; in its individual capacity, "LaSalle") and LC Issuer, WACHOVIA CAPITAL FINANCE CORPORATION (CENTRAL) (f/k/a Congress Financial Corporation (Central)), an Illinois corporation, in its capacity as collateral agent for Lenders (in such capacity, "Collateral Agent," in its individual capacity, "Wachovia") and JPMORGAN CHASE BANK, N.A., in its capacity as documentation agent for Lenders (in such capacity, "Documentation Agent").

W I T N E S S E T H:

WHEREAS, Borrower, Wachovia, as agent, ("Original Agent") and each of Wachovia and LaSalle, individually (Wachovia and LaSalle being the "Original Lenders") are each party to that certain Loan and Security Agreement dated as of May 29, 1997 (the "1997 Loan Agreement") which was amended and restated by that certain Amended and Restated Loan and Security Agreement dated as of December 20, 2001 (as amended or otherwise modified prior to May 31, 2005, the "2001 Loan Agreement"), and further amended by the Second Amended and Restated Loan Agreement dated as of May 31, 2005 (as amended or otherwise modified prior to the Closing Date, but without giving effect to this Agreement the "2005 Loan Agreement") pursuant to which, among other things, the Lenders made available to Borrower "Revolving Loans" (as such term is defined in the 2005 Loan Agreement, and with such loans outstanding immediately prior to the effectiveness of this Agreement being referred to as the "Original Revolving Loans");

WHEREAS, Borrower, Agents and Lenders desire to amend and restate the 2005 Loan Agreement, subject to the terms and conditions set forth herein, to, among other things, (i) restructure the terms of the credit facilities provided for under the 2005 Loan Agreement, (ii) provide that LaSalle shall continue serving as Administrative Agent for the Lenders, and Wachovia shall continue to serve as Collateral Agent for the Lenders and (iii) continue to provide loans and other financial accommodations to Borrower for its working capital requirements and general corporate purposes; and

WHEREAS, Agents and Lenders are willing to amend and restate the 2005 Loan Agreement and Agents and Lenders are willing to make loans and provide other financial accommodations to Borrower, in each case on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the respective meanings given to them below:

1.1 "Accounts" shall mean all present and future rights of Borrower to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card.

1.2 "Adjusted Cash Flow" shall mean, as to any Person, for any period, the amount equal to: (a) the Net Income of such Person for such period, plus (b) depreciation, and other non-cash charges for such period (to the extent deducted in the computation of Net Income), all in accordance with GAAP, minus (c) debt service and capital expenditures made during such period, (to the extent not otherwise deducted in the computation of Net Income), minus (d) payments made in respect of dividends for such period on any shares of Capital Stock of such Person or the redemption or repurchase of any shares of Capital Stock of such Person or in respect of management or consulting fees during such period (to the extent not otherwise deducted in the computation of Net Income), minus (e) payments (to the extent not otherwise subtracted under clause (c) above) made in respect of (i) principal owing on any indebtedness for borrowed money (excluding as to Borrower, the Loans), (ii) reimbursement and all other obligations with respect to surety bonds, letters of credit and banker's acceptances, whether or not matured or (iii) capitalized lease obligations (to the extent not already deducted as a capital expenditure) and for the deferred purchase price of property or services (excluding trade payables incurred by such person in the ordinary course of business).

1.3 "Adjusted Eurodollar Rate" shall mean, with respect to each Interest Period for any Eurodollar Rate Loan, the rate per annum determined by dividing (a) the Eurodollar Rate for such Interest Period by (b) a percentage equal to: (i) one (1) minus (ii) the Reserve Percentage. For purposes hereof, "Reserve Percentage" shall mean the reserve percentage, expressed as a decimal, prescribed by any United States or foreign banking authority for determining the reserve requirement which is or would be applicable to deposits of United States dollars in a non-United States or an international banking office of Administrative Agent used to fund a Eurodollar Rate Loan or any Eurodollar Rate Loan made with the proceeds of such deposit, whether or not the Administrative Agent actually holds or has made any such deposits or loans. The Adjusted Eurodollar Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

1.4 "Adjusted Tangible Net Worth" shall mean as to any Person, at any time, in accordance with GAAP (except as otherwise specifically set forth below), on a consolidated basis for such Person and its subsidiaries (if any), the amount equal to the sum of (a) the difference between: (i) the aggregate net book value of all assets of such Person and its subsidiaries (excluding the book value of goodwill, non-competition agreements, patents, trademarks, copyrights, licenses and other intangible assets), calculating the book value of inventory for this purpose principally on an average cost basis, after deducting from such book

values all appropriate reserves in accordance with GAAP (including all reserves for doubtful receivables, obsolescence, depreciation and amortization) and (ii) the aggregate amount of the indebtedness and other liabilities of such Person and its subsidiaries (including tax and other proper accruals) included on the balance sheet of such person in accordance with GAAP, plus (b) indebtedness of such Person and its subsidiaries which is subordinated in right of payment to the full and final payment of all of the Obligations on terms and conditions acceptable to Administrative Agent.

1.5 "Affiliate" shall mean, with respect to a specified Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, and without limiting the generality of the foregoing, includes (a) any Person which beneficially owns or holds ten (10%) percent or more of any class of Voting Stock of such Person or other equity interests in such Person, (b) any Person of which such Person beneficially owns or holds ten (10%) percent or more of any class of Voting Stock or in which such Person beneficially owns or holds ten (10%) percent or more of the equity interests and (c) any director or executive officer of such Person. For the purposes of this definition, the term "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by agreement or otherwise.

1.6 "Agents" shall mean each of Administrative Agent and Collateral Agent, or each such entity as the context so provides and any successor agents hereunder.

1.7 "Armored Car Companies" shall mean, collectively, Brink's Incorporated, AT Systems; Safe and Sound Armed Courier, Inc.; Dunbar Armored Inc.; Loomis, Fargo & Co.; and PFI Armored, Inc. and their respective successors and assigns or any other armored car service selected by Borrower after the date hereof which is reasonably acceptable to Administrative Agent.

1.8 "Assignment and Acceptance" shall mean an Assignment and Acceptance substantially in the form of Exhibit A attached hereto (with blanks appropriately completed) delivered to the Administrative Agent in connection with an assignment described under Section 13.6 hereof to the extent such assignment is not otherwise prohibited as between or among the Lenders.

1.9 "Availability Reserves" shall have the meaning set forth in Section 2.3 hereof.

1.10 "Blocked Accounts" shall have the meaning set forth in Section 6.3 hereof.

1.11 "Business Day" shall mean any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the laws of the State of New York, Illinois or the State of North Carolina, and a day on which Administrative Agent is open for the transaction of business, except that if a determination of a Business Day

shall relate to any Eurodollar Rate Loans, the term Business Day shall also exclude any day on which banks are closed for dealings in dollar deposits in the London interbank market or other applicable Eurodollar Rate market.

1.12 "Capital Stock" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person's capital stock or partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock).

1.13 "Cash Equivalents" shall mean, at any time, (a) any evidence of indebtedness with a maturity date of one (1) year or less issued or directly and fully guaranteed or insured by the United States of America of any agency or instrumentality thereof; provided, that, the full faith and credit of the United States of America is pledged in support thereof, (b) certificates of deposit or bankers' acceptances with a maturity of one (1) year or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than $250,000,000; (c) commercial paper (including variable rate demand notes) with a maturity of one hundred eighty (180) days or less issued by a corporation (except an Affiliate of Borrower) organized under the laws of any State of the United States of America or the District of Columbia and rated at least A-1 by Standard & Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc. or at least P-1 by Moody's Investors Service, Inc, (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above; (e) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any governmental agency thereof and backed by the full faith and credit to the United States of America, in each case maturing within one hundred eighty (180) days or less from the date of acquisition; provided, that, the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985; and (f) investments in money market funds and mutual funds which invest substantially all of their assets in securities of the types described in clauses (a) through (e) above.

1.14 "Change of Control" shall be deemed to have occurred if (A) prior to a Qualified Public Offering, (a) all or substantially all of Borrower's assets shall have been sold, in one or in a series of transactions to any "Person" or "Group" (as such term is used in Sections 14(d)(2) and 13(d)(3), respectively, of the Securities Exchange Act) other than to Permitted Holders; (b) an event or series of events (whether a stock purchase, amalgamation, merger, consolidation or other business combination or otherwise) shall have occurred by which any Person or Group (other than a Permitted Holder) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act) directly or indirectly of fifty (50%) percent or more of the combined voting power of the then outstanding securities of Borrower ordinarily (and apart from rights accruing under certain circumstances) having the right to vote in election of directors or (c) after the date of this Agreement, a majority of the Board of Directors of Borrower over a two (2) year period commencing from the date hereof shall have replaced the

directors who constituted the Board of Directors at the beginning of such period other than directors whose nominations for election by the stockholders of Borrower was approved by such Board of Directors and (B) following the completion of a Qualified Public Offering, (a) an event or series of events (whether a stock purchase, amalgamation, merger, consolidation or other business combination or otherwise) shall have occurred by which any Person or Group (as such term is used in Sections 14(d)(2) and 13(d)(3), respectively, of the Securities Exchange Act) (other than a Permitted Holder) other than any of the Permitted Holders is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act) directly or indirectly of [thirty-five percent (35%)] or more of the combined voting power of the then outstanding securities of Borrower ordinarily (and apart from rights accruing under certain circumstances) having the right to vote in election of directors or (b) a majority of the Board of Directors of Borrower over a one (1) year period commencing from the date the completion of a Qualified Public Offering shall have replaced the directors who constituted the Board of Directors at the beginning of such period other than directors whose nominations for election by the stockholders of Borrower was approved by such Board of Directors).

1.15 "Closing Date" shall mean June 29, 2007.

1.16 "Code" shall mean the Internal Revenue Code of 1986, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

1.17 "Collateral" shall have the meaning set forth in Section 5 hereof.

1.18 "Collateral Access Agreement" shall mean an agreement in writing, in form and substance satisfactory to Collateral Agent, from any lessor of premises to Borrower, or any other person to whom any Collateral (including Inventory, Equipment, bills of lading or other documents of title) is consigned or who has custody, control or possession of any such Collateral or is otherwise the owner or operator of any premises on which any of such Collateral is located, pursuant to which such lessor, consignee or other person, inter alia, acknowledges the first priority security interest of Collateral Agent in such Collateral, agrees to waive any and all claims such lessor, consignee or other person may, at any time, have against such Collateral, whether for processing, storage or otherwise, and agrees to permit Collateral Agent access to, and the right to remain on, the premises of such lessor, consignee or other person so as to exercise Collateral Agent's rights and remedies and otherwise deal with such Collateral and, in the case of any consignee or other person who at any time has custody, control or possession of any Collateral, acknowledges that it holds and will hold possession of the Collateral for the benefit of Collateral Agent and agrees to follow all instructions of Collateral Agent with respect thereto.

1.19 "Commitments" shall mean, as to any Lender, the aggregate commitment of such Lender to make Loans or to incur Letter of Credit Obligations in the maximum principal amounts set forth on Schedule I hereto next to such Lender's name or on the Assignment and Acceptance Agreement pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 13.6 hereof, as such amount may be adjusted, if at all, in accordance with this Agreement.

1.20 "Cost" shall mean, as to the Inventory as of any date, the cost of such Inventory as of such date, determined principally on the average cost basis in accordance with GAAP and on a first-in-first-out basis in accordance with GAAP.

1.21 "Credit Card Acknowledgments" shall mean, individually and collectively, the agreements by Credit Card Issuers or Credit Card Processors in favor of Collateral Agent acknowledging Collateral Agent's first priority security interest in the monies due and to become due Borrower (including, without limitation, credits and reserves) under the Credit Card Agreements, and agreeing to transfer all such amounts to the Blocked Accounts, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.22 "Credit Card Agreements" shall mean all agreements (other than Credit Card Acknowledgements) now or hereafter entered into by Borrower any Credit Card Issuer or any Credit Card Processor, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, including, but not limited to, the agreements listed and schedules of terms listed on Schedule 8.9 to the Information Certificate.

1.23 "Credit Card Issuer" shall mean any person (other than Borrower) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, including credit cards issued by or through American Express Travel Related Services Company, Inc. and Novus Services, Inc.

1.24 "Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer (including, but not limited to, First Data Merchant Services Corporation).

1.25 "Credit Facilities" shall mean the Loans and Letter of Credit Accommodations provided to or for the benefit of Borrower pursuant to Sections 2.1 and 2.2.

1.26 "Default" shall mean an act, condition or event which with notice or passage of time or both would constitute an Event of Default.

1.27 "Defaulting Lender" shall have the meaning set forth in Section 6.9 hereof.

1.28 "Deposit Account Control Agreement" shall mean an agreement in writing, in form and substance satisfactory to Collateral Agent, by and among Collateral Agent, Borrower and any bank at which any deposit account of Borrower is at any time maintained which provides that such bank will comply with instructions originated by Collateral Agent directing disposition of the funds in the deposit account without further consent by Borrower and such other terms and conditions as Collateral Agent may require, including as to any such

agreement with respect to any Blocked Account, providing that all items received or deposited in the Blocked Accounts are the property of Collateral Agent, that the bank has no lien upon, or right to setoff against, the Blocked Accounts, the items received for deposit therein, or the funds from time to time on deposit therein and that the bank will wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account all funds received or deposited into the Blocked Accounts.

1.29 "Eligible Inventory" shall mean Inventory consisting of finished goods held for resale in the ordinary course of the business of Borrower that are acceptable to Collateral Agent based on the criteria set forth below. In general, Eligible Inventory shall not include (a) packaging and shipping materials; (b) supplies used or consumed in Borrower's business; (c) Inventory at premises other than those owned and controlled by Borrower, except for Inventory at locations of Borrower which are leased by it if either (A) Collateral Agent shall have received a Landlord Agreement duly authorized, executed and delivered by the owner and lessor of such premises or (B) if Collateral Agent has not received such Landlord Agreement, then Collateral Agent shall have established an Availability Reserve in respect of amounts due or to become due to the owner and lessor of such retail store location (without limiting any other rights and remedies of Collateral Agent under this Agreement or under the other Financing Agreements with respect to the establishment of Availability Reserves or otherwise) and after giving effect to such Availability Reserves, there is Excess Availability; provided, that, (1) Borrower shall use its best efforts to obtain the Landlord Agreement with respect to each location in respect of which Borrower enters into a lease after the date hereof and (2) the Availability Reserves established pursuant to this Section shall not exceed at any time one (1.0) times the basic monthly rent payable to such owners and lessors of such leased locations and including amounts, if any, then outstanding and unpaid owed by Borrower to such owners and lessors (such Availability Reserve being $389,685.49 as of the date hereof), provided, that, such limitation on the amount of the Availability Reserves pursuant to this Section shall only apply so long as: (aa) no Default or Event of Default shall exist or have occurred, (bb) Borrower or Agents shall not have received notice of any default or event of default under the lease with respect to such retail store location and (cc) Collateral Agent shall have received evidence, in form and substance satisfactory to Collateral Agent, that Borrower has not granted to the owner and lessor a security interest in or lien upon any assets of Borrower;(d) Inventory subject to a security interest or lien in favor of any person other than Collateral Agent except those permitted in this Agreement; (e) bill and hold goods; (f) unserviceable, obsolete or slow moving Inventory; (g) Inventory which is not subject to the first priority, valid and perfected security interest of Collateral Agent. (h) damaged and/or defective Inventory (i) returned Inventory that is not held for resale; (j) Inventory to be returned to vendors; (k) Inventory subject to deposits made by customers for sales of Inventory that has not been delivered; (1) Inventory held after the applicable expiration date thereof; (m) samples (except to the extent approved from time to time by Collateral Agent) and (n) Inventory purchased or sold on consignment. General criteria for Eligible Inventory may be established and revised from time to time by Collateral Agent in good faith based on an event, condition or other circumstance arising after the date hereof, or existing on the date hereof to the extent neither Agent has any notice thereof in writing from either Borrower or any inventory appraiser, which adversely affects or could reasonably be expected to adversely affect the Inventory in any material respect in the good faith determination of Collateral Agent. Any Inventory which is not Eligible Inventory shall nevertheless be part of the Collateral.

1.30 "Eligible Transferee" shall mean (a) any Lender; (b) any Affiliate of a Lender and (c) any other commercial bank, financial institution or "accredited investor" (as defined in Regulation D under the Securities Act of 1933) approved by Administrative Agent; provided, that, neither the Borrower nor any of its Affiliates shall qualify as an Eligible Transferee.

1.31 "Environmental Laws" shall mean all foreign, Federal, State and local laws (including common law), legislation, rules, codes, licenses, permits (including any conditions imposed therein), authorizations, judicial or administrative decisions, injunctions or agreements between Borrower and any Governmental Authority, (a) relating to pollution and the protection, preservation or restoration of the environment (including air, water vapor, surface water, ground water, drinking water, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, (b) relating to the exposure to, or the use, storage, recycling, treatment, generation, manufacture, processing, distribution, transportation, handling, labeling, production, release or disposal, or threatened release, of Hazardous Materials, or (c) relating to all laws with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials. The term "Environmental Laws" includes (i) the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Superfund Amendments and Reauthorization Act, the Federal Water Pollution Control Act of 1972, the Federal Clean Water Act, the Federal Clean Air Act, the Federal Resource Conservation and Recovery Act of 1976 (including the Hazardous and Solid Waste Amendments thereto), the Federal Solid Waste Disposal and the Federal Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Federal Safe Drinking Water Act of 1974, (ii) applicable state counterparts to such laws, and (iii) any common law or equitable doctrine that may impose liability or obligations for injuries or damages due to, or threatened as a result of, the presence of or exposure to any Hazardous Materials.

1.32 "Equipment" shall mean all of Borrower's now owned and hereafter acquired equipment and fixtures, wherever located, including machinery, data processing and computer equipment and computer hardware and software, whether owned or licensed, and including embedded software, vehicles, tools, furniture, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located.

1.33 "ERISA" shall mean the United States Employee Retirement Income Security Act of 1974, together with all rules, regulations and interpretations thereunder or related thereto.

1.34 "ERISA Affiliate" shall mean any person required to be aggregated with Borrower or any of its Subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code.

1.35 "Eurodollar Rate" shall mean with respect to the Interest Period for a Eurodollar Rate Loan, the interest rate per annum equal to the per annum rate of interest at which United States dollar deposits in an amount comparable to the amount of the relevant Eurodollar Rate Loan and for a period equal to the relevant Interest Period are offered in the London Interbank Eurodollar market at 11:00 A.M. (London time) two (2) Business Days prior to the

commencement of such Interest Period (or two (2) Business Days prior to the commencement of such Interest Period if banks in London, England were not open and dealing in offshore United States dollars on such second preceding Business Day), as displayed in the *Bloomberg Financial Markets* system (or other authoritative source selected by the Administrative Agent in its sole discretion) or, if the *Bloomberg Financial Markets* system or another authoritative source is not available, as the Eurodollar Rate is otherwise determined by the Administrative Agent in its sole and absolute discretion, such rate to remain fixed for such Interest Period. The Administrative Agent's determination of the Eurodollar Rate shall be conclusive, absent manifest error.

1.36 "Eurodollar Rate Loans" shall mean any Loans or portion thereof on which interest is payable based on the Adjusted Eurodollar Rate in accordance with the terms hereof.

1.37 "Event of Default" shall mean the occurrence or existence of any event or condition described in Section 10.1 hereof.

1.38 "Excess Availability" shall mean the amount, as determined by Collateral Agent, calculated at any time, equal to: (a) the lesser of (i) the amount of the Loans available to Borrower as of such time based on the applicable percentage set forth in Section 2.1(a) hereof multiplied by the Value of Eligible Inventory, as determined by Collateral Agent, and subject to the sublimits and Availability Reserves from time to time established by Collateral Agent hereunder and (ii) the Maximum Credit, minus (b) the sum of: (i) the amount of all then outstanding and unpaid principal amount of the Loans, plus (ii) at the option of either Agent, the aggregate amount of all trade payables of Borrower which are more than sixty (60) days past due as of such time (and for which checks included in clause (iii) below have not been issued) plus (iii) the amount of checks issued by Borrower to pay trade payables, but not yet sent and the book overdraft of Borrower.

1.39 "Federal Funds Rate" means, for any day, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent. The Administrative Agent's determination of such rate shall be binding and conclusive absent manifest error.

1.40 "Fee Letter" shall mean the letter agreement, dated on or about the date hereof, by and between Borrower and Administrative Agent, as the same exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.41 "Financing Agreements" shall mean, collectively, this Agreement and all notes, guarantees, security agreements and other agreements, documents and instruments at any time executed and/or delivered by Borrower or any Obligor in connection with the 1997 Loan Agreement, the 2001 Loan Agreement, the 2005 Loan Agreement or this Agreement (to the

extent not superseded or replaced by any other Financing Agreement), as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.42 "GAAP" shall mean generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board which are applicable to the circumstances as of the date of determination consistently applied, except that, for purposes of Section 9.14 hereof, GAAP shall be determined on the basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements delivered to Administrative Agent prior to the date hereof.

1.43 "Governmental Authority" shall mean any nation or government, any state, province, or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

1.44 "Hazardous Materials" shall mean any hazardous, toxic or dangerous substances, materials and wastes, including hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Law (including any that are or become classified as hazardous or toxic under any Environmental Law).

1.45 "Hedging Agreements" shall mean any and all transactions, agreements or documents, now existing or hereafter entered into with a Lender or an Affiliate of a Lender subject to Section 9.9(g) hereof and on terms and conditions reasonably satisfactory (in light of standard ISDA documentation practices) to Administrative Agent and Borrower, which (a) provides for an interest rate swap, cap, floor or collar or similar transaction for the purpose of hedging Borrower's exposure to fluctuations in interest rates in respect of the Obligations, (b) are not entered into for speculative purposes, (c) are with a financial institution having combined capital and surplus and undivided profits of not less than $250,000,000, (d) are unsecured except to the extent any indebtedness of Borrower thereunder constitutes Obligations secured hereby or to the extent secured by pledges or deposits permitted under Section 9.8(i) hereof and (e) and for which the counterparty to the Hedging Agreement and the Borrower have executed a Swap Acknowledgement Agreement.

1.46 "Hedging Balance" shall mean with respect to any Hedging Agreements as of any date of determination, an amount equal to (a) the aggregate amount owing by the counterparties under the Hedging Agreements to the Borrower less (b) the aggregate amount owing by the Borrower to such counterparties under such Hedging Agreements plus (c) the aggregate amount, if any, of all cash, Cash Equivalents and investment securities pledged or

deposited to secure the obligations of Borrower under such Hedging Agreements pursuant to Section 9.8(i) hereof.

1.47 "Information Certificate" shall mean the Information Certificate of Borrower constituting Exhibit B hereto containing material information with respect to Borrower, its business and assets provided by or on behalf of Borrower to Administrative Agent in connection with the preparation of this Agreement and the other Financing Agreements and the financing arrangements provided for herein.

1.48 "Intellectual Property" shall mean Borrower's now owned and hereafter arising or acquired: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright registrations, trademarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or the license of any trademark); customer and other lists in whatever form maintained; and trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registrations; software and contract rights relating to software, in whatever form created or maintained.

1.49 "Interest Period" shall mean for any Eurodollar Rate Loan, a period of approximately one (1), two (2), three (3) or six (6) months duration as Borrower may elect, the exact duration to be determined in accordance with the customary practice in the applicable Eurodollar Rate market; provided, that, Borrower may not elect an Interest Period which will end after the Termination Date.

1.50 "Interest Rate" shall mean, as to Prime Rate Loans, a rate equal to the Prime Rate and, as to Eurodollar Rate Loans, (x) in the event that the outstanding Loans are equal to or less than $100,000,000, a rate of one percent (1.00%) per annum in excess of the Adjusted Eurodollar Rate and (y) in the event that the outstanding Loans are greater than $100,000,000, for the portion of the Loans that are equal to $100,000,000, the rate referenced in clause (x) above, and for the portion of the Loans that exceed $100,000,000, a rate of one and one-quarter percent (1.25%) per annum in excess of the Adjusted Eurodollar Rate (in each case based on the Eurodollar Rate applicable for the Interest Period selected by Borrower as in effect three (3) Business Days after the date of receipt by Administrative Agent of the request of Borrower for such Eurodollar Rate Loans in accordance with the terms hereof, whether such rate is higher or lower than any rate previously quoted to Borrower); provided, that, notwithstanding anything to the contrary contained herein, the Interest Rate shall mean the rate of two (2%) percent per annum in excess of the rates otherwise provided in this definition (i) without notice, at any time an Event of Default exists pursuant to any of Sections 10.1(f), 10.1(g) and/or 10.1(h) and/or (ii) upon the written request of Required Lenders, and otherwise without notice, for the period from and after the date of the occurrence of any Event of Default, other than an Event of Default described in the immediately preceding clause (i), and for so long as such Event of Default is continuing as reasonably determined by Administrative Agent.

1.51 “Inventory” shall mean all of Borrower’s now owned and hereafter existing or acquired goods, wherever located, which (a) are leased by Borrower as lessor; (b) are held by Borrower for sale or lease or to be furnished under a contract of service; (c) are furnished by Borrower under a contract of service; or (d) consist of raw materials, work in process, finished goods or materials used or consumed in its business.

1.52 “Investment Property Control Agreement” shall mean an agreement in writing, in form and substance satisfactory to Collateral Agent, by and among Collateral Agent, Borrower and any securities intermediary, commodity intermediary or other person who has custody, control or possession of any investment property of Borrower acknowledging that such securities intermediary, commodity intermediary or other person has custody, control or possession of such investment property on behalf of Collateral Agent, that it will comply with entitlement orders originated by Collateral Agent with respect to such investment property, or other instructions of Collateral Agent, or (as the case may be) apply any value distributed on account of any commodity contract as directed by Collateral Agent, in each case, without the further consent of Borrower and including such other terms and conditions as Collateral Agent may require.

1.53 “Landlord Agreement” shall mean an agreement in writing from the owner and lessor of premises leased by Borrower (a) executed and delivered prior to the date hereof with respect to a location listed on Exhibit G hereto (each, an “Existing Landlord Agreement” and collectively, the “Existing Landlord Agreements”), (b) if executed and delivered following the Closing Date, (i) substantially in the form attached as Exhibit H hereto, or as otherwise approved as satisfactory by Collateral Agent or (ii) in the form of an Existing Landlord Agreement provided that the lessor executing such Landlord Agreement is the same entity (or successor or assign) that executed such Existing Landlord Agreement and the property subject to such Landlord Agreement is of reasonably similar size to, or smaller than, the premises which is the subject of such Existing Landlord Agreement, or (c) otherwise in form and substance reasonably satisfactory to Collateral Agent (it being understood and agreed that if Borrower does not receive from the Collateral Agent a written response listing objections to the proposed form of landlord waiver within thirty (30) days of the delivery by the Borrower of a proposed form of a landlord agreement to the Collateral Agent, Borrower shall be deemed to have satisfied all of the requirements of delivering a Landlord Agreement, set forth in the definition of the term “Eligible Inventory” herein, and the Collateral Agent shall have been deemed to have received a Landlord Agreement for all purposes of that definition, when Borrower delivers such a proposed form of the landlord agreement duly authorized, executed and delivered by the owner and lessor of leased premises, whether or not Collateral Agent executes and delivers the same).

1.54 “LC Application” shall mean, with respect to any request for the issuance of a Letter of Credit Accommodation, a letter of credit application in the form being used by the LC Issuer at the time of such request for the type of letter of credit being requested.

1.55 “LC Issuer” shall mean LaSalle, in its capacity as the issuer of Letter of Credit Accommodations under the 2005 Loan Agreement or hereunder or any Affiliate of LaSalle that may from time to time issue Letter of Credit Accommodations, and their successors and assigns in such capacity.

1.56 "Lenders" shall mean the financial institutions who are signatories hereto as Lenders and other persons made a party to this Agreement as a Lender in accordance with Section 13.6 hereof, and their respective successors and assigns; each sometimes being referred to herein individually as a "Lender".

1.57 "Letter of Credit Accommodations" shall mean, collectively, the letters of credit, merchandise purchase or other guaranties which are from time to time either (a) issued or opened by Administrative Agent, any Lender or any Affiliate of Lender for the account of Borrower or any Obligor or (b) with respect to which Administrative Agent, any Lender or any Affiliate of Lender has agreed to indemnify the LC Issuer or guaranteed to the LC Issuer the performance by Borrower of its obligations to such LC Issuer, in each case in accordance with the terms of this Agreement: sometimes being referred to herein individually as a "Letter of Credit Accommodation".

1.58 "Loans" shall mean the Revolving Loans and the Swing Line Loans.

1.59 "Material Adverse Effect" shall mean a material adverse effect on (a) the condition (financial or otherwise), business, performance, operations or properties of Borrower, (b) the legality, validity or enforceability of this Agreement or any of the other Financing Agreements; (c) the legality, validity, enforceability, perfection or priority of the security interest or liens of Collateral Agent on a material portion of the Collateral or any other material property which is security for the Obligations; (d) a material portion of the Collateral or any other material property which is security for the Obligations, or the value of a material portion of the Collateral or such other material property, or (e) the ability of Borrower to repay the Obligations or of Borrower or any Obligor to perform its obligations under this Agreement or any of the other Financing Agreements.

1.60 "Margin Stock" shall mean any "margin stock" as defined in Regulation U of the Board of Governors of the Federal Reserve System.

1.61 "Master Letter of Credit Agreement" shall mean that certain Master Letter of Credit Agreement, dated as of the date hereof, between Borrower and LaSalle, as the same may be amended, supplemented or otherwise modified from time to time.

1.62 "Maximum Credit" shall mean, as of any date of determination, the aggregate amount of the Commitments of all Lenders on such date of determination.

1.63 "Net Income" shall mean, with respect to any Person, for any period, the aggregate of the net income (loss) of such Person and its Subsidiaries, on a consolidated basis, for such period (excluding to the extent included therein any extraordinary gains) after deducting all charges which should be deducted before arriving at the net income (loss) for such period and after deducting the Provision for Taxes for such period, all as determined in accordance with GAAP, provided, that, (a) the net income of any Person that is not a wholly-owned Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid or payable to Borrower or a wholly-owned Subsidiary of such person; (b) the effect of any change in accounting principles adopted by such Person or its subsidiaries after the date hereof shall be excluded; and (c) the net income (if

positive) of any wholly-owned Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such wholly-owned Subsidiary to Borrower or to any other wholly-owned Subsidiary of Borrower is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule of government regulation applicable to such wholly-owned Subsidiary shall be excluded. For the purpose of this definition, net income excludes any gain (but not loss), together with any related Provision of Taxes for such gain (but not loss) realized upon the sale or other disposition of any assets that are not sold in the ordinary course of business (including, without limitation, dispositions pursuant to sale and leaseback transactions), or of any Capital Stock of such Person or a Subsidiary of such Person and any net income realized as a result of changes in accounting principles or the application thereof to such Person.

1.64 "Net Recovery Cost Percentage" shall mean the fraction, expressed as a percentage, (a) the numerator of which is the amount equal to the recovery on the aggregate amount of the Inventory at such time on a "going out of business sale" basis as set forth in the most recent acceptable appraisal of Inventory received by Collateral Agent in accordance with Section 7.3, net of operating expenses, liquidation expenses and commissions, and (b) the denominator of which is the original Cost of the aggregate amount of the Inventory subject to such appraisal.

1.65 "Obligations" shall mean (a) any and all Loans, Letter of Credit Accommodations and all other obligations, liabilities and indebtedness of every kind, nature and description (except those described in clause (b) of this definition) owing by Borrower to any Agent or any Lender and/or their Affiliates, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether arising under this Agreement or otherwise, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the commencement of any case with respect to Borrower under the United States Bankruptcy Code or any similar statute (including the payment of interest and other amounts which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and however acquired by any Agent or any Lender and (b) for purposes only of Section 5.1 hereof and subject to priority and right of payment under Section 6.4(a) hereof, any and all obligations, liabilities and indebtedness of any kind, nature and description owing by Borrower arising under or in connection with Hedging Agreements; provided, that, (i) in no event shall the amount of such obligations, liabilities and indebtedness secured by the Collateral pursuant hereto or any of the other Financing Agreements at any time exceed the amount of the Hedging Balance (to the extent below $0) with respect thereto as in effect at such time and (ii) Administrative Agent or Collateral Agent shall have entered into an agreement substantially in the form of Exhibit C hereto with the counterparty to such Hedging Agreement, as acknowledged and agreed to by Borrower (the "Swap Acknowledgment Agreement").

1.66 "Obligor" shall mean any guarantor, endorser, acceptor, surety or other person liable on or with respect to the Obligations or who is the owner of any property which is security for the Obligations, other than Borrower.

1.67 “OFAC” shall mean the Office of Foreign Assets Control.

1.68 “Other Hedging Agreements” shall mean any and all transactions, agreements or documents now existing or hereafter entered into with a Person other than a Lender or an Affiliate of a Lender subject to Section 9.9(g)(B) hereof which (a) provides for an interest rate swap, cap, floor or collar or similar transaction for the purpose of hedging Borrower’s exposure to fluctuations in interest rates in respect of the Obligations, (b) are not entered into for speculative purposes, (c) are with a financial institution having combined capital and surplus and undivided profits of not less than $250,000,000, and (d) are unsecured.

1.69 “Participant” shall mean any financial institution that acquires and holds a participation in the interest of any Lender in any of the Loans and Letter of Credit Accommodations in conformity with the provision of Section 13.6 of this Agreement governing participations and its successors and assigns.

1.70 “Payment Account” shall have the meaning set forth in Section 6.3 hereof.

1.71 “Permits” shall have the meaning set forth in Section 8.7 hereto.

1.72 “Permitted Holders” shall mean the persons listed on Exhibit C to the Information Certificate, and their respective successors and assigns and any Strategic Purchaser.

1.73 “Person” or “person” shall mean any individual, sole proprietorship, partnership, corporation (including any corporation which elects subchapter S status under the Code), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

1.74 “Prime Rate” shall mean, for any day, the greater of (i) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its prime rate (whether or not such rate is actually charged by the Administrative Agent), which is not intended to be the Administrative Agent’s lowest or most favorable rate of interest at any one time and (ii) the Federal Funds Rate plus one-half of one percent (0.50%) per annum. Any change in the Prime Rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the public announcement of such change; provided that the Administrative Agent shall not be obligated to give notice of any change in the Prime Rate.

1.75 “Prime Rate Loans” shall mean any Loans or portion thereof on which interest is payable based on the Prime Rate in accordance with the terms thereof.

1.76 “Pro Rata Share” shall mean with respect to all matters relating to any Lender, (a) with respect to all Loans and Letter of Credit Accommodations prior to the date on which the Commitments have been terminated, the percentage obtained by dividing (i) the Commitments of that Lender (after settlement and repayment of all Swing Line Loans by the Lenders) by (ii) the Commitments of all Lenders, and (b) with respect to all Loans and Letter of Credit Accommodations on and after the date on which the Commitments have been terminated, the percentage obtained by dividing (i) the aggregate outstanding principal balance of the Loans and Letter of Credit Accommodations held by that Lender (after settlement and repayment of all

Swing Line Loans by the Lenders), by (ii) the outstanding principal balance of the Loans and Letter of Credit Accommodations held by all Lenders.

1.77 "Provision for Taxes" shall mean, with respect to a fiscal year of any Person and its Subsidiaries, an amount equal to all taxes imposed on or measured by net income, whether Federal, State or local, and whether foreign or domestic, that are paid or payable by such Person and its Subsidiaries in respect of such fiscal year on a consolidated basis in accordance with GAAP.

1.78 "Qualified Public Offering" shall mean (i) any initial bona fide, firm underwritten offering by Borrower of shares of its Capital Stock consisting of common stock to the public pursuant to an effective registration statement under the Securities Act, as then in effect, or any comparable statement under any similar federal statute then in force; (ii) an acquisition of shares of the Borrower in one or a series of related transactions by a Strategic Purchaser, in each case, as long as the aggregate cash proceeds received by the Borrower for the shares sold in such offering or acquisition, as the case may, is at least $15,000,000; or (iii) any subsequent public offering by Borrower of its Capital Stock.

1.79 "Receivables" shall mean all of the following now owned or hereafter arising or acquired property of Borrower: (a) all Accounts; (b) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Account; (c) all payment intangibles of Borrower and other contract rights, chattel paper, instruments, notes, and other forms of obligations owing to Borrower, whether from the sale and lease of goods or other property, licensing of any property (including Intellectual Property or other general intangibles), rendition of services or from loans or advances by Borrower or to or for the benefit of any third person (including loans or advances to any Affiliates or Subsidiaries of Borrower) or otherwise associated with any Accounts, Inventory or general intangibles of Borrower (including, without limitation, choses in action, causes of action, tax refunds, tax refund claims, any funds which may become payable to Borrower in connection with the termination of any employee benefit plan and any other amounts payable to Borrower from any employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which Borrower is a beneficiary).

1.80 "Records" shall mean all of Borrower's present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of Borrower with respect to the foregoing maintained with or by any other person).

1.81 "Refunded Swing Line Loan" shall have the meaning set forth in Section 2.5(c) hereof.

1.82 "Register" shall have the meaning set forth in Section 13.6(b) hereof.

1.83 “Required Lenders” shall mean Lenders having (i) more than 50% of the Commitments of all Lenders or (ii) if the Commitments have been terminated, more than 50% of the aggregate outstanding amount of all Loans and Letter of Credit Accommodations; provided, however, that in the event that there are three (3) or fewer Lenders party hereto, Required Lenders must consist of at least two (2) Lenders.

1.84 “Revolving Loans” shall mean the loans now or hereafter made by or on behalf of any Lender or by Administrative Agent to or for the benefit of Borrower on a revolving basis (involving advances, repayments and readvances) pursuant to Section 2.1 hereof.

1.85 “Sanctioned Country” means a country subject to a sanctions program identified on the list maintained by OFAC and available at http://www.treas.gov/offices/eotffc/ofac/ sanctions/index.html, or as otherwise published from time to time.

1.86 “Sanctioned Person” means (a) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at http://www.treas.gov/offices/ eotffc/ofac/sdn/index.html, or as otherwise published from time to time, or (b) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country, or (iii) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

1.87 “Seasonal Advance Period” shall mean the period from and including September 1 of each year to and including January 31 of the immediately following year.

1.88 “Securities Act” shall mean the Securities Act of 1933, as the same now exists or may hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

1.89 “Securities Exchange Act” shall mean the Securities Exchange Act of 1934, as the same now exists or may hereafter from time to time be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

1.90 “Special Agent Advances” shall have the meaning set forth in Section 12.11.

1.91 “Standard Advance Period” shall mean the period from and including February 1 of each year to and including August 31 of such year.

1.92 “Stated Amount” shall mean (i) in the case of termination of the Agreement, the Maximum Credit on such date of determination and (ii) in the case of a Commitment reduction pursuant to Section 2.4(b), the amount of such Commitment reduction.

1.93 “Store Bank Accounts” shall have the meaning set forth in Section 6.3(a) hereof.

1.94 "Strategic Purchaser" shall mean a Person (i) which has its shares listed on the American Stock Exchange or the New York Stock Exchange or quoted on the NASDAQ Global Select Markets, (ii) which has a short term unsecured debt ratings currently assigned to them of A-1 or better by Standard and Poor's Ratings Services, a division of The McGraw Hill Companies, Inc. or P-1 by Moody's Investors Service, Inc. (or in the absence thereof, the equivalent long term unsecured senior debt ratings) and (iii) which either (A) owns, operates or manages a business similar to the Existing Business or (B) owns, operates or manages a retail business, or is a supplier to the Existing Business, and has made its investment in the share of the Borrower as a part of the strategy to enter the Existing Business through the Borrower or develop or strategically integrate the Existing Business in conjunction with its own existing business. As used herein, "Existing Business" shall mean the business of providing hairdressing, beauty salon and other spa services and selling perfume, fragrances, cosmetics, salon products, beauty aids and related goods and services at retail (including sales of such goods over the World Wide Web/Internet), or any combination of any of the foregoing.

1.95 "Subsidiary" or "subsidiary" shall mean, with respect to any Person, any corporation, limited liability company, limited liability partnership or other limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Capital Stock or other interests entitled to vote in the election of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency), managers, trustees or other controlling persons, or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more subsidiaries of such Person.

1.96 "Swap Acknowledgment Agreement" shall have the meaning set forth in the definition of "Obligations".

1.97 "Swing Line Availability" shall mean, as of any date of determination, the lesser of (a) the Swing Line Commitment Amount on such date and (b) Excess Availability on such date.

1.98 "Swing Line Commitment Amount" means $10,000,000, or if less, the Maximum Credit on such date, which commitment constitutes a subfacility of the Commitment of the Swing Line Lender.

1.99 "Swing Line Lender" shall mean LaSalle.

1.100 "Swing Line Loan" shall have the meaning set forth in Section 2.5(a) hereof.

1.101 "Termination Date" shall the meaning set forth in Section 13.1 hereof.

1.102 "UCC" shall mean the Uniform Commercial Code as in effect in the State of Illinois, and any successor statute, as in effect from time to time (except that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of Illinois on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as Administrative Agent may otherwise determine).

1.103 "Value" shall mean, as determined by Collateral Agent in good faith, with respect to Inventory, the lower of (a) Cost or (b) market value.

1.104 "Voting Stock" shall mean with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

SECTION 2. CREDIT FACILITIES

2.1. Revolving Loans.

(a) Subject to and upon the terms and conditions contained herein, each Lender severally (and not jointly) agrees to fund its Pro Rata Share of Revolving Loans to Borrower from time to time in amounts requested by Borrower up to the amount equal to (i) during the Standard Advance Period, the lesser of (A) eighty percent (80%) of the Value of Eligible Inventory and (B) ninety percent (90%) of the Net Recovery Cost Percentage multiplied by the Cost of Eligible Inventory or (ii) during the Seasonal Advance Period, the lesser of (A) eighty-five percent (85%) of the Value of Eligible Inventory and (B) ninety percent (90%) of the Net Recovery Cost Percentage multiplied by the Cost of Eligible Inventory less, in each case in clauses (i) and (ii) above, the amount of any Availability Reserves.

(b) Collateral Agent may from time to time, and in each case upon not less than ten (10) days prior notice to Borrower, subject to the prior written approval of Administrative Agent, reduce the lending formula with respect to Eligible Inventory to the extent that Collateral Agent determines that: (i) the number of days of the turnover of the Inventory for any period has changed in any material respect or (ii) the nature, quality or mix of the Inventory has deteriorated in any material respect. In determining whether to reduce the lending formula(s), Collateral Agent may consider events, conditions, contingencies or risks which are also considered in determining Eligible Inventory or in establishing Availability Reserves. To the extent Collateral Agent shall have established an Availability Reserve which is sufficient to address any event, condition or matter in a manner satisfactory to Collateral Agent in good faith, Collateral Agent shall not exercise its rights under this Section 2.1(b) to reduce the lending formulas, to address such event, condition or matter. The amount of any reduction in the lending formula by Collateral Agent pursuant to this Section 2.1(b) shall have a reasonable relationship to the matter which is the basis for such a reduction.

(c) Except in Administrative Agent's discretion, with the consent of all Lenders, the aggregate amount of the Loans and the Letter of Credit Accommodations outstanding at any time shall not exceed the Maximum Credit. In the event that the outstanding amount of any component of the Loans, or the aggregate amount of the outstanding Loans and Letter of Credit Accommodations, exceed the amounts available under the lending formulas, the sublimits for Letter of Credit Accommodations set forth in Section 2.2(d) or the Maximum Credit, as applicable, such event shall not limit, waive or otherwise affect any rights of Agents or

Lenders in that circumstance or on any future occasions and Borrower shall, upon demand by Administrative Agent, which may be made at any time or from time to time, immediately repay to Administrative Agent the entire amount of any such excess(es) for which payment is demanded.

(d) Borrower may, at its option any time before the Termination Date, seek to increase the Maximum Credit by up to an aggregate amount not exceeding $50,000,000 (resulting in a Maximum Credit of up to $200,000,000) upon written notice to Administrative Agent (which shall promptly distribute such notice to each Lender), which notice shall specify the amount of any such incremental increase (which shall not be less than $10,000,000) sought by the Borrower and shall be delivered at a time when no Default or Event of Default has occurred and is continuing. Each Lender shall have the right, but no obligation, to accept to commit to up to a ratable portion of the incremental increase in the Maximum Credit, provided that no later than fourteen (14) days after receipt of such notice, each Lender shall advise Administrative Agent and Borrower whether such Lender intends to participate in the incremental increase in the Maximum Credit and the amount of such Lender's commitment (the "First Offer Requirement"). Any Lender that has not responded within such period shall be deemed to have declined to participate in the requested incremental increase in the Maximum Credit. After satisfying the First Offer Requirement and if the Lenders do not consent to commit to the full amount of the requested incremental increase in the Maximum Credit, Administrative Agent, subject to the consent of Borrower (which shall not be unreasonably withheld), shall allocate within seven (7) days of the satisfaction of the First Offer Requirement the uncommitted portion of the requested incremental increase in the Maximum Credit (which may be declined by any Lender in its sole discretion) on a non pro-rata basis to one or more Lenders which have not declined participation therein and shall provide a written offer to one or more such Lenders to participate up to such allocated amount. Each Lender who has received such offer shall have the right, but no obligation, to accept to commit to up to the offered non-ratable portion of the requested incremental increase in the Maximum Credit, provided that no later than seven (7) days after receipt of such notice, each such Lender shall advise Administrative Agent and Borrower whether such Lender intends to so participate and the amount of its commitment (the "Second Offer Requirement"). Any Lender that has not responded within such period shall be deemed to have declined to participate in the offered allocated amount of the requested incremental increase in the Maximum Credit pursuant to the Second Offer Requirement. After satisfying the Second Offer Requirement and if the Lenders do not consent to commit to the full amount of the requested increase in the Maximum Credit, Administrative Agent, subject to the consent of Borrower (which shall not be unreasonably withheld), shall allocate within seven (7) days of the satisfaction of the Second Offer Requirement the uncommitted portion of the incremental increase Maximum Credit and shall provide a written offer to any other banks or entities reasonably acceptable to Administrative Agent and Borrower which have expressed a desire to accept the increase in the Maximum Credit and thereby become a Lender hereunder to participate up to such allocated amount, provided that no later than seven (7) days after receipt of such notice, each such bank or entity shall advise the Administrative Agent and the Borrower whether it intends to so participate in the increase in the Maximum Credit and the amount of its commitment. Any bank or entity that has not responded within such period shall be deemed to have declined to participate in the requested incremental increase in the Maximum Credit. If Maximum Credit is increased in accordance with this Section 2.1(d), Administrative Agent and Borrower shall determine the effective date and the final allocation of such increase, and

Administrative Agent shall promptly notify each of the Lenders and any other banks or entities of such increase, the allocations of such increase and the effective date thereof. No increase in the Maximum Credit shall become effective until each of the existing or new Lenders extending such incremental Commitment and Borrower shall have delivered to Administrative Agent a document in form and substance reasonably satisfactory to Administrative Agent (the approval of which shall not be unreasonably withheld or delayed) pursuant to which any such existing Lender states the amount of its Commitment increase, any such new Lender states its Commitment amount and agrees to assume and accept the obligations and rights of a Lender hereunder, and Borrower accepts such new Commitments. After giving effect to such increase in the Maximum Credit, all Loans and all such other credit exposure shall be held ratably by the Lenders in proportion to their respective Commitments, as revised to reflect the increase in the Maximum Credit. Upon any increase in the Maximum Credit pursuant to this Section 2.1(d), Borrower shall pay Administrative Agent, for the ratable benefit of only the Lenders (including any new Lender) whose Revolving Commitments are increased, an upfront fee in an amount mutually agreed to among Borrower and the Lenders whose Commitments are increased. Administrative Agent shall use its commercially reasonable efforts to arrange any requested increase in the Maximum Credit sought by Borrower pursuant to this Section 2.1(d), but shall have no obligation to consummate any such increase. Borrower hereby agrees to cooperate with Administrative Agent in such efforts.

2.2. Letter of Credit Accommodations.

(a) Borrower shall execute and deliver to the LC Issuer the Master Letter of Credit Agreement. Borrower shall give notice to Administrative Agent and the LC Issuer of the proposed issuance of each Letter of Credit Accommodation on a Business Day which is at least three (3) Business Days (or such lesser number of days as Administrative Agent and the LC Issuer shall agree in any particular instance in their sole discretion) prior to the proposed date of issuance of such Letter of Credit Accommodation Each such notice shall be accompanied by an LC Application, duly executed by Borrower and in all respects satisfactory to Administrative Agent and the LC Issuer, together with such other documentation as Administrative Agent or the LC Issuer may request in support thereof, it being understood that each LC Application shall specify, among other things, the date on which the proposed Letter of Credit Accommodation is to be issued, the expiration date of such Letter of Credit Accommodation (which shall not be later than the Termination Date (unless such Letter of Credit Accommodation is cash collateralized pursuant to Section 10.2(b)) and whether such Letter of Credit Accommodation is to be transferable in whole or in part. Any Letter of Credit Accommodation outstanding after the Termination Date which is cash collateralized for the benefit of the LC Issuer shall be the sole responsibility of the LC Issuer. So long as the LC Issuer has not received written notice that the conditions precedent set forth in Section 4 with respect to the issuance of such Letter of Credit Accommodation have not been satisfied, the LC Issuer shall issue such Letter of Credit Accommodation and of any amendment thereto, extension thereof or event or circumstance changing the amount available for drawing thereunder. In the event of any inconsistency between the terms of the Master Letter of Credit Agreement, any application for a Letter of Credit Accommodation and the terms of this Agreement, the terms of this Agreement shall control.

(b) The LC Issuer hereby agrees, upon request of Administrative Agent or any Lender, to deliver to Administrative Agent or such Lender a list of all outstanding Letter of Credit Accommodations issued by the LC Issuer, together with such information related thereto as Administrative Agent or such Lender may reasonably request.

(c) The LC Issuer shall notify Borrower and Administrative Agent whenever any demand for payment is made under any Letter of Credit Accommodation by the beneficiary thereunder; provided that the failure of the LC Issuer to so notify Borrower or Administrative Agent shall not affect the rights of the LC Issuer or the Lenders in any manner whatsoever. Borrower hereby unconditionally and irrevocably agrees to reimburse the LC Issuer for each payment or disbursement made by the LC Issuer under any Letter of Credit Accommodation honoring any demand for payment made by the beneficiary thereunder, in each case on the date that such payment or disbursement is made. If Borrower does not pay any reimbursement obligation when due, Borrower shall be deemed to have immediately requested that the Lenders make a Revolving Loan which is a Prime Rate Loan in a principal amount equal to such reimbursement obligations (such Revolving Loan shall be referred to herein as an "LC Reimbursement Loan"). Administrative Agent shall promptly notify such Lenders of such deemed request and, without the necessity of compliance with the requirements of Section 4, Section 6.5 or otherwise such Lender shall make available to Administrative Agent its Pro Rata Share of such Loan. The proceeds of such Loan shall be paid over by Administrative Agent to the LC Issuer for the account of Borrower in satisfaction of such reimbursement obligations.

(d) Borrower's reimbursement obligations hereunder shall be irrevocable and unconditional under all circumstances, including (i) any lack of validity or enforceability of any Letter of Credit Accommodation, this Agreement or any other Financing Agreement, (ii) the existence of any claim, set-off, defense or other right which Borrower may have at any time against a beneficiary named in a Letter of Credit Accommodation, any transferee of any Letter of Credit Accommodation (or any Person for whom any such transferee may be acting), Administrative Agent, the LC Issuer, any Lender or any other Person, whether in connection with any Letter of Credit Accommodation, this Agreement, any other Financing Agreement, the transactions contemplated herein or any unrelated transactions (including any underlying transaction between Borrower and the beneficiary named in any Letter of Credit Accommodation), (iii) the validity, sufficiency or genuineness of any document which the LC Issuer has determined complies on its face with the terms of the applicable Letter of Credit Accommodation, even if such document should later prove to have been forged, fraudulent, invalid or insufficient in any respect or any statement therein shall have been untrue or inaccurate in any respect, or (iv) the surrender or impairment of any security for the performance or observance of any of the terms hereof. Without limiting the foregoing, no action or omission whatsoever by Administrative Agent or any Lender (excluding any Lender in its capacity as the LC Issuer) under or in connection with any Letter of Credit Accommodation or any related matters shall result in any liability of the Administrative Agent or any Lender to Borrower, or relieve Borrower of any of its obligations hereunder to any such Person.

(e) Concurrently with the issuance of each Letter of Credit Accommodation, the LC Issuer shall be deemed to have sold and transferred to each Lender with a Commitment, and each such Lender shall be deemed irrevocably and unconditionally to have purchased and received from the Issuing Lender, without recourse or warranty, an undivided interest and

participation, to the extent of such Lender's Pro Rata Share, in such Letter of Credit Accommodation and Borrower's reimbursement obligations with respect thereto. If the LC Issuer makes any payment or disbursement under any Letter of Credit Accommodation and (a) (x) Borrower has not reimbursed the LC Issuer in full for such payment or disbursement by 11:00 A.M., Chicago time, on the date of such payment or disbursement and (y) an LC Reimbursement Loan may not be made in accordance with Section 2.1 or (b) any reimbursement received by the LC Issuer from Borrower is or must be returned or rescinded upon or during any bankruptcy or reorganization of Borrower or otherwise, each other Lender shall be obligated to pay to Administrative Agent for the account of the LC Issuer, in full or partial payment of the purchase price of its participation in such Letter of Credit Accommodation, its Pro Rata Share of such payment or disbursement (but no such payment shall diminish the obligations of Borrower under Section 2.2 (c) and (d)), and, upon notice from the LC Issuer, Administrative Agent shall promptly notify each other Lender thereof. Each other Lender irrevocably and unconditionally agrees to so pay to Administrative Agent in immediately available funds for the LC Issuer's account the amount of such other Lender's Pro Rata Share of such payment or disbursement. If and to the extent any Lender shall not have made such amount available to Administrative Agent by 2:00 P.M., Chicago time, on the Business Day on which such Lender receives notice from Administrative Agent of such payment or disbursement (it being understood that any such notice received after 12:00 noon, Chicago time, on any Business Day shall be deemed to have been received on the next following Business Day), such Lender agrees to pay interest on such amount to Administrative Agent for the LC Issuer's account forthwith on demand, for each day from the date such amount was to have been delivered to Administrative Agent to the date such amount is paid, at a rate per annum equal to (a) for the first three days after demand, the Federal Funds Rate from time to time in effect and (b) thereafter, the Prime Rate from time to time in effect. Any Lender's failure to make available to Administrative Agent its Pro Rata Share of any such payment or disbursement shall not relieve any other Lender of its obligation hereunder to make available to Administrative Agent such other Lender's Pro Rata Share of such payment, but no Lender shall be responsible for the failure of any other Lender to make available to Administrative Agent such other Lender's Pro Rata Share of any such payment or disbursement.

(f) Except as otherwise provided in Sections 2.5 and 2.2(e), no Lender shall have an obligation to make any Loan, or to permit the continuation of or any conversion into any Eurodollar Rate Loan, and the LC Issuer shall not have any obligation to issue any Letter of Credit Accommodation, if a Default or Event of Default exists.

(g) In addition to any charges, fees or expenses charged by any bank or LC Issuer in connection with the Letter of Credit Accommodations, Borrower shall pay to Administrative Agent, for the benefit of Lenders, a letter of credit fee at a rate equal to 1.125% per annum on the daily outstanding balance of the Letter of Credit Accommodations for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month, except that Borrower shall pay to Administrative Agent for the ratable benefit of Lenders, such letter of credit fee, at Administrative Agent's option, without notice, at a rate equal to two percent (2%) per annum in excess of the rate otherwise provided in this Section 2.2(h) on such daily outstanding balance (i) without notice, at any time an Event of Default pursuant to any of Sections 10.1(f), 10.1(g) and/or 10.1(h) and/or (ii) upon the written request of Required Lenders, and otherwise without notice, for the period from and after the date of the occurrence of any Event of Default, other than an Event of Default described in the immediately

preceding clause (i), and for so long as such Event of Default is continuing as determined by Administrative Agent. Such letter of credit fee shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed and the obligation of Borrower to pay such fee shall survive the termination of this Agreement.

(h) No Letter of Credit Accommodations shall be available unless on the date of the proposed issuance of any Letter of Credit Accommodations, the Loans available to Borrower (subject to the Maximum Credit and any Availability Reserves) are equal to or greater than: (i) if the proposed Letter of Credit Accommodation is for the purpose of purchasing Eligible Inventory, the sum of (A) the percentage equal to one hundred (100%) percent minus the then applicable percentage set forth in Section 2.1(a) above multiplied by the Value of such Eligible Inventory, plus (B) freight, taxes, duty and other amounts which Collateral Agent estimates must be paid in connection with such Inventory upon arrival and for delivery to one of Borrower's locations for Eligible Inventory and (ii) if the proposed Letter of Credit Accommodation is for any other purpose, an amount equal to one hundred (100%) percent of the face amount thereof and all other commitments and obligations made or incurred by Administrative Agent with respect thereto. Effective on the issuance of each Letter of Credit Accommodation, a Reserve shall be established in the applicable amount set forth in Section 2.2(i)(i) or Section 2.2(i)(ii).

(i) Except in Administrative Agent's discretion, with the consent of all Lenders, the amount of all outstanding Letter of Credit Accommodations and all other commitments and obligations made or incurred by either Agent or any Lender in connection therewith shall not at any time exceed $10,000,000. At any time an Event of Default exists or has occurred and is continuing, upon Administrative Agent's request, Borrower will either furnish cash collateral to secure the reimbursement obligations to the LC Issuer in connection with any Letter of Credit Accommodations or furnish cash collateral to Administrative Agent for the Letter of Credit Accommodations, and in either case, the Loans otherwise available to Borrower shall not be reduced as provided in Section to 2.2(i) the extent of such cash collateral.

(j) Borrower shall indemnify and hold Agents and Lenders harmless from and against any and all losses, claims, damages, liabilities, costs and expenses which either Agent or any Lender may suffer or incur in connection with any Letter of Credit Accommodations and any documents, drafts or acceptances relating thereto, including any losses, claims, damages, liabilities, costs and expenses due to any action taken by any LC Issuer or correspondent with respect to any Letter of Credit Accommodation. Borrower assumes all risks with respect to the acts or omissions of the drawer under or beneficiary of any Letter of Credit Accommodation and for such purposes the drawer or beneficiary shall be deemed Borrower's agent. Borrower assumes all risks for, and agrees to pay, all foreign, Federal, State and local taxes, duties and levies relating to any goods subject to any Letter of Credit Accommodations or any documents, drafts or acceptances thereunder. Borrower hereby releases and holds Agents and Lenders harmless from and against any acts, waivers, errors, delays or omissions, whether caused by Borrower, by any LC Issuer or correspondent or otherwise with respect to or relating to any Letter of Credit Accommodation, except for the gross negligence or willful misconduct of either Agent or any Lender as determined pursuant to a final, non-appealable order of a court of competent jurisdiction. The provisions of this Section 2.2(k) shall survive the payment of Obligations and the termination of this Agreement.

(k) Nothing contained herein shall be deemed or construed to grant Borrower any right or authority to pledge the credit of either Agent or any Lender in any manner. Agents and Lenders shall have no liability of any kind with respect to any Letter of Credit Accommodation provided by an LC Issuer other than either Agent or any Lender unless Administrative Agent has duly executed and delivered to such LC Issuer the application or a guarantee or indemnification in writing with respect to such Letter of Credit Accommodation. Borrower shall be bound by any interpretation made in good faith by Administrative Agent, or any other LC Issuer or correspondent under or in connection with any Letter of Credit Accommodation or any documents, drafts or acceptances thereunder, notwithstanding that such interpretation may be inconsistent with any instructions of Borrower. At any time an Event of Default exists or has occurred and is continuing, Administrative Agent shall have the sole and exclusive right and authority to, and Borrower shall not: (i) approve or resolve any questions of non-compliance of documents, (ii) give any instructions as to acceptance or rejection of any documents or goods, (iii) execute any and all applications for steamship or airway guaranties, indemnities or delivery orders, (iv) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents, or (v) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letter of Credit Accommodations, or documents, drafts or acceptances thereunder or any letters of credit included in the Collateral; provided, that, Borrower shall not, at any time prior to an Event of Default, take any of the actions specified in clauses (iv) and (v) above except after prior written notice to Administrative Agent and with the prior written consent of Administrative Agent, if Administrative Agent shall determine in good faith that any such action shall increase the risk of Agents or Lenders with respect to such Letter of Credit Accommodations. Administrative Agent may take such actions either in its own name or in Borrower's name.

(l) Any rights, remedies, duties or obligations granted or undertaken by Borrower to any LC Issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement in favor of any LC Issuer or correspondent relating to any Letter of Credit Accommodation, shall be deemed to have been granted or undertaken by Borrower to Administrative Agent for the ratable benefit of Lenders. Any duties or obligations undertaken by Administrative Agent to any LC Issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement by Administrative Agent in favor of any LC Issuer or correspondent relating to any Letter of Credit Accommodation, shall be deemed to have been undertaken by Borrower to Administrative Agent for the ratable benefit of Lenders and to apply in all respects to Borrower.

2.3. Availability Reserves.

Without limiting any other rights and remedies of Agents or Lenders hereunder or under the other Financing Agreements, all Loans and Letter of Credit Accommodations otherwise available to Borrower shall be subject to the right of Collateral Agent from time to time, in each case subject to the prior written approval of Administrative Agent, to establish and revise in good faith reserves reducing the amount of Loans and Letter of Credit Accommodations that would otherwise be available to Borrower ("Availability Reserves"): (a) to reflect events, conditions or contingencies that, as determined by Collateral Agent in good faith, adversely affect or have a reasonable likelihood of adversely affecting either (i) the Collateral or any other

property which is security for the Obligations, its value or the amount which may be realized by Collateral Agent from the sale or other disposition thereof, or (ii) the assets or financial condition of Borrower or any Obligor, or (iii) the security interests and other rights of Collateral Agent in the Collateral (including the enforceability, perfection and priority thereof), or (b) to reflect either Agent's good faith belief that any collateral report or financial information furnished by or on behalf of Borrower or any Obligor to Agents is or may have been incomplete, inaccurate or misleading in any material respect, or (c) in respect of any state of facts which either Agent determines in good faith constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default, or (d) to reflect inventory shrinkage (as reflected on the most recent financial statements delivered pursuant to Section 9.6(a)(i)), or (e) to reflect the aggregate amount of deposits, if any, received by Borrower from its retail customers in respect of unfilled orders, or (f) to reflect amounts due or to become due in respect of sales, use and/or withholding taxes, provided, that, an Availability Reserve pursuant to this Section 2.3(f) will only be established if (i) Excess Availability (without giving effect to any reserve for such amounts) shall be less than $1,000,000, or (ii) an Event of Default or act, condition or event which with notice or passage of time or both would constitute an Event of Default, shall exist or have occurred and be continuing, or (g) to reflect any rental payments, service charges or other amounts due to lessors of real or personal property (other than amounts due to lessors who have executed and delivered Landlord Agreements) to the extent Inventory or Records are located in or on such property or such Records are needed to monitor or otherwise deal with the Collateral, or (h) to reflect net amounts owing by Borrower to Credit Card Issuers or Credit Card Processors in connection with the Credit Card Agreements. To the extent Collateral Agent may revise the lending formula set forth in Section 2.1 hereof or establish new criteria or revise existing criteria for Eligible Inventory so as to address any circumstance, condition, event or contingency in a manner satisfactory to Collateral Agent, Collateral Agent shall not establish an Availability Reserve for the same purpose. The amount of any Availability Reserve established by Collateral Agent shall have a reasonable relationship to the event, condition or other matter which, is the basis for such reserve as determined by Collateral Agent in good faith.

2.4. Commitments.

(a) The aggregate amount of each Lender's Pro Rata Share of the Loans and Letter of Credit Accommodations shall not exceed the amount of such Lender's Commitments, as the same may from time to time be amended in accordance with the provisions hereof.

(b) Borrower may at any time upon at least five (5) days' prior written notice to the Administrative Agent permanently reduce the Commitments hereunder;provided that (A) prior to a Qualified Public Offering, and in the event that the Commitments have been increased pursuant to Section 2.1(d) prior to such reduction, no more than three (3) Lenders are party to the Agreement at the time of such reduction, (B) the Commitments may not be reduced to less than fifty percent (50%) of the Maximum Credit in effect immediately prior to such reduction, (C) any such reduction shall be in a minimum amount of $5,000,000 and integral multiples of $250,000 in excess of such amount, and (D) such reduction must be accompanied by payment of an early termination fee in respect of the amount of the Commitments reduced as required by Section 13.1(c), if any, plus the payment of any funding breakage costs in accordance with Section 3.1(c).

2.5. Swing Line Facility.

(a) The Administrative Agent shall notify the Swing Line Lender upon the Administrative Agent's receipt of any Notice of Borrowing (as defined in Section 6.5) that requests a Swing Line Loan. Subject to the terms and conditions hereof, upon the Borrower's request for a Swing Line Loan as set forth in the applicable Notice of Borrowing, the Swing Line Lender may, in its sole discretion, make available from time to time until the Termination Date advances (each, a "Swing Line Loan") in accordance with any such notice, notwithstanding that after making a requested Swing Line Loan, the sum of the Swing Line Lender's Pro Rata Share of the Revolving Loans outstanding and all outstanding Swing Line Loans may exceed the Swing Line Lender's Pro Rata Share of the Commitment. The provisions of this Section 2.5 shall not relieve Lenders of their obligations to make Revolving Loans under Section 2.1; provided that if the Swing Line Lender makes a Swing Line Loan pursuant to any such notice, such Swing Line Loan shall be in lieu of any Revolving Loan that otherwise may be made by the Lenders pursuant to such notice. The aggregate amount of Swing Line Loans outstanding shall not exceed at any time Swing Line Availability. Until the Termination Date, the Borrower may from time to time borrow, repay and reborrow under this Section 2.5. Each Swing Line Loan shall be made pursuant to a Notice of Borrowing delivered by the Borrower to the Administrative Agent in accordance with Section 6.5(a). Any such notice must be given no later than 2:00 P.M., Chicago time, on the Business Day of the proposed Swing Line Loan. Unless the Swing Line Lender has received at least one Business Day's prior written notice from the Required Lenders instructing it not to make a Swing Line Loan, the Swing Line Lender shall, notwithstanding the failure of any condition precedent set forth in Section 4.2, be entitled to fund that Swing Line Loan, and to have the Lenders make Revolving Loans in accordance with Section 2.5(c) or purchase participating interests therein in accordance with Section 2.5(d). Notwithstanding any other provision of this Agreement or the other Loan Documents, each Swing Line Loan shall constitute a Prime Rate Loan. The Borrower shall repay the aggregate outstanding principal amount of each Swing Line Loan upon demand therefor by the Administrative Agent.

(b) The entire unpaid balance of each Swing Line Loan and all other noncontingent Obligations shall be immediately due and payable in full in immediately available funds on the Termination Date if not sooner paid in full.

(c) The Swing Line Lender, at any time and from time to time no less frequently than once weekly, shall on behalf of the Borrower (and the Borrower hereby irrevocably authorizes the Swing Line Lender to so act on its behalf) request each Lender with a Commitment (including the Swing Line Lender) to make a Revolving Loan to the Borrower (which shall be a Prime Rate Loan) in an amount equal to that Lender's Pro Rata Share of the principal amount of all Swing Line Loans (the "Refunded Swing Line Loan") outstanding on the date such notice is given. Unless any of the events described in any of Sections 10.1(f), 10.1(g) or 10.1(h) has occurred (in which event the procedures of Section 2.5(d) shall apply) and regardless of whether the conditions precedent set forth in this Agreement to the making of a Revolving Loan are then satisfied, each Lender shall disburse directly to the Administrative Agent, its Pro Rata Share on behalf of the Swing Line Lender, prior to 2:00 P.M., Chicago time, in immediately available funds on the date that notice is given (provided that such notice is given by 12:00 noon, Chicago time, on such date, which shall be a Business Day). The proceeds of

those Revolving Loans shall be immediately paid to the Swing Line Lender and applied to repay the Refunded Swing Line Loan.

(d) If, prior to refunding a Swing Line Loan with a Revolving Loan pursuant to Section 2.5(c), one of the events described in any of Sections 10.1(f), 10.1(g) or 10.1(h) has occurred, then, subject to the provisions of Section 2.5(e) below, each Lender shall, on the date such Revolving Loan was to have been made for the benefit of the Borrower, purchase from the Swing Line Lender an undivided participation interest in the Swing Line Loan in an amount equal to its Pro Rata Share of such Swing Line Loan. Upon request, each Lender shall promptly transfer to the Swing Line Lender, in immediately available funds, the amount of its participation interest.

(e) Each Lender's obligation to make Revolving Loans in accordance with Section 2.5(c) and to purchase participation interests in accordance with Section 2.5(d) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of any Default or Event of Default; (iii) any inability of the Borrower to satisfy the conditions precedent to borrowing set forth in this Agreement at any time or (iv) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If and to the extent any Lender shall not have made such amount available to the Administrative Agent or the Swing Line Lender, as applicable, by 2:00 P.M., Chicago time, the amount required pursuant to Sections 2.5(c) or 2.5(d), as the case may be, on the Business Day on which such Lender receives notice from the Administrative Agent of such payment or disbursement (it being understood that any such notice received after noon, Chicago time, on any Business Day shall be deemed to have been received on the next following Business Day), such Lender agrees to pay interest on such amount to the Administrative Agent for the Swing Line Lender's account forthwith on demand, for each day from the date such amount was to have been delivered to the Administrative Agent to the date such amount is paid, at a rate per annum equal to (a) for the first three days after demand, the Federal Funds Rate from time to time in effect and (b) thereafter, the Prime Rate from time to time in effect.

SECTION 3. INTEREST AND FEES

3.1. Interest.

(a) Borrower shall pay to Administrative Agent, for the benefit of Lenders, interest on the outstanding principal amount of the Loans at the Interest Rate. All interest accruing hereunder on and after the date of any Event of Default or termination hereof shall be payable on demand.

(b) Borrower may from time to time request that Prime Rate Loans be converted to Eurodollar Rate Loans or that any existing Eurodollar Rate Loans continue for an additional Interest Period. Borrower shall give written notice (each such written notice, a "Notice of Conversion/Continuation") substantially in the form of Exhibit D or telephonic notice (followed immediately by a Notice of Conversion/Continuation) to the Administrative Agent of each proposed conversion or continuation not later than (i) in the case of conversion into Prime

Rate Loans, 12:00 noon, Chicago time, on the proposed date of such conversion and (ii) in the case of conversion into or continuation of Eurodollar Rate Loans, 12:00 noon, Chicago time, at least three (3) Business Days prior to the proposed date of such conversion or continuation, specifying in each case: (A) the proposed date of conversion or continuation, (B) the aggregate amount of Loans to be converted or continued, (C) the type of Loans resulting from the proposed conversion or continuation, and (D) in the case of conversion into, or continuation of, Eurodollar Loans, the duration of the requested Interest Period therefor. Subject to the terms and conditions contained herein, three (3) Business Days after receipt by Administrative Agent of such a request from Borrower, such Prime Rate Loans shall be converted to Eurodollar Rate Loans or such Eurodollar Rate Loans shall continue, as the case may be, provided, that, (i) no Default or Event of Default shall exist or have occurred and be continuing, (ii) no party hereto shall have sent any notice of termination of this Agreement, (iii) Borrower shall have complied with such customary procedures as are established by Administrative Agent and specified by Administrative Agent to Borrower from time to time for requests by Borrower for Eurodollar Rate Loans, (iv) no more than ten (10) Interest Periods may be in effect at any one time, (v) the aggregate amount of the Eurodollar Rate Loans must be in an amount not less than $2,000,000 or an integral multiple of $100,000 in excess thereof and (vi) Administrative Agent and each Lender shall have determined that the Interest Period or Adjusted Eurodollar Rate is available to Administrative Agent and such Lender and can be readily determined as of the date of the request for such Eurodollar Rate Loan by Borrower. Any request by Borrower to convert Prime Rate Loans to Eurodollar Rate Loans or to continue any existing Eurodollar Rate Loans shall be irrevocable. Notwithstanding anything to the contrary contained herein, Agents and Lenders shall not be required to purchase United States Dollar deposits in the London interbank market or other applicable Eurodollar Rate market to fund any Eurodollar Rate Loans, but the provisions hereof shall be deemed to apply as if Agents and Lenders had purchased such deposits to fund the Eurodollar Rate Loans. Administrative Agent will promptly notify each Lender of its receipt of a Notice of Conversion/Continuation pursuant to this Section 3.1(b) or, if no timely notice is provided by the Borrower, of the details of any automatic conversion.

(c) Any Eurodollar Rate Loans shall automatically convert to Prime Rate Loans upon the last day of the applicable Interest Period, unless Administrative Agent has received and approved a request to continue such Eurodollar Rate Loan at least three (3) Business Days prior to such last day in accordance with the terms hereof. Any Eurodollar Rate Loans shall, at Administrative Agent's option, upon notice by Administrative Agent to Borrower, convert to Prime Rate Loans in the event that (i) a Default or an Event of Default shall exist, (ii) this Agreement shall terminate or not be renewed, or (iii) the aggregate principal amount of the Prime Rate Loans which have previously been converted to Eurodollar Rate Loans or existing Eurodollar Rate Loans continued, as the case may be, at the beginning of an Interest Period shall at any time during such Interest Period exceed either (A) the aggregate principal amount of the Loans then outstanding, or (B) the Loans then available to Borrower under Section 2 hereof. Borrower shall pay to Administrative Agent, for the benefit of Lenders, upon demand by Administrative Agent (or Administrative Agent may, at its option, charge any loan account of Borrower) any amounts required to compensate any Lender, the Administrative Agent or any Participant for any loss (other than the loss of anticipated profits), cost or expense reasonably incurred by such person, as a result of the conversion of Eurodollar Rate Loans to Prime Rate Loans pursuant to any of the foregoing.

(d) Interest accruing in respect of Prime Rate Loans shall be payable by Borrower to Administrative Agent, for the benefit of Lenders, quarterly in arrears not later than the last day of each calendar quarter and shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed. Interest accruing in respect of Eurodollar Rate Loans shall be payable on the last day of each applicable Interest Period, unless the Interest Period is greater than three (3) months, in which case interest shall be payable on the last day of each three (3) month interval commencing with the first day of such Interest Period. The interest rate on non-contingent Obligations (other than Eurodollar Rate Loans) shall increase or decrease by an amount equal to each increase or decrease in the Prime Rate effective on the first day of the month after any change in such Prime Rate is announced based on the Prime Rate in effect on the last day of the month in which any such change occurs. In no event shall charges constituting interest payable by Borrower to Agents and Lenders exceed the maximum amount or the rate permitted under any applicable law or regulation, and if any such part or provision of this Agreement is in contravention of any such law or regulation, such part or provision shall be deemed amended to conform thereto.

3.2. Other Fees.

(a) Borrower shall pay to Administrative Agent, for the account of Lenders, monthly as billed, an unused line fee at a rate equal to 0.1875% per annum calculated upon the amount by which the Maximum Credit (or in the event that the Maximum Credit has changed during a measuring period, the average daily Maximum Credit during such period) exceeds the average daily principal balance of the outstanding Revolving Loans and Letter of Credit Accommodations during the immediately preceding calendar quarter (or part thereof), which fee shall be payable on the last day of each calendar quarter in arrears.

(b) Borrower agrees to pay to Administrative Agent the other fees and amounts set forth in the Fee Letter in the amounts and at the times specified therein.

3.3. Changes in Laws and Increased Costs of Loans.

(a) Notwithstanding anything to the contrary contained herein, all Eurodollar Rate Loans of any Lender shall, upon notice by Administrative Agent to Borrower, convert to Prime Rate Loans in the event that (i) any change in applicable law or regulation (or the interpretation or administration thereof) shall either (A) make it unlawful for such Lender to make or maintain Eurodollar Rate Loans or to comply with the terms hereof in connection with the Eurodollar Rate Loans, or (B) shall result in the increase in the costs to such Lender of making or maintaining any Eurodollar Rate Loans by an amount deemed by Administrative Agent to be material, or (C) reduce the amounts received or receivable by such Lender in respect thereof, by an amount deemed by Administrative Agent to be material or (ii) the cost to such Lender of making or maintaining any Eurodollar Rate Loans shall otherwise increase by an amount deemed by Administrative Agent to be material. Borrower shall pay to Administrative Agent, for the ratable benefit of Lenders, upon demand by Administrative Agent (or Administrative Agent may, at its option, charge any loan account of Borrower) any amounts required to compensate any Lender for any loss (including loss of anticipated profits), cost or expense incurred by such person as a result of the foregoing, including, without limitation, any such loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or

other funds acquired by such person to make or maintain the Eurodollar Rate Loans or any portion thereof. A certificate of Administrative Agent or the applicable Lender setting forth the basis for the determination of such amount necessary to compensate such Lender as aforesaid shall be delivered to Borrower and shall be presumptive evidence of such amount.

(b) If any payments or prepayments in respect of the Eurodollar Rate Loans are received by either Agent or any Lender other than on the last day of the applicable Interest Period (whether pursuant to acceleration, upon maturity or otherwise), including any payments pursuant to the application of collections under Section 6.3 or any other payments made with the proceeds of Collateral, Borrower shall pay to Administrative Agent, upon demand by Administrative Agent (or Administrative Agent may, at its option, charge any loan account of Borrower) any amounts required to compensate any Lender or any Participant for any additional loss (including loss of anticipated profits), cost or expense incurred by such person as a result of such prepayment or payment, including, without limitation, any loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such person to make or maintain such Eurodollar Rate Loans or any portion thereof. A certificate of Administrative Agent or the applicable Lender setting forth the basis for the determination of such amount necessary to compensate such Lender shall be delivered to Borrower and shall be presumptive evidence of such amount.

(c) If any Lender delivers notice pursuant to Sections 3.3(a) and 3.3(b) above in which such Lender asserts a claim for compensation which claim is not being asserted by the other Lenders, Borrower may require within 90 days of receiving such notice, at its expense, that such Lender assign, at par, without recourse (in accordance with Section 13.6(a) hereof) all of its interests, rights and obligations hereunder and under the other Financing Agreements (including all of its Commitments and the Loans at the time owing to it and any participations in Loans held by it) to an Eligible Transferee proposed by Borrower (a "Substitute Lender"), provided, that (i) no Event of Default shall exist at the time of such assignment, (ii) such assignment shall not conflict with or violate any law, rule or regulation or order of any court or other governmental authority, (iii) Borrower shall have received the written consent of Administrative Agent to such assignment (which consent shall not be unreasonably withheld or delayed) and (iv) Borrower shall have paid to the assigning Lender all monies accrued and owing hereunder to it (including pursuant to Sections 3.3(a) and 3.3(b) above.

(d) Promptly after any Lender becomes aware of any circumstance that will, in its sole judgment, result in a request for increased compensation pursuant to Sections 3.3(a) and 3.3(b) above, such Lender shall notify the Borrower thereof. Each Lender will use reasonable efforts to designate a lending office (or a different lending office), so long as such designation is not adverse to such Lender in such Lender's sole judgment, if such designation would avoid the need to, or reduce the amount which would be required to, compensate such Lender for any additional costs incurred or reductions suffered. Failure on the part of any Lender to so notify Borrower or to demand compensation for any increased costs in amounts received or receivable with respect to any period shall not constitute a waiver of such Lender's right to demand compensation with respect to such period or any other period.

SECTION 4. CONDITIONS PRECEDENT

4.1. Conditions Precedent to Initial Loans and Letter of Credit Accommodations

Each of the following is a condition precedent to Agents and Lenders making the initial Loans and providing the initial Letter of Credit Accommodations hereunder:

(a) all requisite corporate action and proceedings in connection with this Agreement and the other Financing Agreements shall be satisfactory in form and substance to Administrative Agent, and Administrative Agent shall have received all information and copies of all documents, including records of requisite corporate action and proceedings which Administrative Agent may have requested in connection therewith, such documents where requested by Administrative Agent or its counsel to be certified by appropriate corporate officers or Governmental Authority (and including a copy of the certificate of incorporation of Borrower certified by the Secretary of State (or equivalent Governmental Authority) which shall set forth the same complete corporate name of Borrower as is set forth herein and such document as shall set forth the organizational identification number of Borrower, if one is issued in its jurisdiction of incorporation);

(b) Agents shall have received evidence, in form and substance satisfactory to Agents, that Collateral Agent continues to have a valid perfected first priority security interest in all of the Collateral; and any other property which is intended to be security for the Obligation or the liability of any Obligor in respect thereof, subject only to the security interests and liens permitted herein or in the other Financing Agreement;

(c) Agents shall have received and reviewed lien and judgment search results for the jurisdiction of incorporation of Borrower and the jurisdiction of the chief executive office of Borrower, which search results shall be in form and substance satisfactory to Agents;

(d) Agents shall have received, in form and substance satisfactory to Agents, such opinion letters of counsel to Borrower with respect to the Financing Agreements and such other matters as Agents may reasonably request;

(e) Administrative Agent shall have received evidence of payment by Borrower of all accrued and unpaid fees, costs and expenses to the extent then due and payable on the Closing Date, together with all reasonable legal expenses and reasonable attorneys' fees incurred by the Agents, plus such additional amounts as shall constitute the Agents' reasonable estimate of reasonable legal expenses and reasonable attorneys' fees incurred or to be incurred by the Agents through the closing proceedings (provided that such estimate shall not thereafter preclude final settling of accounts between Borrower and the Agents);

(f) Administrative Agent shall have received evidence of the existence of insurance required to be maintained pursuant toSection 9.5, together with evidence that the Collateral Agent continues to be named as a lender's loss payee under Borrower's property insurance policy and each Agent has been named as an additional insured under Borrower's liability insurance policy;

(g) the other Financing Agreements and all instruments and documents hereunder and thereunder required by Administrative Agent shall have been duly executed and delivered to Administrative Agent, in form and substance satisfactory to Administrative Agent, including, without limitation, the agreements, instruments and documents set forth on the closing checklist attached as Exhibit E hereto.

4.2. Conditions Precedent to All Loans and Letter of Credit Accommodations.

Each of the following is an additional condition precedent to Agents and Lenders making Loans and/or providing Letter of Credit Accommodations to Borrower, including the initial Loans and Letter of Credit Accommodations and any future Loans and Letter of Credit Accommodations:

(a) all representations and warranties contained herein and in the other Financing Agreements shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date of the making of each such Loan or providing each such Letter of Credit Accommodation and after giving effect thereto, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate on and as of such earlier date);

(b) no law, regulation, order, judgment or decree of any Governmental Authority shall exist, and no action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any arbitrator or Governmental Authority, which (i) purports to enjoin, prohibit, restrain or otherwise affect (A) the making of the Loans or providing the Letter of Credit Accommodations, or (B) the consummation of the transactions contemplated pursuant to the terms hereof or the other Financing Agreements or (ii) has or could reasonably be expected to have a material adverse effect on the assets, business or prospects of Borrower or would impair the ability of Borrower to perform its obligations hereunder or under any of the other Financing Agreements or of either Agent or any Lender to enforce any Obligations or realize upon any of the Collateral; and

(c) no Default or Event of Default shall exist or have occurred and be continuing on and as of the date of the making of such Loan or providing each such Letter of Credit Accommodation and after giving effect thereto.

SECTION 5. GRANT AND PERFECTION OF SECURITY INTEREST

5.1. Grant of Security Interest.

To secure payment and performance of all Obligations, Borrower hereby grants to Collateral Agent, for itself and the ratable benefit of Lenders, a continuing security interest in, a lien upon, and a right of set off against, and hereby assigns to Collateral Agent, for itself and the ratable benefit of Lenders, as security, all personal and real property and fixtures and interests in property and fixtures of Borrower, whether now owned or hereafter acquired or existing, and wherever located (together with all other collateral security for the Obligations at any time granted to or held or acquired by either Agent or any Lender, collectively, the “Collateral”), including:

(a) all Accounts;

(b) all general intangibles, including, without limitation, all Intellectual Property;

(c) all goods, including, without limitation, Inventory and Equipment;

(d) all chattel paper (including all tangible and electronic chattel paper);

(e) all instruments (including all promissory notes);

(f) all documents;

(g) all deposit accounts;

(h) all letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights;

(i) all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of Receivables and other Collateral, including (i) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (ii) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (iii) goods described in invoices, documents, credit card sales drafts, credit card sales slips or charge slips or receipts and other forms of store receipts, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables or other Collateral, including returned, repossessed and reclaimed goods, and (iv) deposits by and property of account debtors or other persons securing the obligations of account debtors;

(j) all (i) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and (ii) monies, credit balances, deposits and other property of Borrower now or hereafter held or received by or in transit to either Agent, any Lender or their Affiliates or at any other depository or other institution from or for the account of Borrower, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

(k) all commercial tort claims, including, without limitation, those identified in the Information Certificate;

(l) to the extent not otherwise described above, all Receivables;

(m) all Records; and

(n) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

5.2. Exception from Security Interest.

(a) Notwithstanding anything to the contrary set forth in Section 5.1 above, the types or items of Collateral described in such Section shall not include any rights or interests in any contract, lease, permit, license, charter or license agreement covering real or personal property, as such, if under the terms of such contract, lease, permit, license, charter or license agreement, or applicable law with respect thereto, the valid grant of a security interest or lien therein to Collateral Agent is prohibited and such prohibition has not been or is not waived or the consent of the other party to such contract, lease, permit, license, charter or license agreement has not been or is not otherwise obtained or under applicable law such prohibition cannot be waived; provided, that, the foregoing exclusion shall in no way be construed (a) to apply if any such prohibition is unenforceable under the UCC or other applicable law or (b) so as to limit, impair or otherwise affect Collateral Agent's unconditional continuing security interests in and liens upon any rights or interests of Borrower in or to monies due or to become due under any such contract, lease, permit, license, charter or license agreement (including any Accounts).

(b) Notwithstanding anything to the contrary contained in Section 5.1 above, the Collateral shall not include the trademark "Studio Gear" to the extent such trademark is licensed to Studio Gear Cosmetics, Inc. pursuant to the License and Distribution Agreement, dated May, 1996, between Borrower and Studio Gear Cosmetics, Inc.

(c) Notwithstanding anything to the contrary contained in Section 5.1 above, the types or items of Collateral described in such Section shall not include any Equipment which is, or at the time of Borrower's acquisition thereof shall be, subject to a purchase money mortgage or other purchase money lien or security interest (including capitalized or finance leases) permitted under Section 9.8 hereof if: (a) the valid grant of a security interest or lien to Collateral Agent in such item of Equipment is prohibited by the terms of the agreement between Borrower and the holder of such purchase money mortgage or other purchase money lien or security interest or under applicable law and such prohibition has not been or is not waived, or the consent of the holder of the purchase money mortgage or other purchase money lien or security interest has not been or is not otherwise obtained, or under applicable law such prohibition cannot be waived and (b) the purchase money mortgage or other purchase money lien or security interest on such item of Equipment is or shall become valid and perfected.

5.3. Perfection of Security Interest

(a) Borrower irrevocably and unconditionally authorizes Collateral Agent (or its agent) to file at any time and from time to time such financing statements with respect to the Collateral naming Collateral Agent or its designee as the secured party and Borrower as debtor, as Collateral Agent may require, and including any other information with respect to Borrower or otherwise required by part 5 of Article 9 of the Uniform Commercial Code of such jurisdiction as Collateral Agent may determine, together with any amendment and continuations with respect thereto, which authorization shall apply to all financing statements filed on, prior to or after the date hereof. Borrower hereby ratifies and approves all financing statements naming Collateral Agent or its designee as secured party and Borrower as debtor with respect to the Collateral (and any amendments with respect to such financing statements) filed by or on behalf of Collateral Agent prior to the date hereof and ratifies and confirms the authorization of Collateral Agent to

file such financing statements (and amendments, if any). Borrower hereby authorizes Collateral Agent to adopt on behalf of Borrower any symbol required for authenticating any electronic filing. In the event that the description of the collateral in any financing statement naming Collateral Agent or its designee as the secured party and Borrower as debtor includes assets and properties of Borrower that do not at any time constitute Collateral, whether hereunder, under any of the other Financing Agreements or otherwise, the filing of such financing statement shall nonetheless be deemed authorized by Borrower to the extent of the Collateral included in such description and it shall not render the financing statement ineffective as to any of the Collateral or otherwise affect the financing statement as it applies to any of the Collateral. In no event shall Borrower at any time file, or permit or cause to be filed, any correction statement or termination statement with respect to any financing statement (or amendment or continuation with respect thereto) naming Collateral Agent or its designee as secured party and Borrower as debtor.

(b) Borrower does not have any chattel paper (whether tangible or electronic) or instruments as of the date hereof, except as set forth in the Information Certificate. In the event that Borrower shall be entitled to or shall receive any chattel paper or instrument after the date hereof, Borrower shall promptly notify Collateral Agent thereof in writing. Promptly upon the receipt thereof by or on behalf of Borrower (including by any agent or representative), Borrower shall deliver, or cause to be delivered to Collateral Agent, all tangible chattel paper and instruments that Borrower or may at any time acquire, accompanied by such instruments of transfer or assignment duly executed in blank as Collateral Agent may from time to time specify, in each case except as Collateral Agent may otherwise agree. At Collateral Agent's option, Borrower shall, or Collateral Agent may at any time on behalf of Borrower, cause the original of any such instrument or chattel paper to be conspicuously marked in a form and manner acceptable to Collateral Agent with the following legend referring to chattel paper or instruments as applicable: "This [chattel paper][instrument] is subject to the security interest of Wachovia Capital Finance Corporation (Central), as Collateral Agent, and any sale, transfer, assignment or encumbrance of this [chattel paper][instrument] violates the rights of such secured party."

(c) In the event that Borrower shall at any time hold or acquire an interest in any electronic chattel paper or any "transferable record" (as such term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction), Borrower shall promptly notify Collateral Agent thereof in writing. Promptly upon Collateral Agent's request, Borrower shall take, or cause to be taken, such actions as Collateral Agent may reasonably request to give Collateral Agent control of such electronic chattel paper under Section 9-105 of the UCC and control of such transferable record under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as in effect in such jurisdiction.

(d) Borrower does not have any deposit accounts as of the date hereof, except as set forth on Schedule 6.3 to the Information Certificate. Borrower shall not, directly or indirectly, after the date hereof open, establish or maintain any deposit account unless each of the following conditions is satisfied: (i) Collateral Agent shall have received not less than five (5) Business Days prior written notice of the intention of Borrower to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Collateral Agent the name of the account, the owner of the account, the name and address of the bank at which such

account is to be opened or established, the individual at such bank with whom Borrower is dealing and the purpose of the account, (ii) the bank where such account is opened or maintained shall be acceptable to Collateral Agent, and (iii) on or before the opening of such deposit account, Borrower shall as Collateral Agent may specify either (A) deliver to Collateral Agent a Deposit Account Control Agreement with respect to such deposit account duly authorized, executed and delivered by Borrower and the bank at which such deposit account is opened and maintained or (B) arrange for Collateral Agent to become the customer of the bank with respect to the deposit account on terms and conditions acceptable to Collateral Agent. The terms of this subsection (d) shall not apply to deposit accounts specifically and exclusively used for payroll, taxes, other obligations to third parties or other employee wage and benefit payments to or for the benefit of Borrower's salaried employees.

(e) Borrower does not own or hold, directly or indirectly, beneficially or as record owner or both, any investment property, as of the date hereof, or have any investment account, securities account, commodity account or other similar account with any bank or other financial institution or other securities intermediary or commodity intermediary as of the date hereof, in each case except as set forth in the Information Certificate.

(i) In the event that Borrower shall be entitled to or shall at any time after the date hereof hold or acquire any certificated securities, Borrower shall promptly endorse, assign and deliver the same to Collateral Agent, for itself and the ratable benefit of Lenders. accompanied by such instruments of transfer or assignment duly executed in blank as Collateral Agent may from time to time specify. If any securities, now or hereafter acquired by Borrower are uncertificated and are issued to Borrower or its nominee directly by the issuer thereof, Borrower shall immediately notify Collateral Agent thereof and shall as Collateral Agent may specify, either (A) cause the issuer to agree to comply with instructions from Collateral Agent as to such securities, without further consent of Borrower or such nominee, or (B) arrange for Collateral Agent, for itself and the ratable benefit of Lenders, to become the registered owner of the securities.

(ii) Borrower shall not, directly or indirectly, after the date hereof open, establish or maintain any investment account, securities account, commodity account or any other similar account (other than a deposit account) with any securities intermediary or commodity intermediary unless each of the following conditions is satisfied: (A) Collateral Agent shall have received not less than five (5) Business Days prior written notice of the intention of Borrower to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Collateral Agent the name of the account, the owner of the account, the name and address of the securities intermediary or commodity intermediary at which such account is to be opened or established, the individual at such intermediary with whom Borrower is dealing and the purpose of the account, (B) the securities intermediary or commodity intermediary (as the case may be) where such account is opened or maintained shall be acceptable to Collateral Agent, and (C) on or before the opening of such investment account, securities account or other similar account with a securities intermediary or commodity intermediary, Borrower shall as Collateral Agent may specify either

(1) execute and deliver, and cause to be executed and delivered to Collateral Agent, an Investment Property Control Agreement with respect thereto duly authorized, executed and delivered by Borrower and such securities intermediary or commodity intermediary or (2) arrange for Collateral Agent, for itself and for the ratable benefit of Lenders, to become the entitlement holder with respect to such investment property on terms and conditions acceptable to Collateral Agent.

(f) Borrower is not the beneficiary or otherwise entitled to any right to payment under any letter of credit, banker's acceptance or similar instrument as of the date hereof, except as set forth in the Information Certificate. In the event that Borrower shall be entitled to or shall receive any right to payment under any letter of credit, banker's acceptance or any similar instrument, whether as beneficiary thereof or otherwise after the date hereof, Borrower shall promptly notify Collateral Agent thereof in writing. Borrower shall immediately, as Collateral Agent may specify, either (i) deliver, or cause to be delivered to Collateral Agent, with respect to any such letter of credit, banker's acceptance or similar instrument, the written agreement of the issuer and any other nominated person obligated to make any payment in respect thereof (including any confirming or negotiating bank), in form and substance satisfactory to Collateral Agent, consenting to the assignment of the proceeds of the letter of credit to Collateral Agent, for itself and for the ratable benefit of Lenders, by Borrower and agreeing to make all payments thereon directly to Collateral Agent, for itself and for the ratable benefit of Lenders, or as Collateral Agent may otherwise direct or (ii) cause Collateral Agent, for itself and for the ratable benefit of Lenders, to become, at Borrower's expense, the transferee beneficiary of the letter of credit, banker's acceptance or similar instrument (as the case may be).

(g) Borrower has no commercial tort claims as of the date hereof, except as set forth in the Information Certificate. In the event that Borrower shall at any time after the date hereof assert any commercial tort claims in respect of which the expected net recovery exceeds $250,000, Borrower shall promptly notify Collateral Agent thereof in writing, which notice shall (i) set forth in reasonable detail the basis for and nature of such commercial tort claim and (ii) if requested by any Agent, include the express grant by Borrower to Collateral Agent, for itself and the ratable benefit of Lenders, of a security interest in such commercial tort claim (and the proceeds thereof). In the event that such notice does not include such grant of a security interest, the sending thereof by Borrower to Collateral Agent shall be deemed to constitute such grant to Collateral Agent, for itself and for the ratable benefit of Lenders. Upon the sending of such notice, any commercial tort claim described therein shall constitute part of the Collateral and shall be deemed included therein. Without limiting the authorization of Collateral Agent provided in Section 5.3(a) hereof or otherwise arising by the execution by Borrower of this Agreement or any of the other Financing Agreements, Collateral Agent is hereby irrevocably authorized from time to time and at any time to file such financing statements naming Collateral Agent or its designee as secured party and Borrower as debtor, or any amendments to any financing statements, covering any such commercial tort claim as Collateral. In addition, Borrower shall promptly upon Collateral Agent's request, execute and deliver, or cause to be executed and delivered, to Collateral Agent such other agreements, documents and instruments as Collateral Agent may require in connection with such commercial tort claim.

(h) Borrower does not have any goods, documents of title or other Collateral in the custody, control or possession of a third party as of the date hereof, except as set forth in

the Information Certificate and except for goods located in the United States in transit to a location of Borrower permitted herein in the ordinary course of business of Borrower in the possession of the carrier transporting such goods. In the event that any goods, documents of the title or other Collateral are at any time after the date hereof in the custody, control or possession of any other person not referred to in the Information Certificate or such carriers, Borrower shall promptly notify Collateral Agent thereof in writing. Promptly upon Collateral Agent's request, Borrower shall deliver to Collateral Agent a Collateral Access Agreement duly authorized, executed and delivered by such person and Borrower.

(i) Borrower shall take any other actions reasonably requested by Collateral Agent from time to time to cause the attachment, perfection and first priority of, and the ability of Collateral Agent to enforce, the security interest of Collateral Agent in any and all of the Collateral located in the United States, Canada or Puerto Rico, including, without limitation, (i) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC or other applicable law, to the extent, if any, that Borrower's signature thereon is required therefor, (ii) causing Collateral Agent's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of Collateral Agent to enforce, the security interest of Collateral Agent in such Collateral, (iii) complying with any provision of any statute, regulation or treaty of the United States, Canada or Puerto Rico as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Collateral Agent to enforce, the security interest of Collateral Agent in such Collateral, (iv) obtaining the consents and approvals of any Governmental Authority or third party, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral, and taking all actions required by any earlier versions of the UCC or by other law, as applicable in any relevant jurisdiction.

SECTION 6. COLLECTION AND ADMINISTRATION

6.1. Borrower's Loan Account.

Administrative Agent shall maintain one or more loan account(s) on its books in which shall be recorded (a) all Loans, Letter of Credit Accommodations and other Obligations, (b) all payments made by or on behalf of Borrower and (c) all other appropriate debits and credits as provided in this Agreement, including fees, charges, costs, expenses and interest. All entries in the loan account(s) shall be made in accordance with Administrative Agent's customary practices as in effect from time to time. The Revolving Loans shall be evidenced by the loan accounts maintained by Administrative Agent; provided that if any Lender so requests, the Borrower will execute a promissory note in favor of such Lender further evidencing such Lender's Commitment. Administrative Agent is authorized by all the parties hereto to make all revisions and modifications to Schedule I hereto at any time to reflect the then current Commitments of each Lender.

6.2. Statements.

Administrative Agent shall render to Borrower each month a statement setting forth the balance in the Borrower's loan account(s) maintained by Administrative Agent for

Borrower pursuant to the provisions of this Agreement, including principal, interest, fees, costs and expenses. Each such statement shall be subject to subsequent adjustment by Administrative Agent but shall, absent manifest errors or omissions, be considered correct and deemed accepted by Borrower and conclusively binding upon Borrower as an account stated except to the extent that Administrative Agent receives a written notice from Borrower of any specific exceptions of Borrower thereto within forty-five (45) days after the date such statement has been mailed by Administrative Agent. Until such time as Administrative Agent shall have rendered to Borrower a written statement as provided above, the balance in Borrower's loan account(s) shall be presumptive evidence of the amounts due and owing to Administrative Agent and Lenders by Borrower.

6.3. Collection of Accounts.

(a) Borrower shall establish and maintain, at its expense, deposit account arrangements and merchant payment arrangements with the banks set forth on Schedule 6.3 to the Information Certificate and after prior written notice to Administrative Agent, and subject to Section 5.3(d), such other banks as Borrower may hereafter select as are acceptable to Administrative Agent. The banks set forth on Schedule 6.3 to the Information Certificate constitute all of the banks with whom Borrower has deposit account arrangements and merchant payment arrangements as of the date hereof and such Schedule identifies each of the deposit accounts at such banks to a retail store location of Borrower or otherwise describes the nature of the use of such deposit account by Borrower.

(i) Borrower shall deposit all proceeds from sales of Inventory in every form, including, without limitation, cash, checks, credit card sales drafts, credit card sales or charge slips or receipts and other forms of store receipts, from each retail store location of Borrower on each Business Day into the deposit accounts of Borrower used solely for such purpose and identified to each retail store location as set forth on Schedule 6.3 to the Information Certificate (together with any other deposit accounts at any time established or used by Borrower for receiving such store receipts from any retail store location, collectively, the "Store Bank Accounts") or as otherwise provided in Section 6.3(a)(iii) below. Borrower shall irrevocably authorize and direct, and shall use its best efforts to cause, all available funds deposited into the Store Bank Accounts to be sent by wire transfer or by transfer using the automated clearinghouse network ("ACH transfer") on a daily basis, and all other proceeds of Collateral to be sent by wire transfer or by ACH transfer, to the Blocked Account as provided in Section 6.3(a)(ii) below (except nominal amounts which are required to be maintained in such Store Bank Accounts under the terms of Borrower's arrangements with the bank at which such Store Bank Accounts are maintained as in effect on the date hereof, not to exceed $250,000 in the aggregate in all such deposit accounts at any time). Borrower shall irrevocably authorize and direct in writing, in form and substance satisfactory to Administrative Agent, each of the banks into which proceeds from sales of Inventory from each retail store location of Borrower are at any time deposited as provided above to send all available funds deposited in such account (other than the nominal amounts referred to above) by wire transfer or ACH transfer on a daily basis to the Blocked Account. Such authorization and direction

shall not be rescinded, revoked or modified without the prior written consent of Administrative Agent. In the event any of such banks fails to send such funds to the Blocked Account as provided herein, Borrower shall pursue all of its rights and remedies as a result of such failure. Notwithstanding the foregoing, for those Store Bank Accounts that transfer funds daily by ACH transfer initiated by Borrower's store management notifying a third party processor, Borrower shall irrevocably authorize and direct in writing, in form and substance satisfactory to Administrative Agent, the third party processor that establishes the routing and executes the ACH transfer to send funds only to the Blocked Accounts and to agree to do so at any time upon Administrative Agent's request and Administrative Agent shall receive an agreement from such third party processor confirming its agreement to do so. Such authorization and direction shall not be rescinded, revoked or modified without the prior written consent of Administrative Agent.

(ii) Borrower shall establish and maintain, at its expense, a deposit account with such bank as is acceptable to Administrative Agent (the "Blocked Account") into which Borrower shall promptly either cause all amounts on deposit in the Store Bank Accounts to be sent as provided in Section 6.3(a)(i) above or shall itself deposit or cause to be deposited all proceeds from sales of Inventory, all amounts payable to Borrower from Credit Card Issuers and Credit Card Processors and all other proceeds of Collateral. The banks at which the Blocked Account is established shall enter into an agreement, in form and substance satisfactory to Administrative Agent, providing that all items received or deposited in the Blocked Account are the property of Borrower subject to the lien and security interest of Collateral Agent, for the benefit of Agents and Lenders, that the depository bank has no lien upon, or right of setoff against, the Blocked Account, the items received for deposit therein, or the funds from time to time on deposit therein and that the depository bank will wire, or otherwise transfer, immediately available funds, on a daily basis, all funds received or deposited into the Blocked Account to such bank account of Administrative Agent as Administrative Agent may from time to time designate for such purpose ("Payment Account"). Borrower agrees that all amounts deposited in such Blocked Account or in the Store Bank Accounts or other funds received and collected by either Agent, whether as proceeds of inventory or other Collateral or otherwise shall be the property of Collateral Agent, for the benefit of Agents and Lenders.

(iii) To the extent Borrower may elect, at Borrower's option, to use the Armored Car Companies to pick up and collect cash or other proceeds of sales of Inventory from a retail store location, Borrower shall deliver to the Armored Car Companies all proceeds from sales of Inventory and other Collateral from such retail store location of Borrower. Borrower shall irrevocably authorize and direct the Armored Car Companies in writing, in form and substance reasonably satisfactory to Administrative Agent, to remit all such proceeds at any time received by the Armored Car Companies only to the deposit account identified on Schedule 6.3 to the Information Certificate for such purpose and thereafter to the

Blocked Accounts. Such authorization and direction to the Armored Car Companies shall not be rescinded, revoked or modified without the prior written consent of Administrative Agent unless Borrower shall cease to do business with such Armored Car Company, provided that upon any such termination the Armored Car Company shall not be released from its obligation to make payments for amounts previously delivered to such Armored Car Company. As of the date hereof, the only Armored Car Companies used by Borrower are those identified in Section 1.7 hereof. Borrower shall not use any other Armored Car Companies for any purpose unless the aforesaid arrangements are in place with such other Armored Car Company. Upon request of the Administrative Agent, Borrower will promptly either obtain and provide an agreement in writing from such other Armored Car Companies, in form and substance satisfactory to Administrative Agent, duly authorized, executed and delivered by such other Armored Car Company, or cease doing business with such Armored Car Company.

(b) For purposes of calculating interest on the Obligations and the amount of Loans available to Borrower, payments or other funds received in the Payment Account shall be applied to the Obligations (conditional upon final collection) promptly and in accordance with its customary depository practice as such amounts become available.

(c) Borrower and all of its subsidiaries, shareholders, directors, employees, agents or other Affiliates shall, acting as trustee for Collateral Agent, receive, as the property of Borrower subject to the lien and security interest of Collateral Agent, for the benefit of Agents and Lenders, any cash, checks, credit card sales drafts, credit card sales or charge slips or receipts, notes, drafts and all forms of store receipts or any other payment relating to and/or proceeds of Accounts or other Collateral which come into their possession or under their control and immediately upon receipt thereof, shall deposit or cause the same to be deposited in the Blocked Accounts, or remit the same or cause the same to be remitted, in kind, to Administrative Agent. Borrower agrees to reimburse Administrative Agent on demand for any amounts owed or paid to any bank at which a Blocked Account is established or any other bank or person involved in the transfer of funds to or from the Blocked Accounts arising out of Administrative Agent's payments to or indemnification of such bank or person. The obligation of Borrower to reimburse Administrative Agent for such amounts pursuant to this Section 6.3 shall survive the termination of this Agreement.

6.4. Payments.

(a) All Obligations shall be payable to the Payment Account as provided in Section 6.3 or such other place as Administrative Agent may designate from time to time. The Agents shall apply payments received or collected from Borrower or for the account of Borrower (including the monetary proceeds of collections or of realization upon any Collateral) as follows: first, to pay any fees, indemnities or expense reimbursements then due to any Agent, any Lender or their representatives from Borrower (other than in connection with any Hedging Agreements); second, to pay interest due in respect of any Loans;third, to pay principal due in respect of the Swing Line Loans;fourth, to pay principal due in respect of the Revolving Loans; fifth, to pay any other Obligations (other than in connection with any Hedging Agreements) then due and

owing, in such order and manner as Administrative Agent determines; sixth, to pay any Obligations then due and owing relating to Hedging Agreements (including fees, indemnities, expenses and other amounts arising from any Hedging Agreements) on a pro rata basis and seventh, to the extent of any balance remaining, such balance shall be delivered to Borrower or as a court of competent jurisdiction may direct. Notwithstanding anything to the contrary contained in this Agreement, (i) unless so directed by Borrower, or unless a Default or an Event of Default shall exist or have occurred and be continuing, no Agent shall apply any payments which it receives to any Eurodollar Rate Loans, except on the expiration date of the Interest Period applicable to any such Eurodollar Rate Loans and (ii) to the extent Borrower uses any proceeds of the Loans or Letter of Credit Accommodations to acquire rights in or the use of any Collateral or to repay any Indebtedness used to acquire rights in or the use of any Collateral, payments in respect of the obligations shall be deemed applied first to the Obligations arising from Loans and Letter of Credit Accommodations that were not used for such purposes and second to the Obligations arising from Loans and Letter of Credit Accommodations the proceeds of which were used to acquire rights in or the use of any Collateral in the chronological order in which Borrower acquired such rights or use. Each payment on any of the Loans to or for the account of one or more Lender's entitled to such payments pursuant to the this Section 6.4(a) shall be allocated among such Lenders based on their respective Pro Rata Shares of such Loans.

(b) At Administrative Agent's option, all principal, interest, fees, costs, expenses and other charges provided for in this Agreement or the other Financing Agreements may be charged directly to the loan account(s) of Borrower. Borrower shall make all payments to Agents and Lenders on the Obligations free and clear of, and without deduction or withholding for or on account of, any setoff, counterclaim, defense, duties, taxes, levies, imposts, fees, deductions, withholding, restrictions or conditions of any kind. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Obligations, any Agent or any Lender is required to surrender or return such payment or proceeds to any Person for any reason, then the Obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received by such Agent or such Lender. Borrower shall be liable to pay to each Agent, and does hereby indemnify and hold Agents and Lenders harmless for the amount of any payments or proceeds surrendered or returned. This Section 6.4 shall remain effective notwithstanding any contrary action which may be taken by any Agent or any Lender in reliance upon such payment or proceeds. This Section 6.4 shall survive the payment of the Obligations and the termination of this Agreement.

(c) If any payment of principal or interest with respect to any of the Loans, or of any fees, falls due on a day which is not a Business Day, then such due date shall be extended to the immediately following Business Day (unless, in the case of a Eurodollar Rate Loan, such immediately following Business Day is the first Business Day of a calendar month, in which case such due date shall be the immediately preceding Business Day) and, in the case of principal, additional interest shall accrue and be payable for the period of any such extension.

6.5. Authorization to Make Loans.

Agents and Lenders are authorized to make the Loans upon the receipt by Administrative Agent of a written notice (each such written notice, a "Notice of Borrowing")

substantially in the form attached hereto as Exhibit F or telephonic notice (followed immediately by a Notice of Borrowing) of each proposed borrowing not later than (a) in the case of a Prime Rate borrowing, 12:00 noon, Chicago time, on the proposed date of such borrowing, and (b) in the case of a Eurodollar Rate borrowing, 12:00 noon, Chicago time, at least three (3) Business Days prior to the proposed date of such borrowing. Each such notice shall be effective upon receipt by the Administrative Agent, shall be irrevocable, and shall specify the date, amount and type of borrowing and, in the case of a Eurodollar Rate borrowing, the initial Interest Period therefor. Promptly upon receipt of such notice, the Administrative Agent shall advise each Lender thereof. Not later than 3:00 P.M., Chicago time, on the date of a proposed borrowing, each Lender shall provide the Administrative Agent at the office specified by the Administrative Agent with immediately available funds covering such Lender's Pro Rata Share of such borrowing and, so long as the Administrative Agent has not received written notice that the conditions precedent set forth in Section 4 with respect to such borrowing have not been satisfied, the Administrative Agent shall pay over the funds received by the Administrative Agent to Borrower on the requested borrowing date. Each borrowing shall be on a Business Day. Each Eurodollar Rate borrowing shall be in an aggregate amount of at least $2,000,000 and an integral multiple of at least $100,000. All Loans and Letter of Credit Accommodations under this Agreement shall be conclusively presumed to have been made to, and at the request of and for the benefit of, Borrower when deposited to the credit of Borrower or otherwise disbursed or established in accordance with the instructions of Borrower or in accordance with the terms and conditions of this Agreement.

6.6. Use of Proceeds.

All Loans made or Letter of Credit Accommodations provided to Borrower pursuant to the provisions hereof shall be used by Borrower only for general operating, working capital and other proper corporate purposes of Borrower not otherwise prohibited by the terms hereof, including without limitation the payment of all costs, expenses and fees in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Financing Agreements. None of the proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any margin security or for the purposes of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as amended.

6.7. Pro Rata Treatment.

Except to the extent otherwise provided in this Agreement: (a) the making and conversion of Loans shall be made among the Lenders based on their respective Pro Rata Shares as to the Loans and (b) each payment on account of any Obligations to or for the account of one or more of Lenders in respect of any Obligations due on a particular day shall be allocated among the Lenders entitled to such payments based on their respective Pro Rata Shares and shall be distributed accordingly.

6.8. Sharing of Payments, Etc.

(a) Borrower agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim either Agent or any Lender may otherwise have, each Lender shall be entitled, at its option (but subject, as among Agents and Lenders, to the provisions of Section 12.3(b) hereof), to offset balances held by it for the account of Borrower at any of its offices, in dollars or in any other currency, against any principal of or interest on any Loans owed to such Lender or any other amount payable to such Lender hereunder, that is not paid when due (regardless of whether such balances are then due to Borrower), in which case it shall promptly notify Borrower and Administrative Agent thereof; provided, that, such Lender's failure to give such notice shall not affect the validity thereof.

(b) If any Lender (including either Agent) shall obtain from Borrower or any Obligor payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any of the other Financing Agreements through the exercise of any right of setoff, banker's lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received more than its Pro Rata Share of the principal of the Loans or more than its share of such other amounts then due hereunder or thereunder by Borrower or any Obligor to such Lender than the percentage thereof received by any other Lender, it shall promptly pay to Administrative Agent, for the benefit of the applicable Lenders, the amount of such excess and simultaneously purchase from such other applicable Lenders a participation in the Loans or such other amounts, respectively, owing to such other Lenders (or such interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all Lenders of the same category of Loans shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) in accordance with their respective Pro Rata Shares or as otherwise agreed by the applicable Lenders. To such end all applicable Lenders shall make appropriate adjustments among themselves (by the resale of participation sold or otherwise) if such payment is rescinded or must otherwise be restored.

(c) Borrower agrees that any Lender purchasing a participation (or direct interest) as provided in this Section may exercise, in a manner consistent with this Section, all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained herein shall require any Lender to exercise any right of setoff, banker's lien, counterclaims or similar rights or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other Indebtedness or obligation of Borrower or any Obligor. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, assign such rights to Administrative Agent for the benefit of Lenders and, in any event, exercise its rights in respect of such secured claim in a manner consistent with the rights of Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

6.9. Settlement Procedures.

Administrative Agent shall promptly remit to each Lender its share of all payments received in collected funds by Administrative Agent for the account of such Lender. All payments under Section 3.3 shall be made by Borrower directly to the Lender entitled thereto without setoff, counterclaim or other defense.

SECTION 7. COLLATERAL REPORTING AND COLLATERAL COVENANTS

7.1. Collateral Reporting.

Borrower shall provide Collateral Agent with the following documents in a form satisfactory to Collateral Agent (a) on a monthly basis or more frequently as either Agent may reasonably request (i) inventory reports by category and location (with such details as to the mix of Inventory as either Agent may request), (ii) agings of accounts payable, and (iii) reports of sales for each category of Inventory; (b) upon reasonable request of either Agent (i) the stock status reports of Borrower, (ii) reports on sales and use tax payment and including monthly sales and use tax accruals, (iii) reports of amounts of consigned Inventory held by Borrower by category and consignor, (iv) reports of sales of Inventory indicating net sales, (v) reports of aggregate Inventory purchases (including all costs related thereto, such as freight, duty and taxes) and identifying items of Inventory in transit to Borrower related to the applicable documentary letter of credit and/or bill of lading number, (vi) reports of the Cost of the Inventory (net of markdowns), (vii) reports on the status of all payments to owners and lessors of the leased retail store locations of Borrower and other leased premises of Borrower, (viii) copies of customer statements and credit memos, remittance advices and reports, and copies of deposit slips and bank statements, (ix) copies of shipping and delivery documents, (x) copies of purchase orders, invoices and delivery documents for Inventory and Equipment acquired by Borrower, (xi) reports by retail store location of sales and operating profits for each such retail store location and (xii) the monthly statements received by Borrower from any Credit Card Issuers or Credit Card Processors, together with such additional information with respect thereto as shall be sufficient to enable Collateral Agent to monitor the transactions pursuant to the Credit Card Agreements; and (c) such other reports as to the Collateral as Collateral Agent shall reasonably request from time to time. If any of Borrower’s records or reports of the Collateral are prepared or maintained by an accounting service, contractor, shipper or other agent, Borrower hereby irrevocably authorizes such service, contractor, shipper or agent to deliver such records, reports, and related documents to Collateral Agent and to follow the instructions of Administrative Agent or, subject to the prior written approval of Administrative Agent, Collateral Agent with respect to further services at any time that an Event of Default exists or has occurred and is continuing.

7.2. Accounts Covenants.

(a) Borrower shall notify Administrative Agent promptly of the assertion of any material claims, offsets, defenses or counterclaims by any account debtor, Credit Card Issuer or Credit Card Processor or any material disputes with any of such persons or any settlement, adjustment or compromise thereof and (ii) all material adverse information relating to the financial condition of any account debtor, Credit Card Issuer or Credit Card Processor. No material credit, discount, allowance or extension or agreement for any of the foregoing shall be

granted to any account debtor, Credit Card Issuer or Credit Card Processor except in the ordinary course of Borrower's business in accordance with the current practices of Borrower as in effect on the date hereof. So long as no Event of Default exists or has occurred and is continuing, Borrower shall settle, adjust or compromise any claim offset, counterclaim or dispute with any account debtor, Credit Card Issuer, Credit Card Processor. At any time that an Event of Default exists or has occurred and is continuing, Administrative Agent shall, at its option, have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with account debtors, Credit Card Issuers or Credit Card Processors or grant any credits, discounts or allowances.

(b) Borrower shall notify Administrative Agent promptly of (i) any notice of a material default by Borrower under any of the Credit Card Agreements or of any default which might result in the Credit Card Issuer or Credit Card Processor ceasing to make payments or suspending payments to Borrower, (ii) any notice from any Credit Card Issuer or Credit Card Processor that such person is ceasing or suspending, or will cease or suspend, any present or future payments due or to become due to Borrower from such person, or that such person is terminating or will terminate any of the Credit Card Agreements, and (iii) the failure of Borrower to comply with any material terms of the Credit Card Agreements or any terms thereof which might result in the Credit Card Issuer or Credit Card Processor ceasing or suspending payments to Borrower.

(c) With respect to each Account: (i) the amounts shown on any invoice delivered to either Agent or schedule thereof delivered to either Agent shall be true and complete, (ii) no payments shall be made thereon except payments immediately delivered to Administrative Agent pursuant to the terms of this Agreement, (iii) no credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor except as reported, to the extent required hereunder, to Administrative Agent in accordance with this Agreement and except for credits, discounts, allowances or extensions made or given in the ordinary course of Borrower's business in accordance with practices and policies previously disclosed to Administrative Agent, (iv) there shall be no setoffs, deductions, contras, defenses, counterclaims or disputes existing or asserted with respect thereto except as reported to Administrative Agent in accordance with the terms of this Agreement, (v) none of the transactions giving rise thereto will violate any applicable foreign, Federal, State or local laws or regulations, all documentation relating thereto will be legally sufficient under such laws and regulations and all such documentation will be legally enforceable in accordance with its terms.

(d) Collateral Agent may, with the consent of Administrative Agent, at any time or times that an Event of Default exists or has occurred, (i) notify any or all account debtors, Credit Card Issuers and Credit Card Processors that the Accounts have been assigned to Collateral Agent and that Collateral Agent has a security interest therein and Collateral Agent may direct any or all account debtors, Credit Card Issuers and Credit Card Processors to make payments of Accounts directly to Collateral Agent, (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of or otherwise, and upon any terms or conditions, any and all Accounts or other obligations included in the Collateral and thereby discharge or release the account debtor or any other party or parties in any way liable for payment thereof without affecting any of the Obligations, (iii) demand, collect or enforce payment of any Accounts or such other obligations, but without any duty to do so, and Collateral

Agent shall not be liable for its failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto and (iv) take whatever other action Collateral Agent may deem necessary or desirable for the protection of its interests. At any time that an Event of Default exists or has occurred and is continuing, at either Agent's request, all invoices and statements sent to any account debtor, Credit Card Issuer or Credit Card Processor shall state that the Accounts due from such account debtor, Credit Card Issuer or Credit Card Processor and such other obligations have been assigned to Collateral Agent and are payable directly and only to Collateral Agent and Borrower shall deliver to Collateral Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Collateral Agent may require.

(e) Collateral Agent shall have the right at any time or times, in Collateral Agent's name or in the name of a nominee of Collateral Agent, to verify the validity, amount or any other matter relating to any Account or other Collateral, by mail, telephone, facsimile transmission or otherwise.

(f) Borrower shall deliver or cause to be delivered to Collateral Agent, with appropriate endorsement and assignment, with full recourse to Borrower, all chattel paper and instruments which Borrower now owns or may at any time acquire immediately upon Borrower's receipt thereof, except as Collateral Agent may otherwise agree.

7.3. Inventory Covenants.

With respect to the Inventory: (a) Borrower shall at all times maintain inventory records reasonably satisfactory to Collateral Agent, keeping correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, Borrower's cost therefor and daily withdrawals therefrom and additions thereto;
(b) Borrower shall conduct a physical count of the Inventory either through periodic cycle counts or wall-to-wall counts so that all Inventory is covered by such counts at least once each year, but at any time or times as any Agent may request on or after an Event of Default, and promptly following such physical inventory (whether pursuant to periodic cycle counts or otherwise) shall, to the extent requested, supply Collateral Agent with a report in the form and with such specificity as may be reasonably satisfactory to Collateral Agent concerning such physical count; (c) Borrower shall not remove any Inventory from the locations set forth or permitted herein, without the prior written consent of Collateral Agent, except for sales of Inventory in the ordinary course of Borrower's business and except to move Inventory directly from one location set forth or permitted herein to another such location or to return defective, returned or slow moving Inventory to the relevant distribution center or directly to the supplier for appropriate credit; (d) Borrower shall make all material payments required to be made under leases of premises at which Inventory is located when due, except as specifically reported to Collateral Agent pursuant to Section 7.1 above; (e) upon Collateral Agent's request, Borrower shall, at its expense, no more than once in any twelve (12) month period, but at any time or times as Collateral Agent may reasonably request on or after an Event of Default, deliver or cause to be delivered to Collateral Agent written appraisals as to the Inventory in form, scope and methodology acceptable to Collateral Agent and by an appraiser acceptable to Collateral Agent, addressed to Collateral Agent and upon which Collateral Agent is expressly permitted to rely; (f) upon Collateral Agent's request, Borrower shall, at its expense, conduct through RGIS Inventory Specialists, Inc. or another inventory

counting service acceptable to Collateral Agent, a physical count of the Inventory in form, scope and methodology acceptable to Collateral Agent no more than once in any twelve (12) month period, but at any time or times as Collateral Agent may request on or after an Event of Default, the results of which shall be reported directly by such inventory counting service to Collateral Agent and Borrower shall promptly deliver confirmation in a form satisfactory to Collateral Agent that appropriate adjustments have been made to the inventory records of Borrower to reconcile the inventory count to Borrower's inventory records; (g) Borrower shall produce, use, store and maintain the Inventory with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with applicable laws (including the requirements of the Federal Fair Labor Standards Act of 1938, as amended and all rules, regulations and orders related thereto); (h) Borrower assumes (as between Lender and Borrower) all responsibility and liability arising from or relating to the production, use, sale or other disposition of the Inventory; (i) Borrower shall not sell Inventory to any customer on approval, or any other basis which entitles the customer to return or may obligate Borrower to repurchase such Inventory except for the right of return given to retail customers of Borrower in the ordinary course of the business of Borrower in accordance with the then current return policy of Borrower; (j) Borrower shall use its best efforts to keep the Inventory in good and marketable condition and to identify and make appropriate adjustments for Inventory that does not meet that requirement except that which is to be returned; and (k) Borrower shall not acquire or accept any Inventory on consignment or approval except to the extent such Inventory is reported to Collateral Agent in accordance with the terms hereof.

7.4. Power of Attorney.

Borrower hereby irrevocably designates and appoints each Agent (and all persons designated by either Agent) as Borrower's true and lawful attorney-in-fact, and authorizes Collateral Agent, in Borrower's or Collateral Agent's name, to: (a) at any time an Event of Default exists or has occurred and is continuing (i) demand payment on Receivables or other Collateral, (ii) enforce payment of Receivables by legal proceedings or otherwise, (iii) exercise all of Borrower's rights and remedies to collect any Receivable or other Collateral, (iv) sell or assign any Receivable upon such terms, for such amount and at such time or times as the Collateral Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any Receivable, (vii) prepare, file and sign Borrower's name on any proof of claim in bankruptcy or other similar document against an account debtor or other obligor in respect of any Receivables or other Collateral, (viii) notify the post office authorities to change the address for delivery of remittances from account debtors or other obligors in respect of Receivables or other proceeds of Collateral to an address designated by Collateral Agent, and open and dispose of all mail addressed to Borrower and handle and store all mail relating to the Collateral; and (ix) do all acts and things which are necessary, in Collateral Agent's determination, to fulfill Borrower's obligations under this Agreement and the other Financing Agreements and (b) at any time to (i) take control in any manner of any item of payment in respect of Receivables or constituting Collateral or otherwise received in or for deposit in the Blocked Accounts or otherwise received by either Agent or any Lender, (ii) have access to any lockbox or postal box into which remittances from account debtors or other obligors in respect of Receivables or other proceeds of Collateral are sent or received, (iii) endorse Borrower's name upon any items of payment in respect of Receivables or constituting Collateral or otherwise received by either Agent or any Lender and deposit the same in

Administrative Agent's account for application to the Obligations, (iv) endorse Borrower's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Receivable or any goods pertaining thereto or any other Collateral, including any warehouse or other receipts, or bills of lading and other negotiable or non-negotiable documents, (v) clear Inventory the purchase of which was financed with Letter of Credit Accommodations through U.S. Customs or foreign export control authorities in Borrower's name, Collateral Agent's name or the name of Collateral Agent's designee, and to sign and deliver to customs officials powers of attorney in Borrower's name for such purpose, and to complete in Borrower's or Collateral Agent's name, any order, sale or transaction, obtain the necessary documents in connection therewith and collect the proceeds thereof, (vi) sign Borrower's name on any verification of Receivables and notices thereof to account debtors or any secondary obligors or other obligors in respect thereof. Borrower hereby releases each Agent and Lenders and their respective officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except as a result of such Agent's or any Lender's own gross negligence or willful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

7.5. Right to Cure.

Administrative Agent may, at its option upon notice to Borrower (a) cure any default by Borrower under any material agreement with a third party that affects the Collateral, its value or the ability of Administrative Agent to collect, sell or otherwise dispose of the Collateral or the rights and remedies of Administrative Agent therein or the ability of Borrower to perform its obligations hereunder or under the other Financing Agreements, (b) pay or bond on appeal any judgment entered against Borrower, (c) discharge taxes, liens, security interests or other encumbrances at any time levied on or existing with respect to the Collateral and (d) pay any amount, incur any expense or perform any act which, in Administrative Agent's judgment, is necessary or appropriate to preserve, protect, insure or maintain the Collateral and the rights of Agents and Lenders with respect thereto. Administrative Agent may add any amounts so expended to the Obligations and charge Borrower's account therefor, such amounts to be repayable by Borrower on demand. Agents and Lenders shall be under no obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of Borrower. Any payment made or other action taken by either Agent or any Lender under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed accordingly.

7.6. Access to Premises.

From time to time as reasonably requested by any Agent, at the cost and expense of Borrower, (a) each Agent or its designee shall have complete access to all of Borrower's premises during normal business hours and after notice to Borrower, or at any time and without notice to Borrower if an Event of Default exists or has occurred and is continuing, for the purposes of conducting field examinations (which Collateral Agent shall conduct not more than twice per year, provided, however, that Borrower shall not be obligated to reimburse or pay for more than fifty percent (50%) of the reasonable and actual out-of-pocket costs and expenses of any such field examination, or at such greater frequency as Administrative Agent shall elect during the existence of a Default or Event of Default) inspecting, verifying and auditing the

Collateral and all of Borrower's books and records, including the Records, and (b) Borrower shall promptly furnish to each Agent such copies of such books and records or extracts therefrom as any Agent may reasonably request, and (c) any Agent or any Agent's designee may use during normal business hours such of Borrower's personnel, equipment, supplies and premises as may be reasonably necessary for the foregoing and if an Event of Default exists or has occurred and is continuing for the collection of Receivables and realization of other Collateral.

SECTION 8. REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to Agents and Lenders the following (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which are a continuing condition of the making of Loans and providing Letter of Credit Accommodations to Borrower:

8.1. Corporate Existence; Power and Authority.

Borrower is a corporation duly organized and in good standing under the laws of its state of incorporation and is duly qualified as a foreign corporation and in good standing in all states or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary, and in which the failure to so qualify would have a Material Adverse Effect. The execution, delivery and performance of this Agreement, the other Financing Agreements and the transactions contemplated hereunder and thereunder (a) are all within Borrower's corporate powers, (b) have been duly authorized and (c) are not in contravention of law or the terms of Borrower's certificate of incorporation, by-laws, or other organizational documentation, or any indenture, agreement or undertaking to which Borrower is a party or by which Borrower or its property are bound. This Agreement and the other Financing Agreements constitute legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms. Borrower does not have any Subsidiaries except as set forth on the Information Certificate.

8.2. Name; State of Organization; Chief Executive Office; Collateral Locations.

(a) The exact legal name of Borrower is as set forth on the signature page of this Agreement and in the Information Certificate. Borrower has not, during the past five years, been known by or used any other corporate or fictitious name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property or assets out of the ordinary course of business, except as set forth in the Information Certificate.

(b) Borrower is an organization of the type and organized in the jurisdiction set forth in the Information Certificate. The Information Certificate accurately sets forth the organizational identification number of Borrower or accurately states that Borrower has none and accurately sets forth the federal employer identification number of Borrower.

(c) The chief executive office and mailing address of Borrower and Borrower's Records concerning Accounts are located only at the address identified as such in Schedule 8.2 to the Information Certificate and its only other places of business and the only

other locations of Collateral, if any, are the addresses set forth in Schedule 8.2 to the Information Certificate, subject to the right of Borrower to establish new locations in accordance with Section 9.2 below. The Information Certificate correctly identifies any of such locations which are not owned by Borrower and sets forth the owners and/or operators thereof.

8.3. Financial Statements; No Material Adverse Change.

All financial statements relating to Borrower which have been or may hereafter be delivered by Borrower to Agents and Lenders have been prepared in accordance with GAAP (except as to any interim financial statements, to the extent such statements are subject to normal year-end adjustments and do not include any notes) and fairly present the financial condition and the results of operation of Borrower as at the dates and for the periods set forth therein. Except as disclosed in any interim financial statements furnished by Borrower to Administrative Agent prior to the date of this Agreement, there has been no material adverse change in the assets, liabilities, properties and condition, financial or otherwise, of Borrower, since the date of the most recent audited financial statements furnished by Borrower to Administrative Agent prior to the date of this Agreement.

8.4. Priority of Liens; Title to Properties.

The security interests and liens granted to Collateral Agent under this Agreement and the other Financing Agreements constitute valid and perfected first priority liens and security interests in and upon the Collateral which is located within the United States of America, Canada or Puerto Rico subject only to the liens indicated on Schedule 8.4 to the Information Certificate and the other liens permitted under Section 9.8 hereof. Borrower has good and marketable fee simple title to all of its other properties and assets subject to no liens, mortgages, pledges, security interests, encumbrances or charges of any kind, except those granted to Collateral Agent and such others as are specifically listed on Schedule 8.4 to the Information Certificate or permitted under Section 9.8 hereof.

8.5. Tax Returns.

Borrower has filed, or caused to be filed, in a timely manner all (i) federal and state tax returns, reports and declarations which are required to be filed by Borrower and (ii) all other tax returns, reports and declarations which are required to be filed by Borrower, other than such tax returns, reports and declarations the failure of which to file could not reasonably be expected to have a Material Adverse Effect. All information in such tax returns, reports and declarations is complete and accurate in all material respects. Borrower has paid or caused to be paid all taxes due and payable or claimed due and payable in any assessment received by it and has collected, deposited and remitted in accordance with all applicable laws all sales and/or use taxes applicable to the conduct of its business, except taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Borrower and with respect to which adequate reserves have been set aside on its books and except for any taxes of less than $250,000 in the aggregate. Adequate provision has been made for the payment of all accrued and unpaid Federal, State, county, local, foreign and other taxes whether or not yet due and payable and whether or not disputed. Borrower has collected and deposited in a separate bank account or remitted to the appropriate tax authority all sales and/or use taxes applicable to

its business required to be collected and so deposited under the laws of the United States and each possession or territory thereof, and each State or political subdivision thereof, including any State in which Borrower owns any Inventory or owns or leases any other property.

8.6. Litigation.

Except as set forth in Schedule 8.6 to the Information Certificate, there is no present investigation by any Governmental Authority pending, or to the best of Borrower's knowledge threatened, against or affecting Borrower, its assets or business and there is no action, suit, proceeding or claim by any Person pending, or to the best of Borrower's knowledge threatened, against Borrower or its assets or goodwill, or against or affecting any transactions contemplated by this Agreement, which if adversely determined against Borrower could reasonably be expected to have a Material Adverse Effect.

8.7. Compliance with Other Agreements and Applicable Laws.

(a) Borrower is not in default in any respect under, or in violation in any respect of any of the terms of, any agreement, contract, instrument, lease or other commitment to which it is a party or by which it or any of its assets are bound, in each case where such default or violation has or would have a Material Adverse Effect. Borrower is in compliance in all respects with the requirements of all applicable laws, rules, regulations and orders of any governmental authority relating to its business, including, without limitation, those set forth in or promulgated pursuant to the Occupational Safety and Health Act of 1970, as amended, the Fair Labor Standards Act of 1938, as amended, ERISA, the Code, as amended, and the rules and regulations thereunder, the Environmental Laws, all Federal, State and local statutes, regulations, rules and orders relating to consumer credit (including, without limitation, as each has been amended, the Truth-in-Lending Act, the Fair Credit Billing Act, the Equal Credit Opportunity Act and the Fair Credit Reporting Act, and regulations, rules and orders promulgated thereunder), all Federal, State and local states, regulations, rules and orders pertaining to sales of consumer goods (including, without limitation, the Consumer Products Safety Act of 1972, as amended, and the Federal Trade Commission Act of 1914, as amended, and all regulations, rules and orders promulgated thereunder) in each case where the failure to comply would have a Material Adverse Effect.

(b) Borrower has obtained all material permits, licenses, approvals, consents, certificates, orders or authorizations of any governmental agency required for the lawful conduct of its business (the "Permits"). Schedule 8.7 to the Information Certificate sets forth all of the Permits issued to or held by Borrower as of the date hereof by any Federal, State or local governmental agency and any applications pending by Borrower with such federal, state or local governmental agency. The Permits constitute all permits, licenses, approvals, consents, certificates, orders or authorizations necessary for Borrower to own and operate its business as presently conducted or proposed to be conducted where the failure to have such Permits would have a Material Adverse Effect. All of the Permits are valid and subsisting and in full force and effect. There are no actions, claims or proceedings pending or threatened that seek the revocation, cancellation, suspension or modification of any of the Permits.

8.8. Environmental Compliance.

(a) Except as set forth on Schedule 8.8 to the Information Certificate, Borrower has not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner which violates any applicable Environmental Law and the operations of Borrower comply with all applicable Environmental Laws, in each case where such violation or failure to so comply would have a Material Adverse Effect.

(b) Except as set forth on Schedule 8.8 to the Information Certificate, there is no investigation, proceeding, complaint, order, directive, claim, citation or notice by any Governmental Authority or any other person pending or to the best of Borrower's knowledge threatened, with respect to any material non-compliance with or material violation of the requirements of any applicable Environmental Law by Borrower.

(c) Except as set forth in Schedule 8.8 to the Information Certificate, Borrower does not have any liability (contingent or otherwise) in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials which would have a Material Adverse Effect.

(d) Borrower has all licenses, certificates, approvals and other Permits required to be obtained or filed in connection with the operations of Borrower under any Environmental Law in each case where the failure to obtain or file the same would have a Material Adverse Effect and all such licenses, permits, certificates, approvals or similar authorizations are valid and in full force and effect where the failure to have any of such licenses, permits, certificates, approvals or similar authorization would have a Material Adverse Effect.

8.9. Credit Card Agreements.

Set forth in Schedule 8.9 to the Information Certificate is a correct and complete list, as of the date hereof, of (a) all of the Credit Card Agreements and all other agreements, documents and instruments existing as of the date hereof between or among Borrower, any of its affiliates, the Credit Card Issuers, the Credit Card Processors and any of, their affiliates; (b) the percentage of each sale payable to the Credit Card Issuer or Credit Card Processor under the terms of the Credit Card Agreements; (c) the amount of all reserves; or collateral maintained as of the date hereof by the Credit Card Issuer or Credit Card Processor, if any, (d) all other fees and charges payable by Borrower under or in connection with the Credit Card Agreements; and (e) the term of such Credit Card Agreements. The Credit Card Agreements constitute all of such agreements necessary for Borrower to operate its business as presently conducted with respect to credit cards and debit cards and no Accounts of Borrower arise from purchases by customers of Inventory with credit cards or debit cards, other than those which are issued by Credit Card Issuers with whom Borrower has entered into one of the Credit Card Agreements set forth on Schedule 8.9 to the Information Certificate or with whom Borrower has entered into a Credit Card Agreement in accordance with Section 9.13 hereof. Each of the Credit Card Agreements constitutes a legal, valid and binding obligation of Borrower and to the best of Borrower's knowledge, the other parties thereto, enforceable in accordance with their respective terms and

are in full force and effect. No default or event of default, or act, condition or event which after notice or passage of time or both, would constitute a default or an event of default under any of the Credit Card Agreements exists or has occurred and is continuing which would have a Material Adverse Effect, and Borrower and the other parties thereto have complied with all of the terms and conditions of the Credit Card Agreements to the extent necessary for Borrower to be entitled to receive all payments thereunder. Borrower has delivered, or caused to be delivered to Collateral Agent, true, correct and complete copies of all of the Credit Card Agreements.

8.10. Employee Benefits.

(a) Borrower has not engaged in any transaction in connection with which Borrower or any of its ERISA Affiliates could be subject to either a civil penalty assessed pursuant to ERISA or a tax imposed the Code, including any accumulated funding deficiency described in Section 8.10(c) hereof and any deficiency with respect to vested accrued benefits described in Section 8.10(d) hereof.

(b) No liability to the Pension Benefit Guaranty Corporation has been or is expected by Borrower to be incurred with respect to any employee benefit plan of Borrower or any of its ERISA Affiliates. There has been no reportable event (within the meaning of ERISA) or any other event or condition with respect to any employee benefit plan of Borrower or any of its ERISA Affiliates which presents a risk of termination of any such plan by the Pension Benefit Guaranty Corporation.

(c) Full payment has been made of all amounts which Borrower or any of its ERISA Affiliates is required under ERISA and the Code to have paid under the terms of each employee benefit plan as contributions to such plan as of the last day of the most recent fiscal year of such plan ended prior to the date hereof, and no accumulated funding deficiency (as defined in ERISA and the Code), whether or not waived, exists with respect to any employee pension benefit plan, including any penalty or tax described in Section 8.10(a) hereof and any deficiency with respect to vested accrued benefits described in Section 8.10(d) hereof.

(d) The current value of all vested accrued benefits under all employee pension benefit plans maintained by Borrower that are subject to Title IV of ERISA does not exceed the current value of the assets of such plans allocable to such vested accrued benefits, including any penalty or tax described in Section 8.10(a) hereof and any accumulated funding deficiency described in Section 8.10(c) hereof. The terms “current value” and “accrued benefit” have the meanings specified in ERISA.

(e) Neither Borrower nor any of its ERISA Affiliates is or has ever been obligated to contribute to any “multiemployer plan” (as such term is defined in ERISA) that is subject to Title I of ERISA.

8.11. Bank Accounts.

All of the deposit accounts, investment accounts or other accounts in the name of or used by Borrower maintained at any bank or other financial institution are set forth in Schedule 6.3 to the Information Certificate, subject to the right of Borrower to establish new accounts in accordance with Section 5.3(d) hereof.

8.12. Regulation U.

Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

8.13. Investment Company Act.

Neither Borrower nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," within the meaning of the Investment Company Act of 1940.

8.14. OFAC.

Neither Borrower nor, to the best knowledge of Borrower, any Affiliate of Borrower (a) is a Sanctioned Person, (b) does business in a Sanctioned Country in violation of the economic sanctions of the United States administered by OFAC or (c) does business in such country or with any such agency, organization or person, in violation of the economic sanctions of the United States administered by OFAC.

8.15. Accuracy and Completeness of Information.

All information furnished by or on behalf of Borrower in writing to any Agent or any Lender in connection with this Agreement or any of the other Financing Agreements or any transaction contemplated hereby or thereby, including all information on the Information Certificate is true and correct in all material respects on the date as of which such information is dated or certified and does not omit any material fact necessary in order to make such information not misleading. No event or circumstance has occurred which has had or could reasonably be expected to have a Material Adverse Effect, which has not been fully and accurately disclosed to Administrative Agent in writing.

8.16. Survival of Warranties; Cumulative.

All representations and warranties contained in this Agreement or any of the other Financing Agreements shall survive the execution and delivery of this Agreement and shall be deemed to have been made again to Agents and Lenders on the date of each additional borrowing or other credit accommodation hereunder except to the extent that any such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate on and as of such earlier date) and shall be conclusively presumed to have been relied on by Agents and Lenders regardless of any investigation made or information possessed by any Agent or any Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which Borrower shall now or hereafter give, or cause to be given, to any Agent or any Lender. In no event shall the corporate officers of Borrower have any personal liability to any Agent or any Lender if any of the representations and warranties of Borrower in this Section 8 are false or misleading, absent fraud.

SECTION 9. AFFIRMATIVE AND NEGATIVE COVENANTS

9.1. Maintenance of Existence.

(a) Borrower shall at all times preserve, renew and keep in full, force and effect its corporate existence and rights and franchises with respect thereto and maintain in full force and effect all permits, licenses, trademarks, trade names, approvals, authorizations, leases and contracts necessary to carry on the business as presently or proposed to be conducted.

(b) Borrower shall not change its name unless each of the following conditions is satisfied: (ii) Administrative Agent shall have received not less than thirty (30) days prior written notice from Borrower of such proposed change in its corporate name, which notice shall accurately set forth the new name; and (ii) Administrative Agent shall have received a copy of the amendment to the Certificate of Incorporation of Borrower providing for the name change certified by the Secretary of State of the jurisdiction of incorporation or organization of Borrower as soon as it is available.

(c) Borrower shall not change its chief executive office or its mailing address or organizational identification number (or if it does not have one, shall not acquire one) unless Administrative Agent shall have received not less than thirty (30) days' prior written notice from Borrower of such proposed change, which notice shall set forth such information with respect thereto as Administrative Agent may require and Administrative Agent shall have received such agreements as Administrative Agent may reasonably require in connection therewith. Borrower shall not change its type of organization, jurisdiction of organization or other legal structure.

9.2. New Collateral Locations.

Borrower may only open any new location within the United States of America, Canada or Puerto Rico provided Borrower has granted to Collateral Agent (i) a perfected security interest in the Collateral at such location and (ii) a Landlord Agreement in respect of such new location if required by Collateral Agent. From time to time, upon request of the Collateral Agent, Borrower shall provide Collateral Agent with an accurate list showing any new locations or closed locations since the last such listing provided hereunder.

9.3. Compliance with Laws, Regulations, Etc.

(a) Borrower shall, and shall cause any Subsidiary to, at all times, comply in all material respects with all laws, rules, regulations, licenses, Permits, approvals and orders applicable to it and duly observe all requirements of any foreign, Federal, State or local Governmental Authority, including ERISA, the Code, the Occupational Safety and Health Act of 1970, as amended, the Fair Labor Standards Act of 1938, as amended, and all statutes, rules, regulations, orders, permits and stipulations relating to environmental pollution and employee health and safety, including all of the Environmental Laws in each case where the failure to so comply therewith or observe such requirements would have a Material Adverse Effect. Without limitation of the preceding provisions of this Section 9.3, Borrower shall (x) ensure that neither Borrower nor, to the best knowledge of Borrower, any Affiliate of Borrower (i) becomes a Sanctioned Person, (ii) does business in a Sanctioned Country in violation of the economic sanctions of the United States administered by OFAC or (iii) does business in such country or

with any such agency, organization or person, in violation of the economic sanctions of the United States administered by OFAC, and (y) comply, and cause each of its Subsidiaries to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations.

(b) Borrower shall give both oral and written notice to Administrative Agent within five (5) Business Days of Borrower's receipt of any notice of, or Borrower's otherwise obtaining knowledge of, (i) the occurrence of any event involving the release, spill or discharge, threatened or actual, of any Hazardous Material at any one of Borrower's properties or (ii) any investigation, proceeding, complaint, order, directive, claims, citation or notice with respect to: (A) any material non-compliance with or material violation of any Environmental Law by Borrower or (B) the release, spill or discharge, threatened or actual, of any Hazardous Material or (C) the generation, use, storage, treatment, manufacture, handling, production or disposal of any Hazardous Materials or (D) any other environmental, health or safety matter which has or would have a Material Adverse Effect.

(c) Without limiting the generality of the foregoing, whenever Administrative Agent reasonably determines that there is non-compliance, or any condition which requires any action by or on behalf of Borrower in order to avoid any material non-compliance, with any Environmental Law, Borrower shall, at Administrative Agent's request and Borrower's expense: (i) cause an independent environmental engineer acceptable to Administrative Agent to conduct such tests of the site where Borrower's non-compliance or alleged non-compliance with such Environmental Laws has occurred as to such non-compliance and prepare and deliver to Administrative Agent a report as to such non-compliance setting forth the results of such tests, a proposed plan for responding to any material environmental problems described therein, and an estimate of the costs thereof and (ii) provide to Administrative Agent a supplemental report of such engineer whenever the scope of such non-compliance, or Borrower's response thereto or the estimated costs thereof, shall change in any material respect.

(d) Borrower shall indemnify and hold harmless Agents and Lenders and their respective directors, officers, employees, agents, invitees, representatives, successors and assigns, from and against any and all losses, claims, damages, liabilities, costs, and expenses (including attorneys' fees and legal expenses) directly or indirectly arising out of or attributable to the use, generation, manufacture, reproduction, storage, release, threatened release, spill, discharge, disposal or presence of a Hazardous Material, including the costs of any required or necessary repair, cleanup or other remedial work with respect to any property of Borrower and the preparation and implementation of any closure, remedial or other required plans. All representations, warranties, covenants and indemnifications in this Section 9.3 shall survive the payment of the Obligations and the termination of this Agreement.

9.4. Payment of Taxes and Claims.

Borrower shall, and shall cause any Subsidiary to, duly pay and discharge all taxes, assessments, contributions and governmental charges upon or against it or its properties or assets, except for taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Borrower or such Subsidiary, as the case may be, and with respect to which adequate reserves have been set aside on its books. Borrower shall be liable for any tax or penalties imposed on any Agent or any Lender as a result of the financing

arrangements provided for herein and Borrower agrees to indemnify and hold Agents and Lenders harmless with respect to the foregoing, and to repay to Administrative Agent, for the benefit of Agents and Lenders, on demand the amount thereof, and until paid by Borrower such amount shall be added and deemed part of the Loans, provided, that, nothing contained herein shall be construed to require Borrower to pay any income or franchise taxes attributable to the income of Lenders from any amounts charged or paid hereunder to Lenders. The foregoing indemnity shall survive the payment of the Obligations and the termination of this Agreement.

9.5. Insurance.

Borrower shall, and shall cause any Subsidiary to, at all times, maintain with financially sound and reputable insurers insurance with respect to the Collateral against loss or damage and all other insurance of the kinds and in the amounts customarily insured against or carried by corporations of established reputation engaged in the same or similar businesses and similarly situated. Said policies of insurance shall be reasonably satisfactory to Administrative Agent as to form, amount and insurer. Borrower shall furnish certificates, policies or endorsements to Administrative Agent as Administrative Agent shall require as proof of such insurance, and, if Borrower fails to do so, Administrative Agent is authorized, but not required, to obtain after providing written notice thereof to Borrower such insurance with respect to the Collateral at the expense of Borrower. All policies shall provide for at least thirty (30) days prior written notice to Administrative Agent of any cancellation or reduction of coverage. Administrative Agent may act as attorney for Borrower in obtaining, and at any time an Event of Default exists or has occurred and is continuing, adjusting, settling, amending and canceling any such insurance which relates to the Collateral. Borrower shall cause Collateral Agent to be named as a loss payee and each Agent an additional insured (but without any liability for any premiums) under such insurance policies relating to the Collateral and Borrower shall obtain non-contributory lender's loss payable endorsements to all such insurance policies in form and substance satisfactory to Administrative Agent. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to Collateral Agent as its interests may appear and further specify that Collateral Agent shall be paid regardless of any act or omission by Borrower or any of its Affiliates. Any insurance proceeds received by Collateral Agent at any time shall be applied to payment of the Obligations in the order and manner set forth in Section 6.4(a) hereof.

9.6. Financial Statements and Other Information.

(a) Borrower shall keep proper books and records in which true and complete entries shall be made of all dealings or transactions of or in relation to the Collateral and the business of Borrower and its Subsidiaries (if any) in accordance with GAAP and Borrower shall furnish or cause to be furnished to Administrative Agent: (i) within thirty-five days after the end of each fiscal month, monthly unaudited consolidated financial statements (including in each case balance sheets, statements of income and loss statements of cash flow and statements of shareholders' equity), all in reasonable detail, fairly presenting the financial position and the results of the operations of borrower an its Subsidiaries, as of the end of and through such fiscal month and (ii) within ninety (90) days after the end fiscal year, audited consolidated financial statements and, if Borrower has any Subsidiaries, audited consolidating financial statements of Borrower and its Subsidiaries (including in each case balance sheets, statements of income and

loss, statements of cash flow and statements of shareholders' equity), and the accompanying notes thereto, all in reasonable detail, fairly presenting the financial position and the results of the operations of Borrower and its Subsidiaries, as of the end of and for such fiscal year, together with the opinion of independent certified public accountants, which accountants shall be an independent accounting firm selected by Borrower and reasonably acceptable to Lender, that such financial statements have been prepared in accordance with GAAP, and present fairly the results of operations and financial condition of Borrower and its subsidiaries as of the end of and for the fiscal year then ended.

(b) Borrower shall promptly notify Administrative Agent in writing of the details of (i) any material loss, damage, investigation, action, suit, proceeding or claim relating to the Collateral or any other property which is security for the Obligations or which has or would have a Material Adverse Effect and (ii) the occurrence of any Event of Default or act condition or event which, with the passage of time or giving of notice or both, would constitute an Event of Default.

(c) Borrower shall promptly after the sending or filing thereof furnish or cause to be furnished to Administrative Agent copies of all reports which Borrower sends to its stockholders generally and copies of all reports and registration statements which Borrower files with the Securities and Exchange Commission, any national securities exchange or the National Association of Securities Dealers, Inc.

(d) Borrower shall furnish or cause to be furnished to Administrative Agent such budgets, forecasts, projections and other information respecting the Collateral and the business of Borrower, as Administrative Agent may, from time to time, reasonably request. Administrative Agent is hereby authorized to deliver a copy of any financial statement or any other information relating to the business of Borrower to any court or other Governmental Authority or to any Lender or Participant or to any prospective Lender or prospective Participant. Borrower hereby irrevocably authorizes and directs all accountants or auditors to deliver to Administrative Agent, at Borrower's expense, copies of the financial statements of Borrower and any reports or management letters prepared by such accountants or auditors on behalf of Borrower and to disclose to any Agent or any Lender such information as they may have regarding the business of Borrower. Any documents, schedules, invoices or other papers delivered to any Agent or any Lender may be destroyed or otherwise disposed of by such Agent or such Lender one (1) year after the same are delivered to such Agent or such Lender, except as otherwise designated by Borrower to such Agent or such Lender in writing.

9.7. Sale of Assets, Consolidation, Merger, Dissolution, Etc.

Borrower shall not, and shall not permit any Subsidiary to (and no Agent nor any Lender authorizes Borrower to), directly or indirectly,

(a) merge into or with or consolidate with any other Person or permit any other Person to merge into or with or consolidate with it if such merger or consolidation results in a Change of Control;

(b) sell, assign, lease, transfer, abandon or otherwise dispose of any Capital Stock or indebtedness to any other Person or any of its assets to any other Person, except for

(i) sales of Inventory in the ordinary course of business,

(ii) the disposition of worn-out or obsolete Equipment so long as (A) any proceeds are paid to Administrative Agent and (B) such sales do not involve Equipment having an aggregate fair market value in excess of $2,000,000 for all such Equipment disposed of in any fiscal year of Borrower;

(iii) sales or other dispositions by Borrower of assets in connection with the closing or sale of a retail store location of Borrower in the ordinary course of Borrower's business which consist of leasehold interests in the premises of such store, the Equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such store; provided, that, as to each and all such sales, (A) on the date of, and after giving effect to, any such sale, in any calendar year, Borrower shall not have closed or sold retail store locations accounting for more than seven and one-half (7 1/2%) percent of all sales of Borrower in the immediately preceding twelve (12) month period, (B) Administrative Agent shall have received not less than ten (10) Business Days prior written notice of such sale, which notice shall set forth in reasonable detail satisfactory to Administrative Agent, the parties to such sale or other disposition, the assets to be sold or otherwise disposed of, the purchase price and the manner of payment thereof and such other information with respect thereto as Administrative Agent may request, (C) as of the date of such sale or other disposition and after giving effect thereto, no Event of Default, or act, condition or event which with notice or passage of time would constitute an Event of Default, shall exist or have occurred, (D) such sale shall be on commercially reasonable prices and terms in a bona fide arms length transaction, and (E) any and all net proceeds payable or delivered to respect of such sale or other disposition shall be paid or delivered, or caused to be paid or delivered, to Administrative Agent in accordance with the terms of this Agreement either, at Administrative Agent's option, for application to the Obligations in accordance with the terms hereof (except to the extent such proceeds reflect payment in respect of indebtedness secured by a properly perfected first priority security interest in the assets sold, in which case, such proceeds shall be applied to such indebtedness secured thereby) or to be held by Administrative Agent as cash collateral for the Obligations on terms and conditions acceptable to Administrative Agent;

(iv) sales of Capital Stock of Borrower pursuant to a Qualified Public Offering; provided, that, (A) Borrower shall not (except as permitted by Section 9.11) pay or be required to pay any dividends or repurchase or redeem such stock or make any other payments in respect thereof on or prior to the end of the then current term of this Agreement and (B) the terms of such Capital Stock and the purchase and sale thereof shall otherwise be reasonably acceptable to Administrative Agent in all respects;

(v) sales or other issuance's of Capital Stock of Borrower to Borrower's directors, officers, employees and/or consultants pursuant to the Borrower's Restricted Stock Plan or any of Borrower's other stock ownership arrangements established for the benefit of such directors, officers, employees and/or consultants;

(vi) sales of Capital Stock to existing shareholders of the Borrower or pursuant to rights offerings to such existing shareholders; or

(vii) sales of Capital Stock to new investors if the sale of the stock is authorized under the Amended and Restated Reclassification and Sale of Shares Agreement, dated April 29, 1998, as amended or otherwise modified from time to time pursuant to the terms thereof;

(c) form or acquire any subsidiaries; or

(d) wind up, liquidate or dissolve (other than wind up, liquidate or dissolve Internet Sub in accordance with Section 9.16); or

(e) agree to do any of the foregoing.

9.8. Encumbrances.

Borrower shall not, and shall not permit any Subsidiary to, create, incur, assume, suffer or permit to exist any security interest, mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of its assets or properties, including the Collateral, except: (a) the security interests and liens of Collateral Agent for itself and the benefit of Lenders; (b) liens securing the payment of taxes, either not yet overdue or the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Borrower or such Subsidiary, as the case may be and with respect to which adequate reserves have been set aside on its books; (c) non-consensual statutory liens (other than liens securing the payment of taxes) arising in the ordinary course of Borrower's or such Subsidiary's business to the extent: (i) such liens secure Indebtedness which is not overdue or (ii) such liens secure Indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued and available to Borrower or such Subsidiary, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books; (d) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of real property which do not interfere in any material respect with the use of such real property or ordinary conduct of the business of Borrower or such Subsidiary as presently conducted thereon or materially impair the value of the real property which may be subject thereto; (e) purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages on real estate not to exceed $15,000,000 in the aggregate at any time outstanding so long as such interests and mortgages do not apply to any property of Borrower other than the Equipment or real estate so acquired, and the indebtedness secured thereby does not exceed the cost of the Equipment or real estate so acquired, and the indebtedness secured thereby does not exceed the cost of the Equipment or real

estate so acquired, as the case may be; (f) liens or rights of setoffs or credit balances of Borrower with Credit Card Processors as a result of fees and chargebacks; (g) deposits of cash with the owner or lessor of retail store locations leased and operated by Borrower in the ordinary course of the business of Borrower to secure the performance by Borrower of its obligations under the terms of the lease for such premises; (h) liens on assets of Borrower to secure indebtedness of Borrower permitted under Section 9.9(d) below, provided, that, such liens shall be junior and subordinate to the liens of Collateral Agent on terms and conditions acceptable to Collateral Agent; (i) pledges and deposits of cash, Cash Equivalents or investment securities by Borrower to secure indebtedness of Borrower permitted under Section 9.9(g) hereof; provided, that, (i) the aggregate amount so pledged or deposited, together with the amount of all Letter of Credit Accommodations issued in connection with any Hedging Agreements, shall not in the aggregate exceed $2,500,000, (ii) as of each of the thirty (30) days immediately preceding the date of such pledge or deposit and after giving effect thereto, Excess Availability shall not be less than $4,000,000, (iii) such pledge or deposit (or the right to demand such pledge or deposit) shall be required by the other party to the Hedging Agreement as a condition to it entering into such contract with Borrower and Administrative Agent shall have received evidence thereof in form and substance satisfactory to Administrative Agent and (iv) as of the date of such pledge or deposit and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing; and (j) the security interests and liens set forth on Schedule 8.4 to the Information Certificate.

9.9. Indebtedness.

Borrower shall not, and shall not permit any Subsidiary to, incur, create, assume, become or be liable in any manner with respect to, suffer or permit to exist, any obligations or indebtedness, except:

(a) the Obligations (excluding those described in Section 9.9(g) below);

(b) trade obligations and normal accruals in the ordinary course of business not yet due and payable, or with respect to which Borrower is contesting in good faith the amount or validity thereof by appropriate proceedings diligently pursued and available to Borrower and with respect to which adequate reserves have been set aside on its books;

(c) purchase money indebtedness (including capital leases) to the extent not incurred or secured by liens (including capital leases) in violation of any other provision of this Agreement;

(d) indebtedness of Borrower for borrowed money (other than indebtedness permitted under Section 9.9(c) above or Section 9.9(e) below) arising after the date hereof owing to any person in an aggregate amount not to exceed $20,000,000 at any time outstanding; provided, that, as to each and all of such indebtedness: (i) Administrative Agent shall have received not less than ten (10) Business Days prior written notice of the intention to incur such indebtedness, which notice shall set forth in reasonable detail satisfactory to Administrative Agent, the amount of such indebtedness, the person to whom such indebtedness will be owed, the interest rate, the schedule of repayments and maturity date with respect thereto and such other information with respect thereto as Administrative Agent may request, (ii) Administrative

Agent shall have received true, correct and complete copies of all agreements, documents and instruments evidencing or otherwise related to such indebtedness, as duly authorized, executed and delivered by the parties thereto, (iii) such indebtedness shall be incurred by Borrower at commercially reasonable rates and terms in a bona fide arms' length transaction, (iv) if any of such indebtedness is to be secured by any assets of Borrower, then (A) all of the terms and conditions of such indebtedness and the person to whom such indebtedness is owed shall be reasonably acceptable to Administrative Agent, (B) the security interests and liens on the assets of Borrower in favor of such person to secure such indebtedness shall be junior and subordinate to the security interests and liens of Administrative Agent on such assets on terms and conditions reasonably acceptable to Administrative Agent, and (C) Administrative Agent shall have received, in form and substance satisfactory to Administrative Agent, an intercreditor agreement between Administrative Agent and such person, as acknowledged and agreed to by Borrower, duly authorized, executed and delivered by such person and Borrower, providing for, inter alia, the parties' relative rights and priorities with respect to the assets of Borrower, (v) such indebtedness shall not at any time include terms and conditions which in any manner adversely affect Agents or Lenders or any rights of either Agent or Lenders as determined in good faith by Administrative Agent and confirmed by Administrative Agent to Borrower in writing or which are more restrictive or burdensome than the terms or conditions of any other indebtedness of Borrower as in effect on the date hereof (other than the Obligations), (vi) as of the date of incurring such indebtedness and after giving effect thereto, no Event of Default shall exist or have occurred, (vii) Borrower may only make regularly scheduled payments of principal and interest in respect of such indebtedness, (viii) Borrower shall not, directly or indirectly, (A) amend, modify, alter or change the terms of the agreements with respect to such indebtedness, except, that, Borrower may, after prior written notice to Administrative Agent, amend, modify, alter or change the terms thereof so as to extend the maturity thereof or defer the timing of any payments in respect thereof, or to forgive or cancel a portion of such indebtedness (other than pursuant to payments thereof), or to release any liens or security interests in any assets of Borrower which secure such indebtedness (if any), or to reduce the rate or any fees in connection therewith, or to make any covenants contained therein less restrictive or burdensome as to Borrower or otherwise more favorable to Borrower (as determined in good faith by Administrative Agent), or (B) redeem, retire, defease, purchase or otherwise acquire such indebtedness, or set aside or otherwise deposit or invest any sums for such purpose, and (ix) Borrower shall furnish to Administrative Agent all notices or demands in connection with such indebtedness either received by Borrower or on its behalf promptly after the receipt thereof, or sent by Borrower on its behalf, concurrently with the sending thereof, as the case may be;

(e) indebtedness of Borrower for borrowed money after the date hereof (other than indebtedness permitted under Sections 9.9(c) and (d) above) arising after the date hereof; provided, that, as to each and all of such indebtedness: (i) Administrative Agent shall have received not less than ten (10) Business Days prior written notice of the intention to incur such indebtedness, which notice shall set forth in reasonable detail satisfactory to Administrative Agent, the amount of such indebtedness, the person to whom such indebtedness will be owed, the interest rate, the schedule of repayments and maturity date with respect thereto and such other information with respect thereto as Administrative Agent may request (ii) Administrative Agent shall have received true, correct and complete copies of all agreements, documents and instruments evidencing or otherwise related to such indebtedness, as duly authorized, executed and delivered by the parties thereto, (iii) such indebtedness shall be incurred by Borrower at

commercially reasonable rates and terms in a bona fide arms' length transaction, (iv) such indebtedness is and shall remain at all times unsecured, (v) such indebtedness is, and shall be, subject and subordinate in right of payment to the right of Administrative Agent to receive the prior indefeasible payment and satisfaction in full of all of the Obligations, and Borrower shall not make or be required to make payments in cash or other immediately available funds or other property (but may make payment of interest by issuing indebtedness on the same terms) at any time during the then current term of this Agreement, (vi) Administrative Agent shall have received, in form and substance satisfactory to Administrative Agent, a subordination agreement between Administrative Agent and such person, as acknowledged and agreed to by Borrower, duly authorized, executed and delivered by such person and Borrower, providing for, inter alia the terms of the subordination in right of payment of the indebtedness of Borrower to such person to the prior indefeasible payment and satisfaction in full of all of the Obligations, (vii) such indebtedness shall not at any time include terms and conditions which in any manner adversely affect Administrative Agent or any rights of Administrative Agent as determined in good faith by Administrative Agent and confirmed by Administrative Agent to Borrower in writing or which are more restrictive or burdensome than the terms or conditions of any other indebtedness of Borrower as in effect on the date hereof (other than the Obligations), (viii) as of the date of incurring such indebtedness and after giving effect thereto, no Event of Default shall exist or have occurred, (ix) Borrower shall not, directly or indirectly, (A) amend, modify, alter or change the terms of the agreements with respect to such indebtedness, except, that, Borrower may, after prior written notice to Administrative Agent, amend, modify, alter or change the terms thereof so as to extend the maturity thereof or defer the timing of any payments in respect thereof, or to forgive or cancel a portion of such indebtedness (other than pursuant to Payments thereof), or to reduce the rate or any fees in connection therewith, or to make any covenants contained therein less restrictive or burdensome as to Borrower or otherwise more favorable to Borrower (as determined in good faith by Administrative Agent), or (B) redeem, retire, defease, purchase or otherwise acquire such indebtedness, or set aside or otherwise deposit or invest any sums for such purpose, and (x) Borrower shall furnish to Administrative Agent all notices or demands in connection with such indebtedness either received by Borrower or on its behalf promptly after the receipt thereof, or sent by Borrower on its behalf, concurrently with the sending thereof, as the case may be;

(f) obligations or indebtedness existing as of the date hereof set forth on Schedule 9.9 to the Information Certificate, provided, that, (i) Borrower may only make regularly scheduled payments of principal and interest in respect of such indebtedness in accordance with the terms of the agreement or instrument evidencing or giving rise to such indebtedness as in effect on the date hereof, (ii) Borrower shall not, directly or indirectly, (A) amend, modify, alter or change the terms of such indebtedness or any agreement, document or instrument related thereto as in effect on the date hereof, except, that, Borrower may, after prior written notice to Administrative Agent, amend, modify, alter or change the terms thereof so as to extend the maturity thereof or defer the timing of any payments in respect thereof, or to forgive or cancel a portion of such indebtedness (other than pursuant to payments thereof), or to reduce the interest rate or any fees in connection therewith, or to release any of the liens or security interests in any assets and properties of Borrower which secure such indebtedness, or to make any covenants contained therein less restrictive or burdensome as to Borrower or otherwise more favorable to Borrower (as determined in good faith by Administrative Agent), or (B) redeem, retire, defease, purchase or otherwise acquire such indebtedness, or set aside or otherwise deposit

or invest any sums for such purpose, and (iii) Borrower shall furnish to Administrative Agent all notices or demands in connection with such indebtedness either received by Borrower or on its behalf, promptly after the receipt thereof, or sent by Borrower or on its behalf, concurrently with the sending thereof, as the case may be; and

(g) (A) contingent liabilities of Borrower pursuant to any Hedging Agreements entered into by Borrower;provided that the aggregate principal notional amount of indebtedness that may be subject to Hedging Agreements at any one time shall not exceed (i) $50,000,000 prior to May 31, 2008, (ii) $60,000,000 from and after May 31, 2008 but prior to May 31, 2009, (iii) $70,000,000 from and after May 31, 2009 but prior to May 31, 2010 and (iv) $80,00,000 from and after May 31, 2010. Notwithstanding any provision herein to the contrary, no Affiliate of a Lender shall act as a counterparty to a Hedging Agreement unless and until such Affiliate shall have entered into a written agreement and acknowledgement in favor of Administrative Agent, in form and substance satisfactory to Administrative Agent, in which such Affiliate agrees to be bound by the terms of this Agreement, in the capacity as a counterparty to a Hedging Agreement, in the same manner as a Lender hereunder, in the capacity as a counterparty to a Hedging Agreement and (B) contingent liabilities of Borrower pursuant to any Other Hedging Agreements entered into by Borrower; provided that (i) Lenders shall have been given a reasonable opportunity to match the proposed terms of the Other Hedging Agreements prior to Borrower entering into the Other Hedging Agreements and (ii) the aggregate principal notional amount of indebtedness that may be subject to Other Hedging Agreements at any one time shall not exceed $25,000,000.

9.10. Loans, Investments, Etc.

Borrower shall not, and shall not permit any Subsidiary to, directly or indirectly, make, or suffer or permit to exist, any loans or advance money or property to any person, or any investment in (by capital contribution, dividend or otherwise) or purchase or repurchase the Capital Stock or indebtedness or all or a substantial part of the assets or property of any Person, or guarantee, assume, endorse or otherwise become responsible for (directly or indirectly) the indebtedness, performance, obligations or dividends of any Person, or agree to do any of the foregoing, except:

(a) the endorsement of instruments for collection or deposit in the ordinary course of business;

(b) investments in Cash Equivalents, provided, that, as to any of the foregoing, unless waived in writing by Administrative Agent, Borrower shall take such actions as are deemed necessary by Administrative Agent to perfect the security interest of Collateral Agent in such investments;

(c) loans and advances by Borrower to employees of Borrower not to exceed the principal amount of $500,000 in the aggregate at any time outstanding for reasonable and necessary work-related travel or other ordinary business expenses to be incurred by employees in connection with their work for Borrower;

(d) the existing loans, advances and guarantees by Borrower outstanding as of the date hereof as set forth on Schedule 9.10 to the Information Certificate;provided, that, as to such loans, advances and guarantees, (i) Borrower shall not directly or indirectly, (A) amend, modify, alter or change the term of such loans, advances or guarantees or any agreement, document or instrument related thereto, or (B) as to such guarantees, redeem, retire, defease, purchase or otherwise acquire such guarantee or set aside or otherwise deposit or invest any sums for such purpose and (ii) Borrower shall furnish to Administrative Agent all notices, demands or other materials in connection with such loans, advances or guarantees either received by Borrower or on its behalf, promptly after the receipt thereof, or sent by Borrower or on its behalf, concurrently with the sending thereof, as the case may be; and

(e) loans by Borrower to officers or directors of Borrower not to exceed $15,000,000 in the aggregate at any time,provided, that, with respect to any such loan, (i) the officer or director shall have executed and delivered to the Borrower a promissory note in form and substance sufficient to evidence the loan, (ii) the loan shall be recorded on the books and records of Borrower in a manner satisfactory to Administrative Agent, (iii) the proceeds of the loan shall be used either to purchase common or preferred stock in the Borrower, or to finance the exercise of restricted stock options, together with the ordinary income tax attributable to such exercise (provided, that the aggregate outstanding amount of such loans used to finance tax liabilities shall at no time exceed $7,500,000), (iv) the stock so purchased shall be pledged by such officer or director to the Borrower as security for the loan, (v) the maturity date of the loan shall not be more than ten (10) years from the date the loan is made and (vi) the interest rate on the loan shall be sufficient under regulations promulgated by the Internal Revenue Service to prevent such loan from being treated as a below-market loan causing the attribution to such officer or director of income as a result of the loan transaction.

9.11. Dividends and Redemptions.

Borrower shall not, directly or indirectly, declare or pay any dividends on account of any shares of class of Capital Stock of Borrower now or hereafter outstanding, or set aside or otherwise deposit or invest any sums for such purpose, or redeem, retire, defease, purchase or otherwise acquire any shares of any class of Capital Stock (or set aside or otherwise deposit or invest any sums for such purpose) for any consideration other than common stock or apply or set apart any sum, or make any other distribution (by reduction of capital or otherwise) in respect of any such shares or agree to do any of the foregoing, except, that

(a) Borrower may repurchase shares of Capital Stock of Borrower from any former employee of Borrower (or in connection with any severance arrangement with any employee) to the extent such Capital Stock was obtained by such employee pursuant to the exercise of a stock option or any other employee stock purchase arrangement granted in the ordinary course of the business of Borrower; provided, that, (i) no Default or Event of Default shall exist or have occurred at the time of or after giving effect to any such payments, (ii) the aggregate amount paid by Borrower (including any amount forgiven by Borrower with respect to any loan or advance made to any such employees under clause (e) of Section 9.10) to all such former employees of Borrower shall not in any twelve (12) month period exceed $25,000,000 less the amount of any payments which are made in such period under Section 9.11(c) below and which are not funded from a Qualified Public Offering, (iii) as of the date of any such payments,

the daily average of the Excess Availability for the immediately preceding thirty (30) consecutive day period shall be not less than $7,500,000, and after giving effect to such payments, Excess Availability shall be not less than $5,000,000, and (iv) there shall be no limitation on the right of Borrower to make such purchases using net cash proceeds of a Qualified Public Offering; and

(b) Borrower may declare and pay dividends in respect of the Capital Stock of Borrower constituting common stock, provided, that, each of the following conditions is satisfied: (i) no Default or Event of Default shall exist or have occurred at the time of or after giving effect to any such dividends, (ii) any dividends shall be out of funds legally available therefor, (iii) immediately after giving effect to any such dividends, the aggregate amount of all such dividends paid in any fiscal year of Borrower shall not exceed the amount equal to fifty (50%) percent of the positive Adjusted Cash Flow of Borrower in the immediately preceding fiscal year calculated based on the annual audited financial statements for such fiscal year delivered to Administrative Agent in accordance with Section 9.6(a) hereof, (iv) as of the date of any such payments, the daily average of the Excess Availability for the immediately preceding thirty (30) consecutive day period shall be not less than $7,500,000, and after giving effect to such payments, Excess Availability shall be not less than $5,000,000, and (v) Administrative Agent shall have received not less than ten (10) Business Days prior written notice of the intention of Borrower to pay such dividends specifying the amount of such dividends which Borrower intends to pay; and

(c) Borrower may declare and pay any accrued and unpaid dividends, or redeem or retire any shares of Capital Stock of Borrower (in addition to any dividends permitted under Section 9.11(b) above), provided, that, each of the following conditions is satisfied: (i) no Default or Event of Default shall exist or have occurred at the time of or after giving effect to any such payments, (ii) any such payments shall be out of funds legally available therefor, (iii) all such payments shall either (A) be made solely with the net cash proceeds received by Borrower from a Qualified Public Offering or (B) be limited to an amount in any twelve (12) month period of $25,000,000 less any amounts paid during such period under Section 9.11(a) above, provided that, as of the date of any payment under this Section 9.11(c)(iii)(B), the daily average of the Excess Availability for the immediately preceding thirty (30) consecutive day period shall be not less than $7,500,000, and after giving effect to such payments, Excess Availability shall be not less than $5,000,000, and (iv) Administrative Agent shall have received not less than five (5) Business Days prior written notice of the intention of Borrower to make such payments specifying the amount of such payments which Borrower intends to make.

(d) In connection with any stockholder rights agreement or rights plan adopted by Borrower's Board of Directors (commonly referred to as a "poison pill") Borrower may declare and pay a dividend in respect of the Capital Stock of Borrower, consisting, with respect to each share of such Capital Stock, solely of the right to purchase a specified fraction of a share of a newly created junior preferred stock, such specified fraction of a share of preferred stock to have equivalent voting and dividend rights as one whole share of common stock.

9.12. Transactions with Affiliates.

Borrower shall not directly or indirectly, (a) purchase, acquire or lease any property from or sell, transfer or lease any property to, any officer, employee, shareholder, director, agent or any other affiliate of Borrower, except in the ordinary course of and pursuant to the reasonable requirements of Borrower's business and upon fair and reasonable terms no less favorable to Borrower than Borrower would obtain in a comparable arm's length transaction with a person who is not an Affiliate or (b) make any payments of management, consulting or other fees for management or similar services, or of any Indebtedness owing to any officer, employee, shareholder, director or other person affiliated with Borrower except reasonable compensation to officers, employees and directors for services rendered to Borrower in the ordinary course of business.

9.13. Credit Card Agreements.

Borrower shall (a) observe and perform all material terms, covenants, conditions and provisions of the Credit Card Agreements to be observed and performed by it at the times set forth therein; (b) not do, permit, suffer or refrain from doing anything, as a result of which there could be a default under or breach of any of the terms of any of the Credit Card Agreements and (c) at all times maintain in full force and effect the Credit Card Agreements and not terminate, cancel, surrender, modify, amend, waive or release any of the Credit Card Agreements, or consent to or permit to occur any of the foregoing; except, that, Borrower may terminate or cancel any of the Credit Card Agreements in the ordinary course of the business of Borrower, provided, that, Borrower shall give each Agent not less than fifteen (15) days prior written notice of its intention to so terminate or cancel any of the Credit Card Agreements; (d) not enter into any new Credit Card Agreements with any new Credit Card Issuer unless (i) each Agent shall have received not less than thirty (30) days prior written notice of the intention of Borrower to enter into such agreement (together with such other information with respect thereto as any Agent may reasonably request) and (ii) Borrower delivers, or causes to be delivered to Collateral Agent, a Credit Card Acknowledgment in favor of Collateral Agent, (e) give each Agent immediate written notice of any Credit Card Agreement entered into by Borrower after the date hereof, together with a true, correct and complete copy thereof and such other information with respect thereto as any Agent may reasonably request; and (f) furnish to each Agent, promptly upon the request of any Agent, such information and evidence as any Agent may reasonably request from time to time concerning the observance, performance and compliance by Borrower or the other party or parties thereto with the terms, covenants or provisions of the Credit Card Agreements.

9.14. Adjusted Tangible Net Worth.

Borrower shall, at all times have and maintain Adjusted Tangible Net Worth of not less than $80,000,000.

9.15. Compliance with ERISA.

(a) Borrower shall not with respect to any "employee benefit plans" maintained by Borrower or any of its ERISA Affiliates: (i) terminate any of such employee

pension plans so as to incur any liability to the Pension Benefit Guaranty Corporation established pursuant to ERISA, (ii) allow or suffer to exist any prohibited transaction involving any of such employee benefit plans or any trust created them-under which would subject Borrower or such ERISA Affiliate to a tax or penalty or other liability on prohibited transactions imposed under the Code or ERISA, (iii) fail to pay to any such employee benefit plan any contribution which it is obligated to pay under ERISA, the Code or the term of such plan, (iv) allow or suffer to exist any accumulated funding deficiency, whether or not waived, with respect to any such employee benefit plan, (v) allow or suffer to exist any occurrence of a reportable event or any other event or condition which presents a material risk of termination by the Pension Benefit Guaranty Corporation of any such employee benefit plan that is a single employer plan, which termination could result in any liability to the Pension Benefit Guaranty Corporation or (ii) incur any withdrawal liability with respect to any multiemployer pension plan.

(b) As used in this Section 9.15, the term "employee pension benefit plans," "employee benefit plans", "accumulated funding deficiency" and "reportable event" shall have the respective meanings assigned to them in ERISA, and the term "prohibited transaction" shall have the meaning assigned to it in the Code and ERISA.

9.16. Costs and Expenses.

Borrower shall pay to each Agent on demand all reasonable costs, expenses, filing fees and taxes paid or payable in connection with the preparation, negotiation, execution, delivery, recording, administration, collection, liquidation, enforcement and defense of the Obligations, Collateral Agent's rights in the Collateral, this Agreement, the other Financing Agreements and all other documents related hereto or thereto, including any amendments, supplements or consents which may hereafter be contemplated (whether or not executed) or entered into in respect hereof and thereof, including, but not limited to: (a) all costs and expenses of filing or recording (including Uniform Commercial Code financing statement filing taxes and fees, documentary taxes, intangibles taxes and mortgage recording taxes and fees, if applicable); (b) all reasonable appraisal fees and search fees; (c) costs and expenses of remitting loan proceeds, collecting checks and other items of payment, and establishing and maintaining the Blocked Accounts, together with each Agent's customary charges and fees with respect thereto; (d) charges, fees or expenses charged by any bank or LC Issuer in connection with the Letter of Credit Accommodations; (e) reasonable costs and expenses of preserving and protecting the Collateral; (f) costs and expenses paid or incurred in connection with obtaining payment of the Obligations, enforcing the security interests and liens of Collateral Agent, selling or otherwise realizing upon the Collateral, and otherwise enforcing the provisions of this Agreement and the other Financing Agreements or defending any claims made or threatened against any Agent or any Lender arising out of the transactions contemplated hereby and thereby (including, without limitation, preparations for and consultations concerning any such matters); (g) all reasonable out-of-pocket expenses and costs heretofore and from time to time hereafter incurred by Collateral Agent during the course of periodic field examinations of the Collateral and Borrower's operations, plus a per diem charge at the rate of $750 per person per day for Collateral Agent's examiners in the field and office, provided, that, so long as no Default or Event of Default shall exist or have occurred, Borrower shall not be required to pay such costs and expenses or per diem charge in connection with more than four (4) such field examinations

in any calendar year; and (h) the fees and disbursements of counsel (including legal assistants) to Agents and Lenders in connection with any of the foregoing.

9.17. Further Assurances.

At the request of any Agent at any time and from time to time, Borrower shall, at its expense, duly execute and deliver, or cause to be duly executed and delivered, such further agreements, documents and instruments, and do or cause to be done such further acts as may be necessary or proper to evidence, perfect, maintain and enforce the security interests and the priority thereof in the Collateral and to otherwise effectuate the provisions or purposes of this Agreement or any of the other Financing Agreements. Administrative Agent may at any time and from time to time request a certificate from an officer of Borrower representing that all conditions precedent to the making of Loans and providing Letter of Credit Accommodations contained herein are satisfied. In the event of such request by Administrative Agent, Agents and Lenders may, at Administrative Agent's option, cease to make any further Loans or provide any further Letter of Credit Accommodations until Administrative Agent has received such certificate and, in addition, Administrative Agent has determined that such conditions are satisfied.

SECTION 10. EVENTS OF DEFAULT AND REMEDIES

10.1. Events of Default.

The occurrence or existence of any one or more of the following events is referred to herein individually as an "Event of Default", and collectively as "Events of Default":

(a) (i) Borrower fails to pay any of the Obligations within three (3) Business Days after the same becomes due and payable or (ii) Borrower or any Obligor fails to perform any of the covenants contained in Sections 5.3(d), 9.1, 9.2, 9.3, 9.4, 9.6, 9.13, 9.14, 9.15 and 9.16 of this Agreement and such failure shall continue for ten (10) days; provided, that, such ten (10) day period shall not apply in the case of: (A) any failure to observe any such covenant which is not capable of being cured at all or within such ten (10) day period or which has been the subject of a prior failure within a six (6) month period or (B) an intentional breach by Borrower or any Obligor of any such covenant or (iii) Borrower fails to perform any of the terms, covenants, conditions or provisions contained in this Agreement or any of the other Financing Agreements other than those described in Sections 10.1(a)(i) and 10.1(a)(ii) above;

(b) any representation, warranty or statement of fact made by Borrower to any Agent or any Lender in this Agreement, the other Financing Agreements or any other agreement, schedule, confirmatory assignment or otherwise shall when made or deemed made be false or misleading in any material respect;

(c) any Obligor revokes, terminates or fails to perform any of the terms, covenants, conditions or provisions of any guarantee, endorsement or other agreement of such party in favor of any Agent or any Lender;

(d) any judgment for the payment of money is rendered against Borrower or any Obligor in excess of $2,500,000 in any one case or in excess of $5,000,000 in the aggregate

and shall remain undischarged or unvacated for a period in excess of thirty (30) days or execution shall at any time not be effectively stayed, or any judgment other than for the payment of money, or injunction, attachment, garnishment or execution is rendered against Borrower or any Obligor or any of their assets;

(e) any Obligor (being a natural person or a general partner of an Obligor which is a partnership) dies or Borrower or any Obligor, which is a partnership, limited liability company, limited liability partnership or a corporation, dissolves or suspends or discontinues doing business;

(f) Borrower or any Obligor becomes insolvent (however defined or evidenced), makes an assignment for the benefit of creditors, makes or sends notice of a bulk transfer or calls a meeting of its creditors or principal creditors;

(g) a case or proceeding under the bankruptcy laws of the United States of America now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed against Borrower or any Obligor or all or any part of its properties and such petition or application is not dismissed within sixty (60) days after the date of its filing or Borrower or any Obligor shall file any answer admitting or not contesting such petition or application or indicates its consent to, acquiescence in or approval of, any such action or proceeding or the relief requested is granted sooner;

(h) a case or proceeding under the bankruptcy laws of the United States of America now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at a law or equity) is filed by Borrower or any Obligor or for all or any part of its property; or

(i) any default by Borrower or any Obligor under any agreement, document or instrument relating to any indebtedness for borrowed money owing to any person other than Agent and Lenders, or any capitalized lease obligations, contingent indebtedness in connection with any guarantee, letter of credit, indemnity or similar type of instrument in favor of any person other than Agents and Lenders, in any case in an amount in excess of $5,000,000, which default continues for more than the applicable cure period, if any, with respect thereto, or any default by Borrower or any Obligor under any material contract, lease, license or other obligation to any person other than Agents and Lenders, which default continues for more than the applicable cure period, if any, with respect thereto;

(j) any Change of Control;

(k) the indictment or threatened indictment of Borrower or any Obligor under any criminal statute. or commencement or threatened commencement of criminal or civil proceedings against Borrower or any Obligor, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of any of the property of Borrower or such Obligor; or

(l) there shall be an event of default under any of the other Financing Agreements.

10.2. Remedies.

(a) At any time an Event of Default exists or has occurred and is continuing, Agents and Lenders shall have all rights and remedies provided in this Agreement, the other Financing Agreements, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by Borrower or any Obligor, except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to Agents and Lenders hereunder, under any of the other Financing Agreements, the UCC or other applicable law, are cumulative, not exclusive, and enforceable, in Administrative Agent's discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by Borrower or of this Agreement or any of the other Financing Agreements. Administrative Agent may, in accordance with the terms hereof, at any time or times, proceed directly against Borrower or any Obligor to collect the Obligations without prior recourse to any Obligor or any of the Collateral.

(b) Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, Administrative Agent may, in its discretion, or upon the direction of Required Lenders shall, and, without limitation, (i) accelerate the payment of all Obligations and demand immediate payment thereof to Administrative Agent for itself and for the ratable benefit of Lenders (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), all Obligations shall automatically become immediately due and payable), (ii) with or without judicial process or the aid or assistance of others, direct Collateral Agent to, and Collateral Agent shall, enter upon any premises on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral, (iii) require Borrower, at Borrower's expense, to assemble and make available to Collateral Agent any part or all of the Collateral at any place and time designated by Collateral Agent, (iv) direct Collateral Agent to, and Collateral Agent shall, collect, foreclose, receive, appropriate, setoff and realize upon any and all Collateral, (v) direct Collateral Agent to, and Collateral Agent shall, remove any or all of the Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, (vi) direct Collateral Agent to, and Collateral Agent shall, sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of Collateral Agent or elsewhere) at such prices or terms as Collateral Agent may deem reasonable, for cash, upon credit or for future delivery, with the Collateral Agent having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of Borrower, which right or equity of redemption is hereby expressly waived and released by Borrower and/or (vii) terminate this Agreement. If any of the Collateral is sold or leased by Collateral Agent upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Collateral Agent. If notice of disposition of Collateral is required by law, ten (10) days prior notice by Collateral Agent to Borrower designating the time and place of any public sale or the time after which any

private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and Borrower waives any other notice. In the event any Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, Borrower waives the posting of any bond which might otherwise be required. At any time an Event of Default exists or has occurred and is continuing, upon Administrative Agent's request, Borrower will either, as Administrative Agent shall specify, furnish cash collateral to the LC Issuer to be used to secure and fund Agent's reimbursement obligations to the LC Issuer in connection with any Letter of Credit Accommodations or furnish cash collateral to Administrative Agent for the Letter of Credit Accommodations. Such cash collateral shall be in the amount equal to one hundred ten (110%) percent of the amount of the Letter of Credit Accommodations plus the amount of any fees and expenses payable in connection therewith through the end of the expiration of such Letter of Credit Accommodations.

(c) To the extent that applicable law imposes duties on any Agent or any Lender to exercise remedies in a commercially reasonable manner (which duties cannot be waived under such law), Borrower acknowledges and agrees that it is not commercially unreasonable for Agents and Lenders (i) to fail to incur expenses reasonably deemed significant by any Agent or any Lender to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain consents of any Governmental Authority or other third party for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against account debtors, secondary obligors or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (iv) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other persons, whether or not in the same business as Borrower for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, (xi) to purchase insurance or credit enhancements to insure Agents and Lenders against risks of loss, collection or disposition of Collateral or to provide to Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Collateral Agent in the collection or disposition of any of the Collateral. Borrower acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Collateral Agent would not be commercially unreasonable in Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by any Agent or any Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section. Without limitation of the foregoing, nothing contained in this Section shall be construed to grant any rights to Borrower or to impose any duties on any Agent or any Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section.

(d) For the purpose of enabling Agents to exercise the rights and remedies hereunder, Borrower hereby grants to Agents, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to Borrower) to use, assign, license or sublicense any of the trademarks, service-marks, trade names, business names, trade styles, designs, logos and other source of business identifiers and other Intellectual Property and general intangibles now owned or hereafter acquired by Borrower, wherever the same maybe located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

(e) Administrative Agent may apply the cash proceeds of Collateral actually received by Collateral Agent from any sale, lease, foreclosure or other disposition of the Collateral to payment of the Obligations, in whole or in part and in such order as Administrative Agent may elect, whether or not then due. Borrower shall remain liable to Agents and Lenders for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement, including attorneys' fees and legal expenses.

(f) Without limiting the foregoing, upon the occurrence of a Default or Event of Default, Administrative Agent may, at its option, or upon the direction of Required Lenders shall, without notice, (i) cease making Loans or arranging for Letter of Credit Accommodations or reduce the lending formulas or amounts of Revolving Loans and Letter of Credit Accommodations available to Borrower and/or (ii) terminate any provision of this Agreement providing for any future Loans or Letter of Credit Accommodations to be made by Agents and Lenders to Borrower.

SECTION 11. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW

11.1. Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of Illinois (without giving effect to principles of conflicts of law).

(b) Borrower, Agents and Lenders irrevocably consent and submit to the non-exclusive jurisdiction of the Circuit Court of Cook County, Illinois and the United States District Court for the Northern District of Illinois and waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Financing Agreements or in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Agreement or any of the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Agents and Lenders shall have the right to bring any action or proceeding against Borrower or its property in the courts of any other jurisdiction which Administrative Agent deems necessary or

appropriate in order to realize on the Collateral or to otherwise enforce its rights against Borrower or its property).

(c) Borrower hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Administrative Agent's option, by service upon Borrower in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, Borrower shall appear in answer to such process, failing which Borrower shall be deemed in default and judgment may be entered by Administrative Agent against Borrower for the amount of the claim and other relief requested.

(d) BORROWER, AGENTS AND LENDERS EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. BORROWER, AGENTS AND LENDERS EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT BORROWER OR LENDER MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Agents and Lenders shall not have any liability to Borrower (whether in tort, contract, equity or otherwise) for losses suffered by Borrower in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on such Agent and such Lender, that the losses were the result of acts or omissions constituting gross negligence or willful misconduct of such Agent or such Lender. In any such litigation, Agents and Lenders shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement.

11.2. Waiver of Notices.

Borrower hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonor with respect to any and all instruments and chattel paper, included in or evidencing any of the Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on Borrower which any Agent or any Lender may elect to give shall entitle Borrower to any other or further notice or demand in the same, similar or other circumstances.

11.3. Amendments and Waivers.

(a) Except for actions expressly permitted to be taken by any Agent, no amendment, modification, termination or waiver of any provision of this Agreement or any other Financing Agreement, or any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by an authorized officer of Administrative Agent and Borrower, and by Required Lenders or all affected Lenders, as applicable. Except as set forth in clauses (b) and (c) below, all such amendments, modifications, terminations or waivers requiring the consent of any Lenders shall require the written consent of Required Lenders.

(b) No amendment, modification, termination or waiver of or consent with respect to any provision of this Agreement that (i) increases the percentage advance rates set forth in Section 2.1(a) hereof, makes less restrictive the nondiscretionary criteria for exclusion from "Eligible Inventory" set forth in the definition of such term, or (ii) amends Section 12.8 hereof or amends the maximum dollar amount in Section 12.11(a)(i) hereof shall be effective unless the same shall be in writing and signed by Administrative Agent, Required Lenders and Borrower. No amendment, modification, termination or waiver of or consent with respect to any provision of this Agreement that waives compliance with the conditions precedent set forth in Section 4.2 to the making of any Revolving Loan or the incurrence of any Letter of Credit Accommodation shall be effective unless the same shall be in writing and signed by Administrative Agent, Required Lenders and Borrower. Notwithstanding anything contained in this Agreement to the contrary, no waiver or consent with respect to any Event of Default shall be effective for purposes of the conditions precedent to the making of Revolving Loans or the incurrence of Letter of Credit Accommodations set forth in Section 4.2 unless the same shall be in writing and signed by Administrative Agent, Required Lenders and Borrower.

(c) No amendment, modification, termination or waiver shall, unless in writing and signed by Administrative Agent and each Lender directly affected thereby: (i) increase the principal amount of such Lender's Commitment over the amount then in effect; (ii) reduce the principal of, rate of interest on or fees payable with respect to any Loan or Letter of Credit Accommodations of any affected Lender; (ii) extend any scheduled payment date or final maturity date of the principal amount of any Loan of any affected Lender; (iv) waive, forgive, defer, extend or postpone any payment of interest or fees as to any affected Lender; (v) release any Obligor except as otherwise permitted herein (which action shall be deemed to directly affect all Lenders); (vi) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that shall be required for Lenders or any of them to take any action hereunder (which action shall be deemed to directly effect all Lenders); (vii) amend or waive this Section 11.3 or the definition of the term "Required Lenders" insofar as such definition affects the substance of this Section 11.3; or (viii) permit the assignment or transfer by Borrower of any of its right and obligations hereunder (which action shall be deemed to directly affect all Lenders).

(d) No amendment, modification, termination or waiver shall, unless otherwise permitted by this Agreement or unless consented to in writing and signed by Administrative Agent and all Lenders, (i) release, or permit Borrower or any Obligor to sell or

otherwise dispose of, all or substantially all of the Collateral, or release any Obligor from any guaranty of any or all of the Obligations or (ii) amend Section 6.4(a) hereof.

(e) Agents and Lenders shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its or their rights, powers and/or remedies unless such waiver shall be in writing and signed as provided herein. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by any Agent or any Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which any Agent or any Lender would otherwise have on any future occasion, whether similar in kind or otherwise.

(f) The consent of each Agent shall be required for any amendment, waiver or consent affecting the rights or duties of such Agent hereunder or under any of the other Financing Agreements, in addition to the consent of the Lenders otherwise required by this Section.

(g) The consent of Swing Line Lender shall be required for any amendment, waiver or consent affecting the rights or duties of the Swing Line Lender in its capacity as such.

11.4. Waiver of Counterclaims.

Borrower waives all rights to interpose any claims, deductions, setoffs or counterclaims of any nature (other then compulsory counterclaims) in any action or proceeding with respect to this Agreement, the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto.

11.5. Indemnification.

Borrower shall indemnify and hold each Agent and each Lender, and their respective directors, agents, employees and counsel, harmless from and against any and all losses, claims, damages, liabilities, costs or expenses imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other Financing Agreements, or any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs, and the fees and expenses of counsel except for any such losses, claims, liabilities, costs or expenses resulting from the gross negligence or willful misconduct of any Agent or any Lender as determined pursuant to a final non-appealable order of a court of competent jurisdiction. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion which it is permitted to pay under applicable law to Agents and Lenders in satisfaction of indemnified matters under this Section. The foregoing indemnity shall survive the payment of the Obligations and the termination of this Agreement.

SECTION 12. THE AGENTS

12.1. Appointment, Powers and Immunities.

Each Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) irrevocably designates, appoints and authorizes LaSalle to act as Administrative Agent, and Wachovia to act as Collateral Agent, hereunder and under the other Financing Agreements with such powers as are specifically delegated to Administrative Agent and Collateral Agent, respectively by the terms of this Agreement and of the other Financing Agreements, together with such other powers as are reasonably incidental thereto. Agents (a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Financing Agreements, and shall not by reason of this Agreement or any other Financing Agreement be a trustee or fiduciary for any Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement); (b) shall not be responsible to Lenders (including any Lender in its capacity as a counterparty to a Hedging Agreement) for any recitals, statements, representations or warranties contained in this Agreement or in any of the other Financing Agreements, or in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or any other Financing Agreement, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Agreement or any other document referred to or provided for herein or therein or for any failure by Borrower or any Obligor or any other Person to perform any of its obligations hereunder or thereunder; and (c) shall not be responsible to Lenders (including any Lender in its capacity as a counterparty to a Hedging Agreement) for any action taken or omitted to be taken by it hereunder or under any other Financing Agreement or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith, except for its own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Each Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. Agents may deem and treat the payee of any note as the holder thereof for all purposes hereof unless and until the assignment thereof pursuant to an agreement (if and to the extent permitted herein) in form and substance satisfactory to Agents shall have been delivered to and acknowledged by Agents.

12.2. Reliance by Agents.

Each Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopy, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by such Agent. As to any matters not expressly provided for by this Agreement or any other Financing Agreement, each Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Required Lenders or all Lenders as is required in such circumstance, and such instructions of such Agent and any action taken or failure to act pursuant thereto shall be binding on all Lenders.

12.3. Events of Default.

(a) Agents shall not be deemed to have knowledge or notice of the occurrence of an Event of Default or other failure of a condition precedent to the Loans and Letter of Credit Accommodations hereunder, unless and until the respective Agent has received written notice from a Lender, or Borrower specifying such Event of Default or any unfulfilled condition precedent, and stating that such notice is a "Notice of Default or Failure of Condition". In the event that Administrative Agent receives such a Notice of Default or Failure of Condition, Administrative Agent shall give prompt notice thereof to the Lenders. Each Agent shall (subject to Section 12.7) take such action with respect to any such Event of Default or failure of condition precedent as shall be directed by the Required Lenders. Notwithstanding the existence or occurrence and continuance of an Event of Default or any other failure to satisfy any of the conditions precedent set forth in Section 4 of this Agreement to the contrary, Administrative Agent may, but shall have no obligation to, continue to make Revolving Loans and issue or cause to be issued Letter of Credit Accommodations for the ratable account and risk of Lenders from time to time if Administrative Agent believes making such Revolving Loans or issuing or causing to be issued such Letter of Credit Accommodations is in the best interests of Lenders.

(b) Except with the prior written consent of Administrative Agent, neither Collateral Agent nor any Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) may assert or exercise any enforcement right or remedy in respect of the Loans, Letter of Credit Accommodations or other Obligations, as against Borrower or any Obligor or any of the Collateral or other property of Borrower or any Obligor.

12.4. LaSalle/Wachovia in its Individual Capacity.

With respect to any Commitment it may make and any Loans made and Letter of Credit Accommodations issued or caused to be issued by it (and any successor acting as an Agent), if and to the extent that each of LaSalle and Wachovia shall be a Lender hereunder, it shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as an Agent, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include each of LaSalle and Wachovia in its individual capacity as Lender hereunder. Each of LaSalle and Wachovia (and any successor acting as Administrative Agent or Collateral Agent, respectively) and its Affiliates may (without having to account therefor to any Lender) lend money to, make investments in and generally engage in any kind of business with Borrower (and any of its Subsidiaries or Affiliates) as if it were not acting as an Agent, and each of LaSalle and Wachovia and their Affiliates may accept fees and other consideration from Borrower and any of its Subsidiaries and Affiliates for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

12.5. Indemnification.

Lenders (including any Lender in its capacity as a counterparty to a Hedging Agreement) agree to indemnify Agents (to the extent not reimbursed by Borrower hereunder and without limiting any obligations of Borrower hereunder) ratably, in accordance with their Pro Rata Shares, for any and all claims of any kind and nature whatsoever that may be imposed on, incurred by or asserted against any Agent (including by any Lender (including any Lender in its

capacity as a counterparty to a Hedging Agreement)) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement, any Hedging Agreement or any other Financing Agreement or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including the costs and expenses that each Agent is obligated to pay hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents, provided, that, no Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) shall be liable for any of the foregoing to the extent it arises from the gross negligence or willful misconduct of the party to be indemnified as determined by a final non-appealable judgment of a court of competent jurisdiction.

12.6. Non-Reliance on Agents and Other Lenders.

Each Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) agrees that it has, independently and without reliance on any Agent or other Lenders, and based on such documents and information as it has deemed appropriate, made its own credit analysis of Borrower and Obligors and has made its own decision to enter into this Agreement and that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any of the other Financing Agreements. Neither Agent shall be required to keep itself informed as to the performance or observance by Borrower or any Obligor of any term or provision of this Agreement or any of the other Financing Agreements or any other document referred to or provided for herein or therein or to inspect the properties or books of Borrower or any Obligor. Administrative Agent will use reasonable efforts to provide Lenders with any information received by Administrative Agent from Borrower or any Obligor regarding its financial performance or the Collateral(including the collateral reports identified in Section 7.1 and the financial information delivered by the Borrower hereunder) or which is otherwise required to be provided to Lenders hereunder and with a copy of any Notice of Default or Failure of Condition received by Administrative Agent from Borrower or any Lender; provided, that, Administrative Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Administrative Agent’s own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction.

12.7. Failure to Act.

Except for action expressly required of Agents hereunder and under the other Financing Agreements, each Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from Lenders (including any Lender in its capacity as a counterparty to a Hedging Agreement) of their indemnification obligations under Section 12.5 hereof against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

12.8. Additional Loans.

Administrative Agent shall not make any Revolving Loans or provide any Letter of Credit Accommodations to Borrower on behalf of Lenders intentionally and with actual knowledge that such Revolving Loans or Letter of Credit Accommodations would cause the aggregate amount of the total outstanding Revolving Loans and Letter of Credit Accommodations to Borrower to exceed the amount of the Loans available to Borrower as of such time based on the lending formulas set forth in Section 2.1(a), without the prior consent of all Lenders, except, that, Administrative Agent may make such additional Revolving Loans or provide such additional Letter of Credit Accommodations on behalf of Lenders, intentionally and with actual knowledge that such Loans or Letter of Credit Accommodations will cause the total outstanding Revolving Loans and Letter of Credit Accommodations to Borrower to exceed the amount of the Loans available to Borrower as of such time based on the lending formulas set forth in Section 2.1(a), as Administrative Agent may deem necessary or advisable in its discretion, provided, that: (a) the total principal amount of the additional Revolving Loans or additional Letter of Credit Accommodations to Borrower which Administrative Agent may make or provide after obtaining such actual knowledge that the aggregate principal amount of the Revolving Loans equal or exceed the amount of the Loans available to Borrower as of such time based on the lending formulas set forth in Section 2.1.(a) shall not exceed the amount equal to $2,000,000 outstanding at any time less the then outstanding amount of any Special Agent Advances and shall not cause the total principal amount of the Revolving Loans and Letter of Credit Accommodations to exceed the Maximum Credit and (b) without the consent of all Lenders, Administrative Agent shall not make any such additional Revolving Loans or Letter of Credit Accommodations more than sixty (60) days from the date of the first such additional Revolving Loans or Letter of Credit Accommodations. Each Lender shall be obligated to pay Administrative Agent the amount of its Pro Rata Share of any such additional Revolving Loans or Letter of Credit Accommodations provided that Administrative Agent is acting in accordance with the terms of this Section 12.8.

12.9. Concerning the Collateral and the Related Financing Agreements.

Each Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) authorizes and directs Agents to enter into this Agreement and the other Financing Agreements. Each Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) agrees that any action taken by any Agent or Required Lenders or all Lenders in accordance with the terms of this Agreement or the other Financing Agreements and the exercise by any Agent or any category of Lenders of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (including any Lender in its capacity as a counterparty to a Hedging Agreement).

12.10. Field Audit, Examination Reports and other Information; Disclaimer by Lenders.

By signing this Agreement, each Lender:

(a) is deemed to have requested that Collateral Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report and a

weekly report with respect to the amount of the Loans available to Borrower as of such time based on the lending formulas set forth in Section 2.1.(a) prepared by Collateral Agent (each field audit or examination report and weekly report with respect to the amount of the Loans available to Borrower as of such time based on the lending formulas set forth in Section 2.1.(a) being referred to herein as a "Report" and collectively, "Reports") and Borrower hereby consents to the distribution of such Reports;

(b) expressly agrees and acknowledges that Collateral Agent (A) does not make any representation or warranty as to the accuracy of any Report, or (B) shall not be liable for any information contained in any Report;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Collateral Agent or any other party performing any audit or examination will inspect only specific information regarding Borrower and the Subsidiaries and will rely significantly upon Borrower's and the Subsidiaries' books and records, as well as on representations of Borrower's and the Subsidiaries' personnel; and

(d) agrees to keep all Reports confidential and strictly for its internal use and not to distribute or use any Report in any other manner.

12.11. Collateral Matters.

(a) Administrative Agent may, at its option, from time to time, at any time on or after an Event of Default and for so long as the same is continuing or upon any other failure of a condition precedent to the Revolving Loans and Letter of Credit Accommodations hereunder, make such disbursements and advances ("Special Agent Advances") which Administrative Agent, in its sole discretion, deems necessary or desirable either (i) to preserve or protect the Collateral or any portion thereof (provided that in no event shall Special Agent Advances for such purpose exceed the amount equal to $2,000,000 in the aggregate outstanding at any time less the then outstanding Revolving Loans under Section 12.8 hereof) or (ii) to pay any other amount chargeable to Borrower pursuant to the terms of this Agreement or any of the other Financing Agreements consisting of costs, fees and expenses and payments to any LC Issuer of Letter of Credit Accommodations. Special Agent Advances shall be repayable on demand and be secured by the Collateral. Special Agent Advances shall not constitute Loans but shall otherwise constitute Obligations hereunder. Administrative Agent shall notify each Lender and Borrower in writing of each such Special Agent Advance, which notice shall include a description of the purpose of such Special Agent Advance. Without limitation of its obligations pursuant to Section 6.9, each Lender agrees that it shall make available to Administrative Agent, upon Administrative Agent's demand, in immediately available funds, the amount equal to such Lender's Pro Rata Share of each such Special Agent Advance. If such funds are not made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such funds, on demand from such Lender together with interest thereon for each day from the date such payment was due until the date such amount is paid to Administrative Agent at the Federal Funds Rate for each day during such period and if such amounts are not paid within three (3) days of Administrative Agent's demand, at the highest Interest Rate provided for in Section 3.1 hereof applicable to Prime Rate Loans.

(b) Lenders (including any Lender in its capacity as a counterparty to a Hedging Agreement) hereby irrevocably authorize Collateral Agent, to release any security interest in, mortgage or lien upon, any of the Collateral (i) upon termination of the Commitments and payment and satisfaction of all of the Obligations and delivery of cash collateral to the extent required under Section 13.1 below, or (ii) constituting property being sold or disposed of if Borrower certifies to Collateral Agent that the sale or disposition is made in compliance with Section 9.7 or 9.16 hereof (and Collateral Agent may rely conclusively on any such certificate, without further inquiry), or (iii) constituting property in which Borrower or any Obligor did not own an interest at the time the security interest, mortgage or lien was granted or at any time thereafter, or (iv) if approved, authorized or ratified in writing by the applicable Lenders pursuant to Section 11.3(d) hereof. Except as provided above, Collateral Agent will not release any security interest in, mortgage or lien upon, any of the Collateral without the prior written authorization of all the applicable Lenders pursuant to Section 11.3(d) hereof.

(c) Without any manner limiting Collateral Agent's authority to act without any specific or further authorization or consent by the Lenders (including any Lender in its capacity as a counterparty to a Hedging Agreement), each Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) agrees to confirm in writing, upon request by Collateral Agent, the authority to release Collateral conferred upon Collateral Agent under this Section and in Section 11.3(d) hereof. Collateral Agent shall (and is hereby irrevocably authorized by Lenders to) execute such documents as may be necessary to evidence the release of the security interest, mortgage or liens granted to Collateral Agent upon any Collateral to the extent set forth above and in Section 11.3(d) hereof; provided, that, (i) Collateral Agent shall not be required to execute any such document on terms which, in either Agent's opinion, would expose Collateral Agent to liability or create any obligations or entail any consequence other than the release of such security interest, mortgage or liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any security interest, mortgage or lien upon (or obligations of Borrower or any Obligor in respect of) the Collateral retained by Borrower or such Obligor.

(d) No Agent shall have any obligation whatsoever to any Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) or any other Person to investigate, confirm or assure that the Collateral exists or is owned by Borrower or any Obligor or is cared for, protected or insured or has been encumbered, or that any particular items of Collateral meet the eligibility criteria applicable in respect of the Loans or Letter of Credit Accommodations hereunder, or whether any particular reserves are appropriate, or that the liens and security interests granted to Collateral Agent pursuant hereto or any of the Financing Agreements or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Collateral Agent in this Agreement or in any of the other Financing Agreements, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, subject to the prior consent of Administrative Agent, Collateral Agent may act in any manner it may deem appropriate, in its discretion, given Collateral Agent's own interest in the Collateral as a Lender and that, subject to acting in accordance with the consent of Administrative Agent, Collateral Agent shall have no duty or liability whatsoever to any other Lender.

12.12. Agency for Perfection.

Each Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) and Administrative Agent hereby appoints Collateral Agent and each other Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) and Agent as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral of Collateral Agent in assets which, in accordance with Article 9 of the UCC can be perfected only by possession (or where the security interest of a secured party with possession has priority over the security interest of another secured party) and each Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) and Agent hereby acknowledges that it holds possession of any such Collateral for the benefit of Collateral Agent as secured party. Should any Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) obtain possession of any such Collateral, such Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement) shall notify Collateral Agent thereof, and, promptly upon Collateral Agent's request therefor shall deliver such Collateral to Collateral Agent or in accordance with Collateral Agent's instructions.

12.13. Successor Agent.

Either Agent may resign at any time by giving not less than 30 days' prior written notice thereof to Lenders and Borrower. Upon any such resignation, the Required Lenders shall have the right, with the prior consent of each other Agent, to appoint a successor Administrative Agent or Collateral Agent, as applicable. If no successor Agent shall have been so appointed by the Required Lenders and other Agents and shall have accepted such appointment within 30 days after the resigning Agent's giving notice of resignation, then the resigning Agent may, on behalf of Lenders (including any Lender in its capacity as a counterparty to a Hedging Agreement), appoint a successor Agent, which shall be a Lender, if a Lender is willing to accept such appointment, or otherwise shall be a commercial bank or financial institution or a subsidiary of a commercial bank or financial institution if such commercial bank or financial institution is organized under the laws of the United States of America or of any State thereof and has a combined capital and surplus of at least $500,000,000. If no successor Agent has been appointed pursuant to the foregoing, within 30 days after the date such notice of resignation was given by the resigning Agent, such resignation shall become effective and the Required Lenders shall thereafter perform all the duties of such resigning Agent hereunder until such time, if any, as the Required Lenders appoint a successor Agent as provided above. Any successor Agent appointed by Required Lenders and Agents hereunder shall be subject to the approval of Borrower, such approval not to be unreasonably withheld or delayed; provided that such approval shall not be required if an Event of Default has occurred and is continuing. Upon the acceptance of any appointment as Administrative Agent or Collateral Agent, as applicable, hereunder by a successor Agent, such successor Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the resigning Agent. Upon the earlier of the acceptance of any appointment as Agent hereunder by a successor Agent or the effective date of the resigning Agent's resignation, the resigning Agent shall be discharged from its duties and obligations under this Agreement and the other Financing Agreements, except that any indemnity rights or other rights in favor of such resigning Agent shall continue. After any resigning Agent's resignation hereunder, the provisions of this Section 12 shall inure to its benefit as to any actions

taken or omitted to be taken by it while it was acting as Agent under this Agreement and the other Financing Agreements.

12.14. Hedging Agreements.

Each Lender agrees that in its capacity as a counterparty to a Hedging Agreement with Borrower, it shall not be deemed to have any rights as a Lender hereunder except for the right to receive proceeds of Collateral, as a counterparty to a Hedging Agreement, in the order and manner set forth in Section 6.4(a) hereof. Each Lender further agrees that Administrative Agent shall have no duties to a Lender hereunder in its capacity as a counterparty to a Hedging Agreement other than in respect of such Lender's entitlements to proceeds of Collateral, as a counterparty to a Hedging Agreement, in the order and manner set forth in Section 6.4(a) hereof. Nothing in this Section 12.14 is intended to diminish or otherwise alter any Lender's rights, or either Agent's duties to such Lender, under this Agreement as to Lender in its capacity as a Lender hereunder.

12.15. Other Agents; Arrangers and Managers.

None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a "syndication agent," "documentation agent," "co-agent," "book manager," "lead manager," "arranger," "lead arranger" or "co-arranger", if any, shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of such Lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

SECTION 13. TERM OF AGREEMENT; MISCELLANEOUS

13.1. Term.

(a) This Agreement and the other Financing Agreements shall become effective as of the date set forth on the first page hereof and shall continue in full force and effect for a term ending on May 31, 2011 (the "Termination Date"), unless sooner terminated pursuant to the terms hereof. Borrower may terminate this Agreement at any time upon ten (10) days prior written notice to Administrative Agent (which notice shall be irrevocable) and Administrative Agent or Required Lenders may terminate this Agreement at any time on or after an Event of Default. Upon the effective date of termination of this Agreement, Borrower shall pay to Administrative Agent, in full, all outstanding and unpaid Obligations and shall furnish cash collateral to Administrative Agent in such amounts as Administrative Agent determines are reasonably necessary to secure (or reimburse) Administrative Agent from loss, cost, damage or expense, including attorneys' fees and legal expenses, in connection with any contingent Obligations, including issued and outstanding Letter of Credit Accommodations and checks or other payments provisionally credited to the Obligations and/or as to which any Agent or any Lender has not yet received final and indefeasible payment. Such payments in respect of the Obligations and cash collateral shall be remitted by wire transfer in Federal funds to such bank

account of Administrative Agent, as Administrative Agent may, in its discretion, designate in writing to Borrower for such purpose. Interest shall be due until and including the next Business Day, if the amounts so paid by Borrower to the bank account designated by Administrative Agent are received in such bank account later than 2:00 P.M., Chicago time, or as may be otherwise permitted by the Administrative Agent at its sole discretion.

(b) No termination of this Agreement or the other Financing Agreements shall relieve or discharge Borrower of its respective duties, obligations and covenants under this Agreement or the other Financing Agreements until all Obligations have been fully and finally discharged and paid, and Collateral Agent's continuing security interest in the Collateral and the rights and remedies of Agents and the Lenders hereunder, under the other Financing Agreements and applicable law, shall remain in effect until all such Obligations have been fully and finally discharged and paid.

(c) If for any reason this Agreement is terminated prior to May 31, 2009, or any portion of the Commitments are reduced pursuant to Section 2.4(b) prior to May 31, 2009, in view of the impracticality and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation each Agent's and each Lender's lost profits as a result thereof, Borrower agrees to pay to Administrative Agent for itself and the ratable benefit of Lenders, upon the effective date of such termination and on each effective date of any Commitment reduction, an early termination fee in the amount set forth below if such termination or reduction, as applicable, is effective in the period indicated:

	Amount	Period
(i)	fifteen one-hundredths of one (.15%) percent of the Stated Amount	From the Closing Date to and including May 31, 2008
(ii)	one tenth of one (.10%) percent of the Stated Amount	From May 31, 2008 to and including May 31 2009

Such early termination fee shall be presumed to be the amount of damages sustained by Administrative Agent and Lenders as a result of such early termination or reduction and Borrower agrees that it is reasonable under the circumstances currently existing. The early termination fee provided for in this Section 13.1 shall be deemed included in the Obligations.

(d) Notwithstanding anything to the contrary contained in Section 13.1(c), in the event of termination of this Agreement by Borrower prior to May 31, 2009 and the full and final repayment of all of the Obligations and the receipt by Administrative Agent of cash collateral all as provided in Section 13.1(a) above, Borrower shall only be required to pay to Administrative Agent, for its benefit and the ratable benefit of Lenders, an early termination fee in an amount equal to fifty (50%) percent of the early termination fee otherwise payable under Section 13.1(c) if each of the following conditions is satisfied: (i) no Default or Event of Default shall exist or have occurred and be continuing, (ii) Administrative Agent shall have received not less than thirty (30) days prior written notice of the intention of Borrower to so terminate this Agreement and (iii) the full and final repayment of all of the Obligations and the cash collateral

is paid with the proceeds from a Qualified Public Offering upon the consummation of such Qualified Public Offering or from another transaction resulting in a Change of Control upon the consummation of such transaction.

13.2. Interpretative Provisions.

(a) All terms used herein which are defined in Article 1 or Article 9 of the UCC shall have the meanings given therein unless otherwise defined in this Agreement.

(b) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(c) All references to Borrower, Agents and Lenders pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns.

(d) The words "hereof", "herein", "hereunder", "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(e) The word "including" when used in this Agreement shall mean "including, without limitation".

(f) All references to the term "good faith" used herein when applicable to either Agent shall mean, notwithstanding anything to the contrary contained herein or in the UCC, honesty in fact in the conduct or transaction concerned. Borrower shall have the burden of proving any lack of good faith on the part of such Agent alleged by Borrower at any time.

(g) An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 11.3 or is cured in a manner reasonably satisfactory to Administrative Agent, if such Event of Default is capable of being cured as reasonably determined by Administrative Agent.

(h) Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations hereunder shall be computed unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the financial statements of Borrower most recently received by Administrative Agent prior to the date hereof.

(i) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including".

(j) Unless otherwise expressly provided herein, (i) references herein to any agreement, document or instrument shall be deemed to include all subsequent amendments, modifications, supplements, extensions, renewals, restatements or replacements with respect

thereto, but only to the extent the same are not prohibited by the terms hereof or of any other Financing Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, recodifying, supplementing or interpreting the statute or regulation.

(k) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(l) This Agreement and other Financing Agreements may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(m) This Agreement and the other Financing Agreements are the result of negotiations among and have been reviewed by counsel to Administrative Agent and the other parties, and are the products of all parties. Accordingly, this Agreement and the other Financing Agreements shall not be construed against Agents or Lenders merely because of either Agent's or any Lender's involvement in their preparation.

13.3. Notices.

All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next Business Day, one (1) Business Day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

If to Borrower:	Ulta Salon, Cosmetics & Fragrance, Inc. 1135 Arbor Drive Romeoville, Illinois 60646 Attention: Gregg Bodnar Telephone No.: (630) 226-8212 Telecopy No.: (630) 226-0020
with a copy, in the case of a Default or Event of Default, to:	Latham & Watkins 5800 Sears Tower 233 S. Wacker Drive Chicago, Illinois 60606 Attention: Donald L. Schwartz Telephone No.: (312) 876-7700 Telecopy No.: (312) 993-9767

If to Administrative Agent:	LaSalle Bank National Association, as Administrative Agent 135 South LaSalle Street Chicago, Illinois 60603 Attention: Scott Carbon Telephone No.: (312) 904-4818 Telecopy No.: (312) 904-6150
If to Collateral Agent:	Wachovia Capital Finance Corporation (Central), as Collateral Agent 150 S. Wacker Drive Suite 2200 Chicago, Illinois 60606 Attention: Account Officer (Ulta Cosmetics) Telephone No.: (312) 332-0420 Telecopy No.: (312) 332-0424

13.4. Partial Invalidity.

If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

13.5. Successors.

This Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon and inure to the benefit of and be enforceable by Agents, Lenders, Borrower and their respective successors and assigns, except that Borrower may not assign its rights under this Agreement, the other Financing Agreements and any other document referred to herein or therein without the prior written consent of Agents and Lenders. Any such purported assignment without the prior written consent shall be void. No Lender may assign its rights and obligations under this Agreement without the prior written consent of Administrative Agent, except as provided in Section 13.6 below. The terms and provisions of this Agreement and the other Financing Agreements are for the purpose of defining the relative rights and obligations of Borrower, Agents and Lenders with respect to the transactions contemplated hereby and there shall be no third party beneficiaries of any of the terms and provisions of this Agreement or any of the other Financing Agreements.

13.6. Assignments; Participations.

(a) Each Lender may (i) assign all or a portion of its rights and obligations under this Agreement (including, without limitation, a portion of its Commitments, the Loans owing to it and its rights and obligations as a Lender with respect to Letter of Credit Accommodations) and the other Financing Agreements to (A) its parent company and/or any Affiliate of such Lender which is at least fifty (50%) percent owned by such Lender or its parent

company or (B) one or more Lenders or (C) any person (whether a corporation, partnership, trust or otherwise) that is engaged in the business of making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or with respect to any Lender that is a fund which invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor or (ii) assign all or a portion of its rights and obligations under this Agreement to one or more Eligible Transferees, each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment and Acceptance; provided, that, (A) the consent of Administrative Agent shall be required in connection with any assignment to an Eligible Transferee pursuant to clause (ii) above, which consent shall not be unreasonably withheld, (B) absent the existence of an Event of Default, the consent of Borrower shall be required in connection with any assignment to an Eligible Transferee pursuant to clause (ii) above, which consent shall not be unreasonably withheld; (C) if such Eligible Transferee is not a bank, Administrative Agent shall receive a representation in writing by such Eligible Transferee that either (1) no part of its acquisition of its Loans is made out of assets of any employee benefit plan, or (2) after consultation, in good faith, with Borrower and provision by Borrower of such information as may be reasonably requested by such Eligible Transferee, the acquisition and holding of such Commitments and Loans does not constitute a non-exempt prohibited transaction under Section 406 of ERISA and Section 4975 of the Code, or (3) such assignment is an "insurance company general account," as such term is defined in the Department of Labor Prohibited Transaction Class Exemption 95.60 (issued July 12, 1995) ("PTCE 95-60), and, as of the date of the assignment, there is no "employee benefit plan" with respect to which the aggregate amount of such general account's reserves and liabilities for the contracts held by or on behalf of such "employee benefit plan" and all other "employee benefit plans" maintained by the same employer (and affiliates thereof as defined in Section V(a)(1) of PTCE 95-60) or by the same employee organization (in each case determined in accordance with the provisions of PTCE 95-60) exceeds ten (10%) percent of the total reserves and liabilities of such general account (as determined under PTCE 95-60) (exclusive of separate account liabilities) plus surplus as set forth in the National Association of Insurance Commissioners Annual Statement filed with the state of domicile of such Eligible Transferee, (D) such transfer or assignment will not be effective until recorded by the Administrative Agent on the Register, (E) except as Administrative Agent shall otherwise agree, any such assignment shall be in a minimum aggregate amount equal to $5,000,000 or, if less, the remaining Commitment and Loans held by the assigning Lender. As used in this Section, the term "employee benefit plan" shall have the meaning assigned to it in Title I of ERISA and shall also include a "plan" as defined in Section 4975(e)(1) of the Code and (F) any Lender desiring to assign all or any portion of its rights and obligations under this Agreement to a Person other than a Lender shall first and prior to any assignment to such Person provide a written offer to each of the other existing Lenders to accept such assignment, and each Lender who has received such offer shall have the right, but no obligation, to accept such assignment, provided that, no later than seven (7) days after receipt of such notice, each such Lender shall advise Administrative Agent and the Borrower whether it intends to accept such assignment, and any Lender that has not responded within such period shall be deemed to have declined such assignment and in the event that more than one Lender accepts such assignment, the assigning Lender shall assign its rights and obligations to such Lenders on a pro rata basis.

(b) Administrative Agent shall maintain a register of the names and addresses of Lenders, their Commitments and the principal amount of their Loans (the "Register"). Administrative Agent shall also maintain a copy of each Assignment and Acceptance delivered to and accepted by it and shall modify the Register to give effect to each Assignment and Acceptance. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and Borrower, any Obligor, Agents and Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(c) Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and to the other Financing Agreements and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations (including, without limitation, the obligation to participate in Letter of Credit Accommodations) of a Lender hereunder and thereunder and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement. In the event that any Lender assigns or otherwise transfers all or any part of the Obligations, Administrative Agent shall so notify Borrower and Borrower shall, upon the request of the Administrative Agent, execute new promissory notes in exchange for the promissory notes of such assigning Lender, if any.

(d) By execution and delivery of an Assignment and Acceptance, the assignor and assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any of the other Financing Agreements or the execution, legality, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Financing Agreements furnished pursuant hereto, (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower, any Obligor or any of their Subsidiaries or the performance or observance by Borrower or any Obligor of any of the Obligations; (iii) such assignee confirms that it has received a copy of this Agreement and the other Financing Agreements, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such assignee will, independently and without reliance upon the assigning Lender, Administrative Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Financing Agreements, (v) such assignee appoints and authorizes Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Financing Agreements as are delegated to Agents by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Financing Agreements are required to be performed by it as a Lender. Agents and Lenders may furnish any information concerning

Borrower or any Obligor in the possession of either Agent or any Lender from time to time to assignees and Participants.

(e) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Financing Agreements (including, without limitation, all or a portion of its Commitments and the Loans owing to it and its participation in the Letter of Credit Accommodations, without the consent of Administrative Agent or the other Lenders); provided, that, (i) such Lender's obligations under this Agreement (including, without limitation, its Commitment hereunder) and the other Financing Agreements shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and Borrower, and Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Financing Agreements, (iii) the Participant shall not have any rights under this Agreement or any of the other Financing Agreements (the Participant's rights against such Lender in respect of such participation (including rights in connection with increased costs pursuant to Section 3.3 hereof) to be those set forth in the agreement executed by such Lender in favor of the Participant relating thereto) and all amounts payable by Borrower or any Obligor hereunder shall be determined as if such Lender had not sold such participation; provided, that the Borrower shall not be required to reimburse any Participant pursuant to the increased cost provisions of Section 3.3 in any amount which exceeds the amount that would have been payable under such provisions to such Lender had such Lender not sold such participation, (iv) absent the existence of an Event of Default, the consent of Borrower, which consent shall not be unreasonably withheld, shall be required in connection with any participation to an Eligible Transferee that does not consist of (A) any Lender's parent company and/or any Affiliate of such Lender which is at least fifty (50%) percent owned by such Lender or its parent company or (B) one or more Lenders or (C) any person (whether a corporation, partnership, trust or otherwise) that is engaged in the business of making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or with respect to any Lender that is a fund which invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor, and (v) if such Participant is not a bank, represent that either (A) no part of its acquisition of its participation is made out of assets of any employee benefit plan, or (B) after consultation, in good faith, with Borrower and provision by Borrower of such information as may be reasonably requested by the Participant, the acquisition and holding of such participation does not constitute a non-exempt prohibited transaction under Section 406 of ERISA and Section 4975 of the Code, or (C) such participation is an "insurance company general account, " as such term is defined in the "PTCE 95-60", and, as of the date of the transfer there is no "employee benefit plan" with respect to which the aggregate amount of such general account's reserves and liabilities for the contracts held by or on behalf of such "employee benefit plan" and all other "employee benefit plans" maintained by the same employer (and affiliates thereof as defined in Section V(a)(1) of PTCE 95-60) or by the same employee organization (in each case determined in accordance with the provisions of PTCE 95-60) exceeds ten (10%) percent of the total reserves and liabilities of such general account (as determined under PTCE 95-60) (exclusive of separate account liabilities) plus surplus as set forth in the National Association of Insurance Commissioners Annual Statement filed with the state of domicile of the Participant. As used in this Section, the term

“employee benefit plan” shall have the meaning assigned to it in Title I of ERISA and shall also include a “plan” as defined in Section 4975(e)(1) of the Code.

(f) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans hereunder to a Federal Reserve Bank in support of borrowings made by such Lender from such Federal Reserve Bank.

(g) Borrower shall, and shall cause each of its Subsidiaries to, assist any Agent or any Lender permitted to sell assignments or participations under this Section 13.6 in whatever manner reasonably necessary in order to enable or effect any such assignment or participation, including (but not limited to) the execution and delivery of any and all agreements, notes and other documents and instruments as shall be requested and the delivery of informational materials, appraisals or other documents for, and the participation of relevant management in meetings and conference calls with, potential Lenders or Participants. Borrower shall certify the correctness, completeness and accuracy, in all material respects, of all descriptions of Borrower and its Subsidiaries and their affairs provided, prepared or reviewed by Borrower that are contained in any selling materials and all other information provided by it and included in such materials.

13.7. Confidentiality.

(a) Each Agent and each Lender shall use all reasonable efforts to keep confidential, in accordance with its respective customary procedures for handling confidential information and safe and sound lending practices, any non-public information supplied to them by Borrower pursuant to this Agreement which is clearly and conspicuously marked as confidential at the time such information is furnished by Borrower to any Agent or any Lender, provided, that, nothing contained herein shall limit the disclosure of any such information: (i) to the extent required by statute, rule, regulation, subpoena or court order, (ii) to bank examiners and other regulators, auditors and/or accountants, (iii) in connection with any litigation to which any Agent or any Lender is a party, (iv) to any assignee or Participant (or prospective assignee or Participant) so long as such assignee or Participant (or prospective assignee or Participant) shall have first agreed in writing to treat such information as confidential in accordance with this Section 13.7, (v) to any Affiliate, employee, director, officer or agent of such Agent or such Lender so long as such Affiliate, employee, director, officer of agent shall have been instructed to treat such information as confidential in accordance with this Section 13.7 or (vi) to counsel for either Agent or any Lender or any Participant or assignee (or prospective participant or assignee); provided, that, in the case of clause (i), such Agent or Lender, as applicable, shall use reasonable efforts to provide Borrower with prior notice of such required disclosure and the opportunity to obtain a protective order in respect thereof if no conflict exists with such Agent’s or Lender’s governmental, regulatory or legal requirements.

(b) In no event shall this Section 13.7 or any other provision of this Agreement or applicable law be deemed: (i) to apply to or restrict disclosure of information that has been or is made public by Borrower or any third party without breach of this Section 13.7 or otherwise become generally available to the public other than as a result of a disclosure in violation hereof, (ii) to apply to or restrict disclosure of information that was or becomes available to Agents or Lenders on a non-confidential basis from a person other than Borrower,

(iii) require Agents or Lenders to return any materials furnished by Borrower to Agents or Lenders or (iv) prevent Agents or Lenders from responding to routine informational requests in accordance with the Code of Ethics for the Exchange of Credit Informationpromulgated The Robert Morris Associates or other applicable industry standards relating to the exchange of credit information. The obligations of Agents and Lenders under this Section 13.7 shall supersede and replace the obligations of Agents and Lenders under any confidentiality letter signed prior to the date hereof.

13.8. Entire Agreement.

This Agreement, the other Financing Agreements, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. In the event of any inconsistency between the terms of this Agreement and any schedule or exhibit hereto, the terms of this Agreement shall govern.

13.9. Counterparts, Etc.

This Agreement or any of the other Financing Agreements may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement or any of the other Financing Agreements by telefacsimile shall have the same force and effect as the delivery of an original executed counterpart of this Agreement or any of such other Financing Agreements. Any party delivering an executed counterpart of any such agreement by telefacsimile shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

13.10. Customer Identification - USA Patriot Act Notice.

Each Lender and Administrative Agent (for itself and not on behalf of any other party) hereby notifies Borrower that, pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001 (the "Act"), it is required to obtain, verify and record information that identifies Borrower and/or its subsidiaries, which information includes the name and address of Borrower and/or its subsidiaries and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower and/or its subsidiaries in accordance with the Act.

SECTION 14. ACKNOWLEDGMENT AND RESTATEMENT

14.1. Existing Obligations.

Borrower hereby acknowledges, confirms and agrees that it is indebted to Original Lenders for Loans and advances to Borrower under the 2005 Loan Agreement, as of the close of business on June 29, 2007, in the aggregate principal amount of $82,712,131 and the amount of $326,264 in respect of that certain Letter of Credit Accommodation (as defined in the

2005 Loan Agreement) described on Exhibit I hereto (the "2005 Letter of Credit Accommodation"), together with all interest accrued and accruing thereon (to the extent applicable), and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally owing by Borrower to Original Lenders, without offset, defense or counterclaim of any kind, nature or description whatsoever. All such Loans under, and as such term is defined in the 2005 Loan Agreement, outstanding on the Closing Date shall be deemed to be Loans outstanding under this Agreement as of the Closing Date, the 2005 Letter of Credit Accommodation shall be deemed to be a Letter of Credit Accommodation existing as of the Closing Date under this Agreement and any and all other Obligations under, and as such term is defined in the 2005 Loan Agreement, existing as of the Closing Date shall be deemed to be comparable Obligations existing as of the Closing Date under this Agreement.

14.2. Acknowledgment of Security Interests.

(a) Borrower hereby acknowledges, confirms and agrees that Collateral Agent, for itself and the ratable benefit of Lenders, has and shall continue to have a security interest in and lien upon the Collateral heretofore granted to Collateral Agent pursuant to the 2005 Loan Agreement to secure the Obligations, as well as any Collateral granted under this Agreement or under any of the other Financing Agreements or otherwise granted to or held by any Agent or any Lender.

(b) The liens and security interests of Collateral Agent, for itself and the ratable benefit of Lenders, in the Collateral shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such liens and security interests, whether under the 2005 Loan Agreement, this Agreement or any other Financing Agreements.

14.3. Existing Agreement.

Borrower hereby acknowledges, confirms and agrees that: (a) the 2005 Loan Agreement has been duly executed and delivered by Borrower and is in full force and effect as of the date hereof and (b) the agreements and obligations of Borrower contained in the 2005 Loan Agreement constitute the legal, valid and binding obligations of Borrower enforceable against it in accordance with their respect terms and Borrower has no valid defense to the enforcement of such obligations and (c) Original Lenders are entitled to all of the rights and remedies provided for in the 2005 Loan Agreement.

14.4. Restatement.

(a) Except as otherwise stated in Section 14.2 hereof and this Section 14.4, as of the date hereof, the terms, conditions, agreements, covenants, representations and warranties set forth in the 2005 Loan Agreement are hereby amended and restated in their entirety, and as so amended and restated, replaced and superseded, by the terms, conditions, agreements, covenants, representations and warranties set forth in this Agreement and the other Financing Agreements, except that nothing herein or in the other Financing Agreements shall impair or adversely affect the continuation of the liability of Borrower for the Obligations heretofore granted, pledged and/or assigned to any Agent or any Lender. The amendment and restatement contained herein shall not, in any manner, be construed to constitute payment of, or impair, limit, cancel or

extinguish, or constitute a novation in respect of, the indebtedness and other obligations and liabilities of Borrower evidenced by or arising under the 2005 Loan Agreement, and the liens and security interests securing such indebtedness and other obligations and liabilities, which shall not in any manner be impaired, limited, terminated, waived or released.

(b) Notwithstanding the foregoing, with respect to any Eurodollar Rate Loan (as defined in the 2005 Loan Agreement) having an Interest Period (as defined in the 2005 Loan Agreement) that terminates after the date hereof, such Eurodollar Rate Loan shall continue to be a Eurodollar Rate Loan under this Agreement with the same maturity (but reduced margin to reflect this Agreement) that it had under the 2005 Loan Agreement.

(c) All references in any or all of the Financing Agreements to the 2005 Loan Agreement shall be deemed to be a reference to this Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time, and such Financing Agreements are hereby amended to reflect such reference. All references in any or all of the Financing Agreements to Congress Financial Corporation (Central) (i) in its capacity as collateral agent shall continue to be deemed to be a reference to Collateral Agent and (ii) in its capacity as administrative agent shall continue to be deemed to be a reference to Administrative Agent.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Agents, Lenders and Borrower have caused these presents to be duly executed as of the day and year first above written.

LASALLE BANK NATIONAL ASSOCIATION,
as Administrative Agent, as a Lender and as LC Issuer

By: /s/ Scott Carbon
Title: First Vice President

Address:

135 South LaSalle Street
Chicago, Illinois 60603

BORROWER

ULTA SALON , COSMETICS & FRAGRANCE, INC.

By: /s/ Gregg Bodnar
Title: CFO

Chief Executive Office:

1135 Arbor Drive
Romeoville, Illinois 60446

WACHOVIA CAPITAL FINANCE CORPORATION (CENTRAL),
as Collateral Agent and as a Lender

By: /s/ Anthony Vizgirda
Title: Director

Address:

150 South Wacker Drive
Chicago, Illinois 60606

JPMORGAN CHASE BANK, N.A., as a Lender

By: /s/ Teresa M. Bolick
Title: Vice President

Address:

JPMorgan Chase
120 South LaSalle Street, Floor 8
Mail Code, IL1-1458
Chicago, IL 60603
Attention: Teresa M. Bolick

EXHIBIT A

FORM OF ASSIGNMENT AND ACCEPTANCE AGREEMENT

Date:____________________

To: Ulta Salon, Cosmetics and Fragrance, Inc. and
LaSalle Bank National Association, as Administrative Agent
Re: Assignment under the Loan Agreement referred to below

Gentlemen and Ladies:

Please refer to Section 13.6 of the Third Amended and Restated Loan and Security Agreement dated as of June 29, 2007 (as amended or otherwise modified from time to time, the "Loan Agreement") among Ulta Salon, Cosmetics and Fragrance, Inc. (the "Borrower"), various financial institutions and LaSalle Bank National Association, as administrative agent (in such capacity, the "Administrative Agent"). Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Loan Agreement.

__________(the "Assignor") hereby sells and assigns, without recourse, to (the "Assignee"), and the Assignee hereby purchases and assumes from the Assignor, that interest in and to the Assignor's rights and obligations under the Loan Agreement as of the date hereof equal to ___% of all of the Loans, of the participation interests in the Letter of Credit Accommodations and of the Commitments, such sale, purchase, assignment and assumption to be effective as of __________, ___, or such later date on which the Borrower and the Administrative Agent shall have consented hereto (the "Effective Date"). After giving effect to such sale, purchase, assignment and assumption, the Assignee's and the Assignor's respective Pro Rata Shares for purposes of the Loan Agreement will be as set forth opposite their names on the signature pages hereof.

The Assignor hereby instructs the Administrative Agent to make all payments from and after the Effective Date in respect of the interest assigned hereby directly to the Assignee. The Assignor and the Assignee agree that all interest and fees accrued up to, but not including, the Effective Date are the property of the Assignor, and not the Assignee. The Assignee agrees that, upon receipt of any such interest or fees, the Assignee will promptly remit the same to the Assignor.

The Assignor represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim.

The Assignee represents and warrants to the Borrower and the Administrative Agent that, as of the date hereof, the Borrower will not be obligated to pay any greater amount under Section 3.3 of the Loan Agreement than the Borrower is obligated to pay to the Assignor under such Section. The [Assignee/Assignor] [Borrower] shall pay a processing fee equal to $3,500 to the Administrative Agent.

The Assignee hereby confirms that it has received a copy of the Loan Agreement. Except as otherwise provided in the Loan Agreement, effective as of the Effective Date:

(d) the Assignee (i) shall be deemed automatically to have become a party to the Loan Agreement and to have all the rights and obligations of a "Lender" under the Loan Agreement as if it were an original signatory thereto to the extent specified in the second paragraph hereof; and (ii) agrees to be bound by the terms and conditions set forth in the Loan Agreement as if it were an original signatory thereto; and

(e) the Assignor shall be released from its obligations under the Loan Agreement to the extent specified in the second paragraph hereof.

The Assignee hereby advises each of you of the following administrative details with respect to the assigned Loans and Commitment:

(A) Institution Name:
Address:
Attention:
Telephone:
Facsimile:

(B) Payment Instructions:

This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois

Please evidence your receipt hereof and your consent to the sale, assignment, purchase and assumption set forth herein by signing and returning counterparts hereof to the Assignor and the Assignee.

Percentage = __%

[ASSIGNEE]

By: ______________________________________

Title: ______________________________________

Adjusted Percentage = __%

[ASSIGNOR]

By: ______________________________________

Title: ______________________________________

ACKNOWLEDGED AND CONSENTED TO
this ____ day of __________, ____

LASALLE BANK NATIONAL ASSOCIATION, as
Administrative Agent

By: ______________________________________

Title: ______________________________________

[ACKNOWLEDGED AND CONSENTED TO
this ____ day of __________, ____

ULTA SALON, COSMETICS AND FRAGRANCE, INC.

By: ______________________________________

Title: ______________________________________]

EXHIBIT B

INFORMATION CERTIFICATE

See attached.

EXHIBIT C

FORM OF SWAP ACKNOWLEDGMENT AGREEMENT

__________, 200_

LaSalle Bank National Association, as
Administrative Agent for itself and the Lenders as referred
to below
135 South LaSalle Street
Chicago, Illinois 60603

Ladies and Gentlemen:

Reference is made to the Third Amended and Restated Loan and Security Agreement among LaSalle Bank National Association as administrative agent (in such capacity, "Administrative Agent") for itself and the financial institutions from time to time party thereto, as lenders (collectively, "Lenders"), Wachovia Capital Finance Corporation (Central) as Collateral Agent for itself and the Lenders, the Lenders, and Ulta Salon, Cosmetics & Fragrance, Inc. (the "Borrower"), as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced (the "Loan Agreement"). All capitalized terms used herein, unless otherwise defined herein, shall have the meanings given to such terms in the Loan Agreement.

Pursuant to such financing arrangements, Administrative Agent and Lenders may from time to time make loans to Borrower secured by substantially all of the assets and properties of Borrower including among other things, all right, title and interest of Borrower in, to and under the swap agreements, cap agreements, collar agreements, exchange agreements, futures or forward hedging contracts or similar contractual arrangements intended to protect Borrower against fluctuations in interest rates as listed on Exhibit A hereto, and at any time entered into between Borrower and __________ (the "Bank"; collectively, "Hedge Agreements" and individually, a "Hedge Agreement").

Bank and Borrower agree in favor of Agents and Lenders that upon receipt by Bank of written instructions from Administrative Agent in the form annexed hereto as Exhibit B, Bank will no longer comply with any instructions or orders originated by Borrower or any of its affiliates or representatives concerning any Hedge Agreement and will comply only with the instructions or orders of Administrative Agent with respect thereto, without any further consent by Borrower or its affiliates or representatives. Bank is hereby irrevocably authorized and directed to follow such instructions or orders without any inquiry as to Administrative Agent's right or authority to give such instructions or orders and Bank is fully protected in acting in accordance therewith. Bank shall not for any reason exercise any lien rights or rights of setoff or other claims against amounts owing to Borrower pursuant to Hedge Agreements, without the prior consent of Administrative Agent. Upon Administrative Agent's request, Bank will report to Administrative Agent the amounts then outstanding with respect to the Hedge Agreements consistent with its current practices as of the date hereof with Borrowers or more frequently as Administrative Agent may request after Administrative Agent has sent the written instructions

referred to above, together with such other information with respect thereto as Administrative Agent may reasonably request.

Nothing contained herein shall be construed as an assumption by Administrative Agent or any Lender of the obligations or liabilities of Borrower or any of its affiliates to Bank or any other person pursuant to any Hedge Agreement or otherwise. Bank agrees that in its capacity as a counterparty to the Hedge Agreement, it shall not be deemed to have any rights as a "Lender" under the Loan Agreement except for the right to receive proceeds of Collateral, as a counterparty to the Hedge Agreement, in the order and manner set forth in Section 6.4(a) of the Loan Agreement. Bank further aggress that Administrative Agent has no duties to Bank under the Loan Agreement in its capacity as a counterparty to the Hedge Agreement other than in respect of Bank's entitlement to proceeds of Collateral, as a counterparty to the Hedge Agreement, in the order and manner set forth in Section 6.4(a) of the Loan Agreement. To the extent Bank is also a "Lender" under the Loan Agreement, nothing in the preceding two sentences is intended to diminish or otherwise alter Bank's rights, or Administrative Agent's duties to Bank, under the Loan Agreement as to Bank in its capacity as a "Lender" thereunder.

Administrative Agent and Lenders are relying upon this letter agreement in providing financing to Borrower and this letter agreement shall be binding upon Borrower and its successors and assigns and inure to the benefit of Administrative Agent and Lenders and their successors and assigns. This agreement may not be amended, modified, supplemented or terminated orally or by course of conduct or otherwise. This agreement may only be amended, modified, supplemented or terminated with the written agreement of Administrative Agent.

Borrower agrees that it will not assert any claims against the Bank as counterparty to the Hedge Agreement solely as a result of Bank following the instructions or orders of Administrative Agent pursuant to the terms hereof with respect to any Hedge Agreement.

This agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

This agreement may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement. In making proof of this agreement, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto.

[Signature Page Follows]

This agreement shall be binding upon Bank and Borrower and inure to the benefit of Administrative Agent, Lenders and each of the parties hereto and their respective successors and assigns.

Very truly yours,

[**BANK**]

By: ______________________________

Title: ______________________________

ULTA SALON, COSMETICS & FRAGRANCE, INC.

By: ______________________________

Title: ______________________________

ACKNOWLEDGED AND AGREED:

LASALLE BANK NATIONAL ASSOCIATION,
as Administrative Agent

By: ______________________________

Title: ______________________________

EXHIBIT A
TO
SWAP ACKNOWLEDGMENT AGREEMENT

[Details to be completed for each such agreement.]

EXHIBIT B
TO
SWAP ACKNOWLEDGMENT AGREEMENT

Form of Notice to Bank

[Name and Address
of Hedge Lender]

____

____

Attn: ___________________________

Re: Swap Transactions with

Ladies and Gentlemen:

Reference is made to the Third Amended and Restated Loan and Security Agreement among LaSalle Bank National Association, as administrative agent (in such capacity, "Administrative Agent") for itself and the financial institutions from time to time party thereto as lenders (collectively, together with Administrative Agent, "Lenders"), the Lenders, and Ulta Salon, Cosmetics & Fragrance, Inc. ('Borrower"), as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced (the "Loan Agreement"). All capitalized terms used herein, unless otherwise defined herein, shall have the meanings given to such terms in the Loan Agreement.

A default or event of default under the Loan Agreement exists or has occurred and is continuing. Accordingly, Bank is no longer to comply with any instructions or orders originated by Borrower or any of its affiliates or representatives and Bank is only to comply with the instructions or orders or Administrative Agent with respect thereto. Borrower and its affiliates and representatives no longer have any authority with respect to the Hedge Agreement (as defined in the Loan Agreement) except as Administrative Agent may otherwise specify to Bank in writing.

Very truly yours,

LASALLE BANK NATIONAL ASSOCIATION,
as Administrative Agent

By: ______________________________________

Title: ______________________________________

EXHIBIT D

FORM OF NOTICE OF CONTINUATION/CONVERSION

To: LaSalle Bank National Association, as Administrative Agent

Please refer to the Third Amended and Restated Loan and Security Agreement dated as of June 29, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") among Ulta Salon, Cosmetics and Fragrance, Inc. (the "Borrower"), various financial institutions and LaSalle Bank National Association, as Administrative Agent. Terms used but not otherwise defined herein are used herein as defined in the Loan Agreement.

The undersigned hereby gives irrevocable notice, pursuant to Section 3.1(b) of the Loan Agreement, of its request to:

(a) on [date] convert $[__________] of the aggregate outstanding principal amount of the [__________] Loan, bearing interest at the [__________] Rate, into a(n) [__________] Loan [and, in the case of a Eurodollar Rate Loan, having an Interest Period of [__________] month(s)]; [(b) on [date] continue $[__________] of the aggregate outstanding principal amount of the [___] Loan, bearing interest at the Eurodollar Rate, as a Eurodollar Rate Loan having an Interest Period of [__________] month(s)].

The undersigned hereby represents and warrants that all of the conditions contained in Section 4.2 of the Loan Agreement have been satisfied on and as of the date hereof, and will continue to be satisfied on and as of the date of the conversion/continuation requested hereby, before and after giving effect thereto.

The Borrower has caused this Notice of Conversion/Continuation to be executed and delivered by its officer thereunto duly authorized on____________________, __________.

ULTA SALON, COSMETICS AND FRAGRANCE, INC.

By: ____________________________________

Title: ____________________________________

EXHIBIT E

CLOSING CHECKLIST

1. Third Amended & Restated Loan & Security Agreement
2. Amended and Restated Promissory Notes payable to each Lender (if requested)
3. Certificates of good standing for Borrower in the States of Delaware and in all other jurisdictions in which Borrower is qualified to do business
4. Secretary's Certificate as to Borrower's Articles of Incorporation, By-Laws and Resolution authorizing transaction
5. Amended & Restated Fee Letter
6. Latham & Watkins Opinion

EXHIBIT F

FORM OF NOTICE OF BORROWING

To: LaSalle Bank National Association, as Administrative Agent

Please refer to the Third Amended and Restated Loan and Security Agreement dated as of June 29, 2007 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement") among Ulta Salon, Cosmetics and Fragrance, Inc. (the "Borrower), various financial institutions and LaSalle Bank National Association, as Administrative Agent. Terms used but not otherwise defined herein are used herein as defined in the Loan Agreement.

The undersigned hereby gives irrevocable notice, pursuant toSection 6.5 of the Loan Agreement, of a request hereby for a borrowing as follows:

(i) The requested borrowing date for the proposed borrowing (which is a Business Day) is____________________, __________.

(ii) The aggregate amount of the proposed borrowing is $____________________.

(iii) The type of Revolving Loans comprising the proposed borrowing is [Prime Rate] [Eurodollar Rate] Loans.

(iv) The duration of the Interest Period for each Eurodollar Rate Loan made as part of the proposed borrowing, if applicable, is__________ months (which shall be 1, 2, 3 or 6 months).

The undersigned hereby certifies that on the date hereof and on the date of borrowing set forth above, and immediately after giving effect to the borrowing requested hereby: (i) there exists and there shall exist no Default or Event of Default under the Loan Agreement; and (ii) each of the representations and warranties contained in the Loan Agreement and the other Financing Agreements is true and correct as of the date hereof, except to the extent that such representation or warranty expressly relates to another date and except for changes therein expressly permitted or expressly contemplated by the Loan Agreement.

The undersigned requests, subject to the provisions of Section 2.5, that the requested borrowing be funded as a Swing Line Loan.**[Delete as applicable]**

The Borrower has caused this Notice of Borrowing to be executed and delivered by its officer thereunto duly authorized on____________________, __________.

ULTA SALON, COSMETICS AND FRAGRANCE, INC.

By: ____

Title: ____

SCHEDULE I

LENDERS AND PRO RATA SHARES

Lender	Commitment Amount	Pro Rata Share
LaSalle Bank National Association	$ 75,000,000.00[1]	50.000000000%
Wachovia Capital Finance Corporation (Central)	$ 45,000,000.00	30.000000000%
JPMorgan Chase Bank, N.A.	$ 30,000,000.00	20.000000000%
TOTALS	$ 150,000,000.00	100%

[1] **This amount includes Swing Line Commitment Amount of $10,000,000.**

EXHIBIT G

EXISTING LANDLORD AGREEMENTS

EXHIBIT H

FORM OF LANDLORD AGREEMENT

THIS LANDLORD'S WAIVER AND CONSENT ("Waiver and Consent") is made and entered into as of this__________ day of ____________________, by and between ____________________, a ____________________ ("Landlord"), and **Wachovia Capital Finance Corporation (Central)**, an Illinois corporation ("Lender"), in its capacity as Collateral Agent ("Agent") for various lenders ("Lenders").

A. Landlord is the owner of the real property commonly known as____________________(the "Premises").

B. Landlord has entered into a certain Lease Agreement (together with all amendments and modifications thereto and waivers thereof, the "Lease") with Ulta Salon, Cosmetics & Fragrance, Inc. ("Company"), with respect to the Premises.

C. Agent and the Lenders have entered into a certain Third Amended and Restated Loan and Security Agreement with Company (as amended from time to time, the "Credit Agreement"), and to secure the obligations arising under such Credit Agreement, Company has granted to Agent for its benefit and the benefit of the Lenders a security interest in and lien upon certain assets of Company which assets may from time to time be located at the Premises, including, without limitation, all of Company's cash, cash equivalents, goods, inventory, machinery, equipment, and furniture and trade fixtures (such as equipment bolted to floors), together with all additions, substitutions, replacements and improvements to, and proceeds of, the foregoing, but excluding building fixtures (such as plumbing, lighting and HVAC systems and other fixtures not constituting trade fixtures) (collectively, the "Collateral").

NOW, THEREFORE, in consideration of any financial accommodations extended by Agent and the Lenders to Company at any time, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Landlord acknowledges that (a) the Lease is in full force and effect and (b) Landlord is not aware of any existing default under the Lease.

2. Landlord will use commercially reasonable efforts to provide Lender with written notice of any default by Company under the Lease resulting in termination of the Lease (a "Default Notice"). Agent shall have at least 15 days following receipt of such Default Notice to cure such default, but Agent shall not be under any obligation to cure any default by Company under the Lease. No action by Agent pursuant to this Waiver and Consent shall be deemed to be an assumption by Agent or any Lender of any obligation under the Lease, and, except as provided in paragraphs 5, 6, 7 and 8 below, neither Agent nor any Lender shall have any obligation to Landlord hereunder.

3. Landlord acknowledges the validity of Lender's lien on the Collateral and, until such time as the obligations of Company to Agent and the Lenders are indefeasibly paid in full,

Landlord waives any interest in the Collateral and agrees not to distrain or levy upon any Collateral or to assert any landlord lien, right of distraint or other claim against the Collateral for any reason, provided that the foregoing provision shall not prevent Landlord from suing the Company for rent or other charges owing under the Lease.

4. Landlord agrees that the Collateral consisting of trade fixtures such as equipment bolted to the floor shall not be deemed a fixture or part of the real estate but shall at all times be considered personal property.

5. Prior to a termination of the Lease, Agent or its representatives or invitees may enter upon the Premises at any time without any interference by Landlord to inspect, remove, sell or otherwise dispose of any or all of the Collateral, subject, in each case, to any restrictions contained in any applicable restrictive covenants, easements or other documents recorded in the applicable public records against the Premises, publicly stated rules or regulations or governing laws ("Sale Restrictions"). Lender will use commercially reasonable efforts to provide Landlord with prior written notice of its intention to enter onto the Premises to conduct any sale, removal or disposition of Collateral.

6. Upon a termination of the Lease, Landlord will permit Agent and its representatives and invitees to occupy and remain on the Premises;provided, that (a) such period of occupation (the "Disposition Period") shall not exceed up to 60 days following receipt by Agent of a Default Notice or, if the Lease has expired by its own terms (absent a default thereunder) and the Company has failed to remove all of the Collateral from the Premises, up to 45 days following Agent's receipt of written notice from Landlord of such failure, (b) for the actual period of occupancy by Agent, Agent will pay to Landlord all rent and other charges due and payable by the Company under the Lease (including, without limitation, taxes, common area maintenance costs and insurance, but excluding any percentage or contingent rent) which becomes due under the Lease pro-rated on a per diem basis determined on a 30-day month, and shall provide and retain liability and property insurance coverage, electricity and heat to the extent required by the Lease, and (c) such amounts paid by Agent to Landlord shall exclude any rent adjustments, indemnity payments or similar amounts for which the Company remains liable under the Lease for default, holdover status or other similar charges. If any injunction or stay is issued that prohibits Agent from removing the Collateral, the commencement of the Disposition Period will be deferred until such injunction or stay is lifted or removed.

7. During any Disposition Period, (a) Agent and its representatives and invitees may inspect, repossess, remove and otherwise deal with the Collateral, and Agent may, subject to any applicable Sale Restrictions, advertise and sell or otherwise dispose of the Collateral at the Premises, in each case without interference by Landlord or liability of Agent to Landlord, and (b) Agent shall make the Premises available for inspection by Landlord and prospective tenants and shall cooperate in Landlord's reasonable efforts to re-lease the Premises. If Agent conducts a sale of the Collateral at the Premises, Agent shall use commercially reasonable efforts to notify Landlord first and to conduct such sale in a manner that would not unduly disrupt Landlord's or any other tenant's use of the Premises. In no event shall Agent disturb or interfere with other tenants' rights of quiet enjoyment of their leased space and no auction or other advertised sale shall be held by Agent at the Premises. Upon request by the Landlord, Agent shall promptly

provide Landlord with evidence that commercially reasonable insurance is in force throughout Agent's period of possession.

8. Agent shall promptly repair, at Agent's expense, or reimburse Landlord for any physical damage to the Premises actually caused by the conduct of any sale, removal or other disposition of Collateral by or through Agent (ordinary wear and tear excluded). Agent shall not be liable for any diminution in value of the Premises caused by the absence of Collateral removed, and Agent shall not have any duty or obligation to remove or dispose of any Collateral or any other property left on the Premises by Company.

9. All notices hereunder shall be in writing, sent by certified mail, return receipt requested or by telecopy, to the respective parties and the addresses set forth on the signature page or at such other address as the receiving party shall designate in writing.

10. This Waiver and Consent may be executed in any number of several counterparts, shall be governed and controlled by, and interpreted under, the laws of the state in which the Premises are located and shall inure to the benefit of Agent and its successors and assigns and shall be binding upon Landlord and its successors and assigns (including any transferees of the Premises).

IN WITNESS WHEREOF, this Landlord's Waiver and Consent is entered into as of the date first set forth above.

"LANDLORD"

____

Attention:	____________________	By:	____________________
Telephone:	____________________	Name:	____________________
Facsimile:	____________________	Title:	____________________

Landlord's Notice Address:

____

____

____

"AGENT"

Wachovia Capital Finance Corporation (Central), an Illinois corporation

Attention:	____________________	By:	____________________
Telephone:	____________________	Name:	____________________
Facsimile:	____________________	Title:	____________________

Lender's Notice Address:
Wachovia Capital Finance
Corporation (Central), as agent
150 South Wacker Drive
Chicago, IL 60606-4401
Attn: Portfolio Manager

EXHIBIT I

2005 LETTER OF CREDIT ACCOMMODATION

That certain Letter of Credit No. S585314 issued by LaSalle to Aetna Life Insurance Company c/o Nicholson, Porter and List Inc. on November 18, 2005 in the original face amount of $326,264.00.

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated April 11, 2007, in Amendment No.1 to the Registration Statement (Form S-1 No. 333-144405) and related Prospectus of Ulta Salon, Cosmetics & Fragrance, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Chicago, Illinois
August 13, 2007