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

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**FORM 8-K**

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**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d)**  
**of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): January 27, 2017**

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**ULTA BEAUTY, INC.**  
(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-33764**  
(Commission  
File Number)

**38-402268**  
(IRS Employer  
Identification No.)

**1000 Remington Blvd., Suite 120**  
**Bolingbrook, Illinois 60440**  
(Address of principal executive offices, including zip code)

**(630) 410-4800**  
(Registrant's telephone number, including area code)

**ULTA SALON, COSMETICS & FRAGRANCE, INC.**  
(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## Explanatory Note

On January 29, 2017, Ulta Salon, Cosmetics & Fragrance, Inc., a Delaware corporation ("Salon"), implemented a holding company reorganization (the "Reorganization"). Following the Reorganization, Ulta Beauty, Inc., a Delaware corporation ("Ulta Beauty"), became the successor issuer to Salon. This Current Report on Form 8-K is being filed for the purpose of establishing Ulta Beauty as the successor issuer pursuant to Rule 12g-3(a) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and to disclose certain related matters. Pursuant to Rule 12g-3(a) under the Exchange Act, shares of common stock, par value \$0.01 per share, of Ulta Beauty, as successor issuer, are deemed registered under Section 12(b) of the Exchange Act.

### **Item 1.01. Entry into a Material Definitive Agreement.**

On January 27, 2017, Salon, Ulta Beauty and Ulta Merger Sub, Inc., a Delaware corporation ("Merger Sub"), entered into the Agreement and Plan of Merger (the "Agreement") which resulted in Ulta Beauty owning all of the outstanding capital stock of Salon. Pursuant to the Reorganization, effective at 12:01 a.m., Eastern Time, on January 29, 2017 (the "Effective Time"), Merger Sub, a direct, wholly owned subsidiary of Ulta Beauty and an indirect, wholly owned subsidiary of Salon, merged with and into Salon, with Salon surviving as a direct, wholly owned subsidiary of Ulta Beauty. At the Effective Time, each share of Salon common stock issued and outstanding immediately prior to the Reorganization automatically converted into a share of Ulta Beauty common stock, having the same rights, powers and preferences, and the qualifications, limitations and restrictions, as the common stock of Salon that was converted. Accordingly, Salon's stockholders immediately prior to the consummation of the Reorganization became stockholders of Ulta Beauty at the Effective Time. In accordance with the Stockholder Rights Agreement, as amended, one preferred stock purchase right is attached to each share of Ulta Beauty common stock, just as it was attached to the Salon common stock prior to the Reorganization. The stockholders of Salon will not recognize gain or loss for U.S. federal income tax purposes as a result of the consummation of the Reorganization.

The Reorganization was conducted pursuant to Section 251(g) of the General Corporation Law of the State of Delaware (the "DGCL"), which provides for the formation of a holding company without a vote of the stockholders of the constituent corporations. Ulta Beauty has a Certificate of Incorporation and Bylaws that are each identical to those of Salon immediately prior to the consummation of the Reorganization, except for the change of the name of the corporation as permitted by Section 251(g) of the DGCL. Furthermore, the conversion of stock in the Reorganization occurred automatically without an exchange of stock certificates. After the Reorganization, stock certificates that previously represented shares of Salon common stock now represent the same number of shares of Ulta Beauty common stock. Following the consummation of the Reorganization, shares of Ulta Beauty's common stock continue to trade on the NASDAQ Global Select Market, on an uninterrupted basis, under the symbol "ULTA," with the same CUSIP number. Immediately after consummation of the Reorganization, Ulta Beauty has, on a consolidated basis, the same assets, businesses and operations as Salon had immediately prior to the consummation of the Reorganization.

As a result of the Reorganization, Ulta Beauty became the successor issuer to Salon pursuant to 12g-3(a) of the Exchange Act and shares of Ulta Beauty's common stock are deemed registered under Section 12(b) of the Exchange Act.

The foregoing descriptions of the Reorganization and the Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Agreement, which is filed as Exhibit 2 and which is incorporated by reference herein.

### **Item 3.03. Material Modification of Rights of Security Holders.**

The information set forth in Item 1.01 and Item 5.03 is hereby incorporated by reference in this Item 3.03.

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

The directors of Ulta Beauty, which are listed below, are identical to the directors of Salon immediately prior to the Effective Time of the Reorganization.

**DIRECTORS**

Director	Audit Committee	Nominating and Corporate Governance Committee	Compensation Committee
Charles J. Philippin*			
Michelle L. Collins	✓	†	
Mary N. Dillon			
Robert F. DiRomualdo	†		
Dennis K. Eck		✓	✓
Catherine A. Halligan		✓	†
Charles Heilbronn		✓	✓
Michael R. MacDonald			✓
George R. Mrkonic	✓		
Lorna E. Nagler		✓	✓
Vanessa A. Wittman	✓		

\* Non-Executive Chairperson of the Board.

† Committee Chairperson.

Biographical information and information regarding the compensation of Ulta Beauty’s directors can be found in Salon’s definitive Proxy Statement for the 2016 Annual Meeting of Stockholders filed with the Securities and Exchange Commission on April 20, 2016 (the “2016 Proxy Statement”) under the caption “Corporate Governance and the Board of Directors” and is incorporated by reference herein.

The executive officers of Ulta Beauty, which are listed below, are identical to the executive officers of Salon immediately prior to the Effective Time of the Reorganization.

**EXECUTIVE OFFICERS**

<u>Officer</u>	<u>Position with Ulta Beauty</u>
Mary N. Dillon	Chief Executive Officer
Scott M. Settersten	Chief Financial Officer, Treasurer and Assistant Secretary
Jodi J. Caro	General Counsel and Corporate Secretary
Jeffrey J. Childs	Chief Human Resources Officer
David C. Kimbell	Chief Merchandising and Marketing Officer

Biographical information of Ulta Beauty’s executive officers can be found in Salon’s Annual Report on Form 10-K for the fiscal year ended January 30, 2016 filed with the Securities and Exchange Commission on March 30, 2016 under the caption “Executive Officers of the Registrant” in Part I, and is incorporated by reference herein. Information regarding the compensation arrangements of Ulta Beauty’s named executive officers can be found in Salon’s 2016 Proxy Statement under the caption “Compensation Committee Report and Compensation Discussion And Analysis” and is incorporated by reference herein.

In connection with the Reorganization, on January 27, 2017, Salon and Ulta Beauty also entered into the Compensation Plan Agreement pursuant to which (1) Salon transferred to Ulta Beauty, and Ulta Beauty assumed (including sponsorship of), as of the Effective Time, the Ulta Salon, Cosmetics & Fragrance, Inc. Second Amended and Restated Restricted Stock Option Plan, as further amended, the Ulta Salon, Cosmetics & Fragrance, Inc. 2002 Equity Incentive Plan, the Ulta Salon, Cosmetics & Fragrance, Inc. 2007 Incentive Award Plan and the Amended and Restated Ulta Salon, Cosmetics & Fragrance, Inc. 2011 Incentive Award Plan and any subplans, appendices or addendums thereunder (together, the “Salon Equity Compensation Plans”), and all obligations of Salon pursuant to each stock option

to purchase a share of Salon common stock (a “Salon Option”) and each right to acquire or vest in a share of Salon common stock, including, without limitation, restricted stock units and performance based vesting share unit awards (a “Salon Unit” and each of a Salon Option and a Salon Unit, a “Salon Equity Award”) that was outstanding immediately prior to the Effective Time and (a) issued under the Salon Equity Compensation Plans and underlying grant agreements (each such grant agreement, a “Salon Equity Award Grant Agreement”) and such grant agreements together with the Salon Equity Compensation Plans, the “Salon Equity Compensation Plans and Agreements”) or (b) granted by Salon outside of the Salon Equity Compensation Plans and Agreements pursuant to NASDAQ Listing Rule 5635(c), and (2) each such Salon Equity Award was converted into (a) with respect to each Salon Unit, a right to acquire or vest in a share of Ulta Beauty common stock or (b) with respect to a Salon Option, an option to purchase a share of Ulta Beauty common stock at an exercise price per share equal to the exercise price per share of Salon common stock subject to such Salon Option immediately prior to the Effective Time. At the Effective Time, the Salon Equity Awards, the Salon Equity Compensation Plans and Agreements and any provision of any other compensatory plan, agreement or arrangement providing for the grant or issuance of shares of Salon common stock were automatically deemed to be amended, to the extent necessary or appropriate, to provide that references to Salon in such awards, documents and provisions be read to refer to Ulta Beauty and references to shares of Salon common stock in such awards, documents and provisions be read to refer to shares of Ulta Beauty common stock.

The foregoing description of the Compensation Plan Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Compensation Plan Agreement, which is filed as Exhibit 10.1 and which is incorporated by reference herein.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

In connection with the Reorganization, Ulta Beauty’s Board of Directors approved and/or adopted the Ulta Beauty Certificate of Incorporation (including a Certificate of Designations of Series A Junior Participating Preferred Stock) and the Bylaws of Ulta Beauty that are each identical to those of Salon immediately prior to the consummation of the Reorganization, except for the change of the name of the corporation as permitted by Section 251(g) of the DGCL.

The foregoing descriptions of the Ulta Beauty Certificate of Incorporation, the Ulta Beauty Certificate of Designations of Series A Junior Participating Preferred Stock and the Ulta Beauty Bylaws do not purport to be complete and are qualified in their entirety by reference to the full text of the Certificate of Incorporation, the Certificate of Designations of Series A Junior Participating Preferred Stock and the Bylaws, which are filed as Exhibits 3.1, 3.2 and 3.3 hereto, respectively, and each of which is incorporated by reference herein.

**Item 8.01. Other Items.**

*Successor Issuer*

In connection with the Reorganization and by operation of Rule 12g-3(a) promulgated under the Exchange Act, Ulta Beauty is the successor issuer to Salon and has succeeded to the attributes of Salon as the registrant. Shares of Ulta Beauty common stock are deemed to be registered under Section 12(b) of the Exchange Act, and Ulta Beauty is subject to the informational requirements of the Exchange Act, and the rules and regulations promulgated thereunder. Ulta Beauty hereby reports this succession in accordance with Rule 12g-3(f) promulgated under the Exchange Act.

*Amendment to Salon Credit Agreement*

In connection with, and in order to allow for the implementation of, the Reorganization, Salon amended its credit agreement.

*Press Release*

On January 27, 2017, Salon issued a press release announcing the Reorganization. A copy of that press release is filed herewith as Exhibit 99 and incorporated by reference herein.

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

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Exhibits. The exhibits listed in the accompanying Index to Exhibits are filed as part of this Current Report on Form 8-K.

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**SIGNATURE**

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

Date: January 30, 2017

**ULTA BEAUTY, INC.**

/s/ Jodi J. Caro

Jodi J. Caro

*General Counsel and Corporate Secretary*

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**INDEX TO EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>
2	Agreement and Plan of Merger, dated as of January 27, 2017, by and among Ulta Salon, Cosmetics & Fragrance, Inc., Ulta Beauty, Inc. and Ulta Merger Sub, Inc.
3.1	Certificate of Incorporation of Ulta Beauty, Inc.
3.2	Certificate of Designations of Series A Junior Participating Preferred Stock of Ulta Beauty, Inc.
3.3	Bylaws of Ulta Beauty, Inc.
4	Amendment to Stockholder Rights Agreement, dated as of January 29, 2017.
10.1	Compensation Plan Agreement, dated as of January 27, 2017 between Ulta Salon, Cosmetics & Fragrance, Inc. and Ulta Beauty, Inc.
10.2	Amended and Restated Loan and Security Agreement, dated October 19, 2011 (as further amended through November 22, 2016), by and among Ulta Salon, Cosmetics & Fragrance, Inc., Wells Fargo Bank, National Association, Wells Fargo Capital Finance, LLC, J.P. Morgan Securities LLC, JPMorgan Chase Bank, N.A. and PNC Bank, National Association.
99	Press Release issued on January 27, 2017.

**AGREEMENT AND PLAN OF MERGER**

This AGREEMENT AND PLAN OF MERGER (the "Agreement"), entered into as of January 27, 2017, by and among Ulta Salon, Cosmetics & Fragrance, Inc., a Delaware corporation (the "Company"), Ulta Beauty, Inc., a Delaware corporation and a direct, wholly owned subsidiary of the Company ("Holdco"), and Ulta Merger Sub, Inc., a Delaware corporation and a direct, wholly owned subsidiary of Holdco ("Merger Sub").

**RECITALS**

WHEREAS, on the date hereof, the Company has the authority to issue 470,000,000 shares, consisting of: (i) 400,000,000 shares of common stock, par value \$0.01 per share (the "Company Common Stock"), of which, as of January 25, 2017, 62,139,326 shares were issued and outstanding and (ii) 70,000,000 shares of preferred stock, par value \$0.01 per share (400,000 shares of which are designated as Series A Junior Participating Preferred Stock) (the "Company Preferred Stock"), of which no shares are issued and outstanding.

WHEREAS, as of the Effective Time (as defined below), Holdco will have the authority to issue 470,000,000 shares, consisting of: (i) 400,000,000 shares of common stock, par value \$0.01 per share (the "Holdco Common Stock"), and (ii) 70,000,000 shares of preferred stock, par value \$0.01 per share (400,000 shares of which will be designated as Series A Junior Participating Preferred Stock) (the "Holdco Preferred Stock").

WHEREAS, as of the date hereof, Merger Sub has the authority to issue 100 shares of common stock, no par value per share (the "Merger Sub Common Stock"), of which one (1) share is issued and outstanding on the date hereof and owned by Holdco.

WHEREAS, as of the Effective Time, the designations, rights, powers and preferences, and the qualifications, limitations and restrictions of the Holdco Common Stock and Holdco Preferred Stock (including the Series A Junior Participating Preferred Stock) will be the same as those of the Company Common Stock and Company Preferred Stock (including the Series A Junior Participating Preferred Stock), respectively.

WHEREAS, the Certificate of Incorporation of Holdco, including the Certificate of Designations of the Series A Junior Participating Preferred Stock (the "Holdco Charter"), and the Bylaws of Holdco (the "Holdco Bylaws"), which will be in effect immediately following the Effective Time, contain provisions identical to the Amended and Restated Certificate of Incorporation of the Company, including the Certificate of Designations of the Series A Junior Participating Preferred Stock (the "Company Charter"), and the Amended and Restated Bylaws of the Company (the "Company Bylaws"), in effect as of the date hereof and that will be in effect immediately prior to the Effective Time, respectively (other than as permitted by Section 251(g) of the General Corporation Law of the State of Delaware (the "DGCL").

WHEREAS, Holdco and Merger Sub are newly formed corporations organized for the sole purpose of participating in the transactions herein contemplated and actions related thereto, own no assets (other than Holdco's ownership of Merger Sub and nominal capital) and have taken no actions other than those necessary or advisable to organize the corporations and to effect the transactions herein contemplated and actions related thereto.



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WHEREAS, the Company entered into that certain Stockholder Rights Agreement, dated as of October 25, 2007 (the "Rights Agreement"), with American Stock Transfer & Trust Company, as Rights Agent, pursuant to which a Right to acquire a fraction of a share of Series A Junior Participating Preferred Stock is currently attached to each share of Company Common Stock.

WHEREAS, the Company desires to reorganize into a holding company structure pursuant to Section 251(g) of the DGCL, under which Holdco would become a holding company, by the merger of Merger Sub with and into the Company, and with each outstanding share of Company Common Stock being converted in the Merger (as defined below) into a share of Holdco Common Stock.

WHEREAS, on or about the date hereof, the Company and Holdco will enter or have entered into a Compensation Plan Agreement, pursuant to which, among other things, the Company will, at the Effective Time, transfer to Holdco, and Holdco will assume, sponsorship of all of the Company's Equity Plans (as defined below) and all of the Company's rights and obligations thereunder.

WHEREAS, the boards of directors of Holdco and the Company have approved and declared advisable this Agreement and the transactions contemplated hereby, including, without limitation, the Merger.

WHEREAS, the board of directors of Merger Sub has approved and declared advisable this Agreement and the transactions contemplated hereby, including, without limitation, the Merger, and the sole stockholder of Merger Sub has approved and adopted this Agreement and the transactions contemplated hereby, including, without limitation, the Merger.

WHEREAS, the parties intend, for United States federal income tax purposes, that the Merger, together with other steps taken pursuant to a plan of reorganization, shall qualify as a reorganization described in Section 368 of the Internal Revenue Code.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained in this Agreement, and intending to be legally bound hereby, the Company, Holdco and Merger Sub hereby agree as follows:

**1. THE MERGER.** In accordance with Section 251(g) of the DGCL and subject to, and upon the terms and conditions of, this Agreement, Merger Sub shall be merged with and into the Company (the "Merger"), the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation of the Merger (the "Surviving Corporation"). At the Effective Time, the effects of the Merger shall be as provided in this Agreement and in Section 259 of the DGCL.

**2. EFFECTIVE TIME.** As soon as practicable on or after the date hereof, the Company shall file a certificate of merger executed in accordance with the relevant provisions of the DGCL, with the Secretary of State of the State of Delaware (the "Secretary of State") and shall make all other filings or recordings required under the DGCL to effectuate the Merger. The Merger shall become effective at such time as the certificate of merger is duly filed with the Secretary of State or at such later date and time as the parties shall agree and specify in the certificate of merger (the date and time the Merger becomes effective being referred to herein as the "Effective Time").

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**3. CERTIFICATE OF INCORPORATION.** At the Effective Time, the Company Charter shall be amended in the Merger as set forth below, and as so amended, shall be the certificate of incorporation of the Surviving Corporation (the "Surviving Corporation Charter") until thereafter amended as provided therein or by the DGCL.

ARTICLE FOUR of the Company Charter shall be deleted in its entirety and replaced with the following:

(a) Authorized Shares. The total number of shares of capital stock which the Corporation has the authority to issue is 500 shares of common stock, par value \$0.01 per share (the "Common Stock").

The number of authorized shares of the Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of at least a majority of the voting power of the issued and outstanding shares of Common Stock of the Corporation.

(b) Common Stock. Except as otherwise provided in this Amended and Restated Certificate of Incorporation 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. 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, 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.

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ARTICLE SIX of the Company Charter shall be deleted in its entirety and replaced with the following:

The number of directors of the Corporation shall be three (3) or such other specific number as may be designated from time to time by resolution of the Board of Directors of the Corporation.

ARTICLE NINE of the Company Charter shall be amended by adding a Section (b) immediately following a newly designated Section (a) so that Article NINE reads in its entirety as follows:

(a) Shareholder Action. 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.

(b) Shareholder Action As It Relates to Ulta Beauty. Any act or transaction by or involving the Corporation, other than the election or removal of directors of the Corporation, that requires for its adoption under the General Corporation Law of the State of Delaware or this Amended and Restated Certificate of Incorporation the approval of the stockholders of the Corporation shall, in accordance with Section 251(g) of the General Corporation Law of the State of Delaware, require, in addition, the approval of the stockholders of Ulta Beauty, Inc. (or any successor thereto by merger), by the same vote as is required by the General Corporation Law of the State of Delaware and/or this Amended and Restated Certificate of Incorporation.

EXHIBIT A of the Company Charter (the Certificate of Designations of the Series A Junior Participating Preferred Stock) shall be deleted in its entirety.

**4. BYLAWS.** From and after the Effective Time, the Company Bylaws, as in effect immediately prior to the Effective Time, shall constitute the Bylaws of the Surviving Corporation (the "Surviving Corporation Bylaws") until thereafter amended as provided therein or by applicable law.

**5. DIRECTORS.** The directors of Merger Sub in office immediately prior to the Effective Time shall be the directors of the Surviving Corporation and will continue to hold office from the Effective Time until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation Charter and Surviving Corporation Bylaws, or as otherwise provided by law.

**6. OFFICERS.** The officers of the Company in office immediately prior to the Effective Time shall be the officers of the Surviving Corporation and will continue to hold office from the Effective Time until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation Charter and Surviving Corporation Bylaws, or as otherwise provided by law.

**7. ADDITIONAL ACTIONS.** If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of

the rights, properties or assets of either Merger Sub or the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of each of Merger Sub and the Company, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of Merger Sub and the Company or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

**8. CONVERSION OF SECURITIES.** At the Effective Time, by virtue of the Merger and without any action on the part of Holdco, Merger Sub, the Company or any holder of any securities thereof:

(a) Conversion of Company Common Stock. Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and non-assessable share of Holdco Common Stock.

(b) Rights Attached to Company Common Stock. Each Right under the Rights Agreement that is currently attached to each share of Company Common Stock issued and outstanding immediately prior to the Effective Time shall be deemed to be attached to each share of Holdco Common Stock.

(c) Conversion of Company Stock Held as Treasury Stock. Each share of Company Common Stock held in the Company's treasury shall be converted into one validly issued, fully paid and non-assessable share of Holdco Common Stock, to be held immediately after completion of the Merger in the treasury of Holdco.

(d) Conversion of Capital Stock of Merger Sub. Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and non-assessable share of common stock, par value \$0.01 per share, of the Surviving Corporation.

(e) Rights of Certificate Holders. Upon conversion thereof in accordance with this Section 8, all shares of Company Common Stock shall no longer be outstanding and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock shall cease to have any rights with respect to such shares of Company Common Stock, except, in all cases, as set forth in Section 9 herein. In addition, each outstanding book-entry that, immediately prior to the Effective Time, evidenced shares of Company Common Stock shall, from and after the Effective Time, be deemed and treated for all corporate purposes to evidence the ownership of the same number of shares of Holdco Common Stock.

**9. CERTIFICATES.** At and after the Effective Time until thereafter surrendered for transfer or exchange in the ordinary course, each outstanding certificate which immediately prior thereto represented shares of Company Common Stock shall be deemed for all purposes to evidence ownership of and to represent the shares of Holdco Common Stock, into which the shares of Company Common Stock represented by such certificate have been converted as herein

provided and shall be so registered on the books and records of Holdco and its transfer agent. At and after the Effective Time, the shares of capital stock of Holdco shall be uncertificated; provided, that, any shares of capital stock of Holdco that are represented by outstanding certificates of the Company pursuant to the immediately preceding sentence shall continue to be represented by certificates as provided therein and shall not be uncertificated unless and until a valid certificate representing such shares pursuant to the immediately preceding sentence is delivered to Holdco at its registered office in the State of Delaware, its principal place of business, or an officer or agent of Holdco having custody of books and records of Holdco, at which time such certificate shall be canceled and in lieu of the delivery of a certificate representing the applicable shares of capital stock of Holdco, Holdco shall (i) issue to such holder the applicable uncertificated shares of capital stock of Holdco by registering such shares in Holdco's books and records as book-entry shares, upon which such shares shall thereafter be uncertificated and (ii) take all action necessary to provide such holder with evidence of the uncertificated book-entry shares, including any action necessary under applicable law in accordance therewith, including in accordance with Sections 151(f) and 202 of the DGCL. If any certificate that prior to the Effective Time represented shares of Company Common Stock shall have been lost, stolen or destroyed, then, upon the making of an affidavit of such fact by the person or entity claiming such certificate to be lost, stolen or destroyed and the providing of an indemnity by such person or entity to Holdco, in form and substance reasonably satisfactory to Holdco, against any claim that may be made against it with respect to such certificate, Holdco shall issue to such person or entity, in exchange for such lost, stolen or destroyed certificate, uncertificated shares representing the applicable shares of Holdco Common Stock in accordance with the procedures set forth in the preceding sentence.

#### **10. ASSUMPTION OF EQUITY PLANS AND AWARDS.**

At the Effective Time, pursuant to this Agreement and the Compensation Plan Agreement entered into between Holdco and the Company on or about the date hereof (the "Compensation Plan Agreement"), the Company will transfer to Holdco, and Holdco will assume, sponsorship of all of the Company's Equity Plans (as defined below), along with all of the Company's rights and obligations under the Equity Plans.

At the Effective Time, pursuant to this Agreement and the Compensation Plan Agreement, the Company will transfer to Holdco, and Holdco will assume, its rights and obligations under each stock option to purchase a share of Company Common Stock (each, a "Stock Option") and each right to acquire or vest in a share of Company Common Stock, including, without limitation, restricted stock units and performance based vesting share unit awards (each, a "Unit" and together with the Stock Options, the "Awards") issued under the Equity Plans or granted by the Company outside of the Equity Plans pursuant to Nasdaq Listing Rule 5635(c) that is outstanding and unexercised, unvested and not yet paid or payable immediately prior to the Effective Time, which Awards shall be converted into a stock option to purchase or a right to acquire or vest in, respectively, a share of Holdco Common Stock with the same rights and privileges relative to Holdco that such share underlying such Stock Option or Unit had relative to the Company immediately prior to the Effective Time on otherwise the same terms and conditions as were applicable immediately prior to the Effective Time, including, for Stock Options, at an exercise price per share equal to the exercise price per share for the applicable share of Company Common Stock. For purposes of this Agreement, "Equity Plans"

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shall mean, collectively, the Company Restricted Stock Option Plan, the Company 2002 Equity Incentive Plan, the Company 2007 Incentive Award Plan and the Company Amended and Restated 2011 Incentive Award Plan and any and all subplans, appendices or addendums thereto, and any and all agreements evidencing Awards.

**11. HOLDCO SHARES.** Prior to the Effective Time, the Company and Holdco shall take any and all actions as are necessary to ensure that each share of capital stock of Holdco that is owned by the Company immediately prior to the Effective Time shall be cancelled and cease to be outstanding at the Effective Time, and no payment shall be made therefor, and the Company, by execution of this Agreement, agrees to forfeit such shares and relinquish any rights to such shares.

**12. NO APPRAISAL RIGHTS.** In accordance with the DGCL, no appraisal rights shall be available to any holder of shares of Company Common Stock in connection with the Merger.

**13. TERMINATION.** This Agreement may be terminated, and the Merger and the other transactions provided for herein may be abandoned, whether before or after the adoption of this Agreement by the sole stockholder of Merger Sub, at any time prior to the Effective Time, by action of the board of directors of the Company. In the event of termination of this Agreement, this Agreement shall forthwith become void and have no effect, and neither the Company, Holdco, Merger Sub nor their respective stockholders, directors or officers shall have any liability with respect to such termination or abandonment.

**14. AMENDMENTS.** At any time prior to the Effective Time, this Agreement may be supplemented, amended or modified, whether before or after the adoption of this Agreement by the sole stockholder of Merger Sub, by the mutual consent of the parties to this Agreement by action by their respective boards of directors; provided, however, that, no amendment shall be effected subsequent to the adoption of this Agreement by the sole stockholder of Merger Sub that by law requires further approval or authorization by the sole stockholder of Merger Sub or the stockholders of the Company without such further approval or authorization. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the parties hereto.

**15. GOVERNING LAW.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws.

**16. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which shall constitute one and the same agreement.

**17. ENTIRE AGREEMENT.** This Agreement, including the documents and instruments referred to herein, constitutes the entire agreement and supersedes all other prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

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**18. SEVERABILITY.** The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Company, Holdco and Merger Sub have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**ULTA SALON, COSMETICS & FRAGRANCE, INC.**

By: /s/ Mary Dillon  
Mary Dillon  
Chief Executive Officer

**ULTA BEAUTY, INC.**

By: /s/ Scott Settersten  
Scott Settersten  
Chief Financial Officer, Treasurer and Assistant Secretary

**ULTA MERGER SUB, INC.**

By: /s/ Jodi Caro  
Jodi Caro  
General Counsel, Vice President and Corporate Secretary

*[Signature Page to Agreement and Plan of Merger]*



**CERTIFICATE OF INCORPORATION  
OF  
ULTA BEAUTY, INC.**

**ARTICLE ONE**

The name of the Corporation is Ulta Beauty, 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 General Corporation Law of the State of Delaware (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").

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

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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 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 Certificate of Incorporation becomes effective, the Board of Directors of the Corporation shall consist of three (3) 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 2017, 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.

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#### 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

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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 Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware and this Certificate of Incorporation, and all rights, preferences and privileges conferred on stockholders, directors, officers, employees, agents and other persons in this 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.

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The name and address of the sole incorporator are: Russell E. Ryba, Foley & Lardner LLP, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5306.

The undersigned, being the sole incorporator of the Corporation, for the purpose of forming a corporation under the DGCL, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 16th day of December, 2016.

/s/ Russell E. Ryba

Russell E. Ryba

**CERTIFICATE OF DESIGNATIONS**

of

**SERIES A JUNIOR PARTICIPATING PREFERRED STOCK**

of

**ULTA BEAUTY, INC.**

(Pursuant to Section 151 of the  
Delaware General Corporation Law)

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Ulta Beauty, 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 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

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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.



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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

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(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 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

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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 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.

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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.

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IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by the undersigned authorized officer this 16th day of December, 2016.

/s/ Jodi Caro

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Name: Jodi Caro

Title: General Counsel and Secretary

**BY-LAWS  
OF  
ULTA BEAUTY, INC.**

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**ADOPTED ON  
DECEMBER 16, 2016**

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**ARTICLE I.  
OFFICES**

1. Registered Office. The registered office of Ulta Beauty, Inc. (the "Corporation") in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware, 19808. The name of the Corporation's registered agent at such address shall be The Prentice-Hall Corporation System, 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 than 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

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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,

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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 or 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.

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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

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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 be 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 Corporation's 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 by 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

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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



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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

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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.

## AMENDMENT TO STOCKHOLDER RIGHTS AGREEMENT

This AMENDMENT (this "Amendment") to the Stockholder Rights Agreement, dated as of October 25, 2007 (the "Agreement"), by and between Ulta Salon, Cosmetics & Fragrance, Inc. (the "Company") and American Stock Transfer & Trust Company, as Rights Agent ("Rights Agent"), is made and entered into as of January 29, 2017. Capitalized terms used but not expressly defined in this Amendment shall have the meanings ascribed to such terms in the Agreement.

## RECITALS

**WHEREAS**, Section 25 of the Agreement provides that, as long as the Rights are then redeemable (which they are currently), 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 the Agreement in any respect without the approval of any holders of Rights or Common Shares;

**WHEREAS**, on January 29, 2017, the Company implemented a holding company reorganization (the "Holding Company Reorganization") pursuant to which, among other things, Ulta Beauty, Inc., a Delaware corporation ("Ulta Beauty"), replaced the Company as the publicly-traded entity and each outstanding share of common stock of the Company automatically converted into a share of the common stock of Ulta Beauty, having the same rights, powers and preferences, and qualifications, limitations and restrictions (accordingly, upon consummation of the Holding Company Reorganization, the Company's then current stockholders became stockholders of Ulta Beauty); and

**WHEREAS**, in connection with, and as a result of, the Holding Company Reorganization, the Board of Directors of the Company has determined that it is in the best interests of the Company and its stockholders to amend the terms of the Agreement as set forth below and directs the Rights Agent to also execute this Amendment.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company, Ulta Beauty and the Rights Agent hereby amend the Agreement as follows:

SECTION 1. Amendment to Certain Definitions All references in the Agreement to "Ulta Salon, Cosmetics & Fragrance, Inc." shall be deleted and replaced with "Ulta Beauty, Inc." As a result, among other things, the defined term the "Company" shall mean Ulta Beauty, Inc., the defined term "Common Shares" when used with reference to the Company shall mean the shares of common stock, par value \$.01 per share, of Ulta Beauty, Inc. and the defined term "Preferred Shares" shall mean the Series A Junior Participating Preferred Stock of Ulta Beauty, Inc. having the rights, powers and preferences set forth in the Certificate of Designations of Series A Junior Participating Preferred Stock filed with the Delaware Secretary of State on December 16, 2016.

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SECTION 2. Legend in Section 3.3 of the Agreement. The stock certificate legend set forth in Section 3.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

This certificate also evidences and entitles the holder hereof to certain rights as set forth in an Agreement between Ulta Beauty, Inc. (the “Company”) and American Stock Transfer & Trust Company, as Rights Agent, dated as of October 25, 2007, as amended as of January 29, 2017, and as the same may be further 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.***

SECTION 3. Ratification of Agreement; Effect of Amendment Except to the extent expressly modified herein, all of the terms, covenants and other provisions of the Agreement are hereby ratified and confirmed and shall continue to be in full force and effect in accordance with their respective terms. In the event of any conflict or inconsistency between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment will control. From and after the date of this Amendment, all references to the Agreement (whether in the Agreement, in this Amendment or otherwise) shall refer to the Agreement as amended by this Amendment.

SECTION 4. Governing Law. This Amendment will be governed by and construed and enforced in accordance with the laws of the State of Delaware without regard to principles of conflicts of law.

SECTION 5. Counterparts. This Amendment may be executed in one or more counterparts, and counterparts may be exchanged by electronic transmission, each of which will be deemed an original, but all of which together constitute one and the same instrument.

SECTION 6. Headings. The headings contained in this Amendment are included for purposes of convenience only, and will not affect the meaning or interpretation of this Amendment.

[Signature Page Follows]

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IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the day and year first above written.

**ULTA SALON, COSMETICS & FRAGRANCE, INC.**

By: /s/ Jodi J. Caro  
Jodi J. Caro  
General Counsel and Corporate Secretary

**ULTA BEAUTY, INC.**

By: /s/ Jodi J. Caro  
Jodi J. Caro  
General Counsel and Corporate Secretary

**AMERICAN STOCK TRANSFER & TRUST COMPANY**

By: /s/ Jennifer Donovan  
Jennifer Donovan  
Senior Vice President, Regional Manager, Relationship  
Management

[Signature Page to Amendment to Stockholder Rights Agreement]

## COMPENSATION PLAN AGREEMENT

This COMPENSATION PLAN AGREEMENT (this "Agreement") dated as of January 27, 2017 is between Ulta Salon, Cosmetics & Fragrance, Inc., a Delaware corporation ("Salon") (which will be the surviving entity following the merger in which Ulta Merger Sub, Inc., a Delaware corporation ("Merger Sub"), will be merged with and into Salon), and Ulta Beauty, Inc., a Delaware corporation ("Ulta Beauty"). All capitalized terms used in this Agreement and not defined herein have the respective meanings ascribed to them in the Agreement and Plan of Merger, dated as of January 27, 2017 (the "Merger Agreement"), by and among Salon, Ulta Beauty and Merger Sub.

## RECITALS

WHEREAS, pursuant to the Merger Agreement, at the Effective Time, Merger Sub will be merged with and into Salon, with Salon continuing as the surviving entity in such merger and each outstanding share of common stock of Salon ("Salon Stock") will be converted into one share of common stock of Ulta Beauty ("Ulta Beauty Stock") with the same rights and privileges relative to Ulta Beauty that such share had relative to Salon prior to the merger (the "Reorganization");

WHEREAS, in connection with the Reorganization, (1) Salon will transfer (including sponsorship of) to Ulta Beauty, and Ulta Beauty will assume (including sponsorship of), Salon's equity compensation plans listed in Exhibit A and any subplans, appendices or addendums thereto (the "Salon Equity Compensation Plans") and all obligations of Salon pursuant to each stock option to purchase a share of Salon Stock (a "Salon Option") and each right to acquire or vest in a share of Salon Stock, including, without limitation, restricted stock units and performance based vesting share unit awards (a "Salon Unit" and each of a Salon Option and a Salon Unit, a "Salon Equity Award") that is outstanding immediately prior to the Effective Time and (a) issued under the Salon Equity Compensation Plans and underlying grant agreements (each such grant agreement, a "Salon Equity Award Grant Agreement" and such grant agreements together with the Salon Equity Compensation Plans, the "Salon Equity Compensation Plans and Agreements") or (b) granted by Salon outside of the Salon Equity Compensation Plans and Agreements pursuant to Nasdaq Listing Rule 5635(c), all upon the terms and subject to the conditions set forth in the Merger Agreement and this Agreement, and (2) each such Salon Equity Award will be converted into (a) with respect to each Salon Unit, a right to acquire or vest in a share of Ulta Beauty Stock or (b) with respect to a Salon Option, an option to purchase a share of Ulta Beauty Stock at an exercise price per share equal to the exercise price per share of Salon Stock subject to such Salon Option immediately prior to the Effective Time;

WHEREAS, the Board of Directors of Salon has determined that it is in the best interests of Salon for Salon to enter into this Agreement;

WHEREAS, the Board of Directors of Ulta Beauty has determined that it is in the best interests of Ulta Beauty and its shareholders for Ulta Beauty to enter into this Agreement;

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WHEREAS, the Board of Directors of Salon and the Board of Directors of Ulta Beauty have determined that the Reorganization does not constitute a “Change in Control” under the Salon Equity Compensation Plans and Agreements or the Salon Equity Awards, as such term is defined therein.

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Salon and Ulta Beauty hereby agree as follows:

**I.**  
**EQUITY PLANS AND AWARDS**

1. Subject to and as of the Effective Time, Ulta Beauty will assume and will perform, from and after the Effective Time, all of the obligations of Salon pursuant to the Salon Equity Compensation Plans and Agreements.

2. Subject to and as of the Effective Time, (a) Ulta Beauty will assume each Salon Equity Award that is outstanding and unexercised, unvested and not yet paid or payable immediately prior to the Effective Time (i) issued under the Salon Equity Compensation Plans and Agreements or (ii) granted by Salon outside of the Salon Equity Compensation Plans and Agreements pursuant to Nasdaq Listing Rule 5635(c) and (b) each such Salon Equity Award shall be converted into (i) with respect to each Salon Unit, a right to acquire or vest in, on otherwise the same terms and conditions as were applicable under the applicable Salon Equity Compensation Plan and/or Salon Equity Award Grant Agreement (as modified herein), a share of Ulta Beauty Stock with the same rights and privileges applicable to the share of Salon Stock subject to such Salon Unit immediately prior to the Effective Time and (ii) with respect to a Salon Option, an option to purchase, on otherwise the same terms and conditions as were applicable under the applicable Salon Equity Compensation Plan and/or Salon Equity Award Grant Agreement (as modified herein), a share of Ulta Beauty Stock with the same rights and privileges applicable to the share of Salon Stock subject to such Salon Option immediately prior to the Effective Time, at an exercise price per share equal to the exercise price per share of Salon Stock subject to such Salon Option immediately prior to the Effective Time. All Salon Options shall be adjusted and converted in accordance with the requirements of Section 424 of the United States Internal Revenue Code of 1986, as amended, and regulations thereunder.

3. At the Effective Time, the Salon Equity Awards, the Salon Equity Compensation Plans and Agreements and any provision of any other compensatory plan, agreement or arrangement providing for the grant or issuance of Salon Stock shall each be automatically deemed to be amended, to the extent necessary or appropriate, to provide that references to Salon in such awards, documents and provisions shall be read to refer to Ulta Beauty and references to Salon Stock in such awards, documents and provisions shall be read to refer to Ulta Beauty Stock. Ulta Beauty and Salon agree to (i) prepare and execute all amendments to the Salon Equity Compensation Plans and Agreements, Salon Equity Awards and other documents necessary to effectuate Ulta Beauty’s assumption of the Salon Equity Compensation Plans and Agreements and outstanding Salon Equity Awards, (ii) provide notice of the assumption to holders of such Salon Equity Awards, and (iii) submit any required filings with the Securities and Exchange Commission in connection with same.

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4. On or prior to the Effective Time, Ulta Beauty shall reserve sufficient shares of Ulta Beauty Stock to provide for the issuance of Ulta Beauty Stock to satisfy Ulta Beauty's obligations under this Agreement with respect to the Salon Equity Compensation Plans and Agreements and Salon Equity Awards.

5. Salon and Ulta Beauty agree that the Reorganization does not constitute a "Change in Control" or "Sale of the Company" under the Salon Equity Compensation Plans and Agreements or the Salon Equity Awards, as such term is defined therein.

**II.**  
**MISCELLANEOUS**

1. Each of Salon and Ulta Beauty will, from time to time and at all times hereafter, upon every reasonable request to do so by any other party hereto, make, do, execute and deliver, or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be reasonably required or necessary in order to further implement and carry out the intent and purpose of this Agreement.



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**IN WITNESS WHEREOF**, the undersigned have executed this Compensation Plan Agreement as of the date first written above.

**ULTA SALON, COSMETICS & FRAGRANCE, INC.**

By: /s/ Scott Settersten  
Scott Settersten  
Chief Financial Officer, Treasurer and Assistant Secretary

**ULTA BEAUTY, INC.**

By: /s/ Scott Settersten  
Scott Settersten  
Chief Financial Officer, Treasurer and Assistant Secretary

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**Exhibit A**

**Equity Plans**

- Ulta Salon, Cosmetics & Fragrance, Inc. Second Amended and Restated Restricted Stock Option Plan, as further amended
- Ulta Salon, Cosmetics & Fragrance, Inc. 2002 Equity Incentive Plan
- Ulta Salon, Cosmetics & Fragrance, Inc. 2007 Incentive Award Plan
- Amended and Restated Ulta Salon, Cosmetics & Fragrance, Inc. 2011 Incentive Award Plan

**AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

**by and among**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent, Collateral Agent and LC Issuer,**

**WELLS FARGO CAPITAL FINANCE, LLC  
J.P. MORGAN SECURITIES LLC  
as Joint Lead Arrangers and Joint Bookrunners**

**JPMORGAN CHASE BANK, N.A.,  
as Syndication Agent**

**PNC BANK, NATIONAL ASSOCIATION,**

**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 October 19, 2011**

**As Further Amended through November 22, 2016**

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**AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

This Amended and Restated Loan and Security Agreement (as amended, restated or otherwise modified from time to time, the "Agreement") dated as of October 19, 2011 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"), WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacities as administrative agent for Lenders ("Administrative Agent"), as collateral agent for Lenders ("Collateral Agent") and in its individual capacity, ("Wells Fargo"), WELLS FARGO BANK NATIONAL ASSOCIATION, as LC Issuer ("LC Issuer") and JPMORGAN CHASE BANK, N.A., in its capacity as Syndication Agent ("Syndication Agent"); and PNC BANK, NATIONAL ASSOCIATION, in its capacity as documentation agent for Lenders ("Documentation Agent") and in its individual capacity ("PNC").

**W I T N E S S E T H:**

WHEREAS, Borrower, Wachovia Capital Finance Corporation, (f/k/a Congress Financial Corporation (Central) and individually, "Wachovia"), as agent, and each of Wachovia and Bank of America, N.A. (as successor to LaSalle National Bank, National Association) ("Bank of America"), individually 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 which was further amended by the Second Amended and Restated Loan and Security Agreement dated as of May 31, 2005 (as amended or otherwise modified prior to June 29, 2007, the "2005 Loan Agreement" and which was further amended by that certain Third Amended and Restated Loan and Security Agreement dated as of June 29, 2007 (as amended or otherwise modified prior to August 31, 2010, the "2007 Loan Agreement" and, collectively with the 1997 Loan Agreement, the 2001 Loan Agreement and the 2005 Loan Agreement, the "Prior Loan Agreements"), pursuant to which, among other things, the lenders thereunder made available to Borrower various secured financings;

WHEREAS, the parties hereto entered into that certain Loan and Security Agreement dated as of August 31, 2010 (as amended prior to the date hereof, the "Existing Loan Agreement"), pursuant to which Borrower terminated the Prior Loan Agreements and subject to the terms and conditions set forth therein, replaced the financing under the 2007 Loan Agreement with a new credit facility as evidenced thereby; and

WHEREAS, the Borrower has requested, and the Administrative Agent and Lenders have agreed to amend and restate the Existing Loan Agreement pursuant to the terms and conditions set forth in this Agreement;

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 "Acquisition" means, with respect to any Person (a) a purchase of a Controlling interest in the Capital Stock of any other Person, (b) a purchase or other acquisition of all or substantially all of the assets or properties of, another Person or of any business unit of another Person, or (c) any merger or consolidation of such Person with any other Person or other transaction or series of transactions resulting in the acquisition of all or substantially all of the assets, or a Controlling interest in the Capital Stock, of any other Person, in each case in any transaction or group of transactions which are part of a common plan.

1.3 "Additional Credit" means \$50,000,000.

1.4 "Additional Credit Assumption Agreement" means an Additional Credit Assumption Agreement, in form and substance satisfactory to the Administrative Agent, among the Borrower, the Administrative Agent and one or more Lenders providing additional Commitments pursuant to Section 2.1(d).

1.5 "Adjusted LIBO Rate" means:

(a) for any Interest Period with respect to any LIBO Rate Loan, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of one percent) equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate; and

(b) for any interest rate calculation with respect to any Prime Rate Loan, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of one percent) equal to (i) the LIBO Rate for an Interest Period commencing on the date of such calculation and ending on the date that is thirty (30) days thereafter multiplied by (ii) the Statutory Reserve Rate.

The Adjusted LIBO Rate will be adjusted automatically as of the effective date of any change in the Statutory Reserve Rate.

1.6 "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.

1.7 “Agents” shall mean each of Administrative Agent and Collateral Agent, or each such entity as the context so provides and any successor agents hereunder.

1.8 “Armored Car Companies” shall mean, collectively, the armored car services companies set forth on Schedule 6.3 of the Information Certificate or any other armored car service selected by Borrower after the date hereof which is reasonably acceptable to Administrative Agent.

1.9 “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.

1.10 “Availability Reserves” shall have the meaning set forth in Section 2.3 hereof.

1.11 “Bank Products” means any services or facilities provided to the Borrower or any Obligor by a Lender or any of its Affiliates (but excluding Cash Management Services) on account of (a) Hedging Agreements, (b) purchase cards, (c) merchant services constituting a line of credit (d) factoring, (e) commercial credit cards, and (f) leasing.

1.12 “Bank Product Reserves” means, if and only to the extent disclosed to the Administrative Agent in writing, such reserves as the Lender (or its Affiliate) providing a Bank Product and the Borrower agree in writing from time to time to reflect the liabilities and obligations of the Borrower or any Obligor with respect to such Bank Products then provided or outstanding.

1.13 “Blocked Accounts” shall have the meaning set forth in Section 6.3 hereof.

1.14 “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 LIBO 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 LIBO Rate market.

1.15 “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).

1.16 "Cash Equivalents" shall mean, at any time, investments consistent with the Borrower's investment policy attached hereto as Exhibit J, as such Exhibit may be modified from time to time with the prior written consent of the Administrative Agent (not to be unreasonably withheld), to the extent such investment policy is modified by the Borrower's board of directors.

1.17 "Cash Management Reserves" means, if and only to the extent disclosed to the Administrative Agent in writing, such reserves as the Lender (or its Affiliate) providing Cash Management Services and the Borrower agree in writing from time to time to reflect the liabilities and obligations of the Borrower or any Obligor with respect to such Cash Management Services then provided or outstanding.

1.18 "Cash Management Services" means any one or more of the following types or services or facilities provided to the Borrower or any Obligor by a Lender or any of its Affiliates: (a) ACH transactions, (b) cash management services, including, without limitation, controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit or debit cards, (e) credit card processing services, (f) purchase cards and (g) merchant services not constituting a Bank Product.

1.19 "Change in Law" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, (b) any change in any law, or in the administration, interpretation, implementation or application thereof, by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of law) and (y) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of law), in each case pursuant to Basel III, shall in each case be deemed to be a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

1.20 "Change of Control" shall be deemed to have occurred if an event or series of events (whether a stock purchase, amalgamation, merger, consolidation or other business combination or otherwise) shall have occurred by which (a) 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 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 Holdings ordinarily (and apart from rights accruing under certain circumstances) having the right to vote in election of directors or (b) Holdings shall no longer directly or indirectly be the beneficial owner of 100% of the Capital Stock of each of Borrower and Ulta Inc. (subject to Section 9.7(a) herein).

1.21 "Closing Date" shall mean October 19, 2011.

1.22 "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.

1.23 "Collateral" shall have the meaning set forth in Section 5 hereof.

1.24 "Collateral Access Agreement" shall mean an agreement in writing, in form and substance satisfactory to Agents, 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.

1.25 "Commitments" shall mean, as to any Lender, the aggregate commitment of such Lender to make Loans or to incur Letter of Credit Accommodations 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, or on the Additional Credit Assumption Agreement pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 2.1(d) hereof, as such amount may be adjusted, if at all, in accordance with this Agreement.

1.26 "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

1.27 "Control Event" shall mean any of the following: (a) an Event of Default has occurred and is continuing; or (b) Excess Availability is less than forty percent (40%) of the lesser of (i) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof or (ii) the Maximum Credit for ten (10) consecutive Business Days; or (c) Excess Availability at any time is less than thirty percent (30%) of the lesser of (i) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof or (ii) the Maximum Credit.

1.28 "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.

1.29 "Credit Card Agreements" shall mean all agreements 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.

1.30 "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, credit cards issued by or through American Express Travel Related Services Company, Inc. and Novus Services, Inc.

1.31 "Credit Card Notifications" shall mean, individually and collectively, notifications in the form of Exhibit K furnished to Credit Card Processors notifying such Credit Card Processors of the Collateral Agent's first priority security interest in the monies due or to become due to the Borrower (including, without limitation, credits and reserves) under the Credit Card Agreements and furnishing instructions for the transfer of such monies to a Blocked Account.

1.32 "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).

1.33 "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.

1.34 "Default" shall mean an act, condition or event which with notice or passage of time or both would constitute an Event of Default.

1.35 "Defaulting Lender" shall have the meaning set forth in Section 12.15 hereof.

1.36 "Deposit Account Control Agreement" shall mean an agreement in writing, in form and substance satisfactory to Agents, by and among Agents, 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 the Agents directing disposition of the funds in the

deposit account without further consent by Borrower and such other terms and conditions as Agents 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.

1.37 “Deteriorating Lender” means any Defaulting Lender or any Lender as to which (a) the LC Issuer or the Swing Line Lender has a good faith belief that such Lender has defaulted in fulfilling its obligations under one or more other syndicated credit facilities, or (b) a Person that controls such Lender has been deemed insolvent or become the subject of a bankruptcy, insolvency or similar proceeding.

1.38 “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 Agents 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, controlled or leased by Borrower, provided that for Inventory at any new locations which the Borrower leases after the date hereof (i) consisting of distribution centers or warehouses or (ii) in Virginia, Pennsylvania, Washington and such other states in which a landlord’s claim for rent may have priority over the Lien of the Collateral Agent in any of the Collateral (A) Agents shall have received a Landlord Agreement duly authorized, executed and delivered by the owner and lessor of such premises or (B) if Agents have not received such Landlord Agreement, then Agents 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 Agents 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 such new location, and (2) the Availability Reserves established pursuant to this Section shall not exceed at any time (x) one (1.0) times the basic monthly rent payable to such owners and lessors of such leased locations plus (y) amounts, if any, then outstanding and unpaid owed by Borrower to such owners and lessors, 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) Agents shall have received evidence, in form and substance satisfactory to the Agents, that Borrower has not granted to the owner and lessor a security interest in or lien upon any assets of Borrower; and (3) for clarity, the Borrower shall not be obligated to obtain any such Landlord Agreements for distribution centers, warehouses or store locations existing on the date hereof, (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; (l) Inventory

held after the applicable expiration date thereof; (m) samples (except to the extent approved from time to time by Agents) and (n) Inventory purchased or sold on consignment. General criteria for Eligible Inventory may be established and revised from time to time by Agents 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 Agents. Any Inventory which is not Eligible Inventory shall nevertheless be part of the Collateral. To the extent any Subsidiary of the Borrower or of Holdings is an Obligor or becomes an Obligor pursuant to Section 9.7(c), then references to "Borrower" set forth in this definition (and any component definition used in this definition) shall be deemed to also include references to such Obligor for purposes of including the Inventory of such Obligor as Eligible Inventory subject to the foregoing criteria.

1.39 "Eligible Letter of Credit Inventory" means, as of any date of determination (without duplication of other Eligible Inventory), Inventory:

(a) which has been delivered to a carrier in a foreign port or foreign airport for receipt by the Borrower in the United States within sixty (60) days of the date of determination, but which has not yet been received by the Borrower;

(b) the purchase order for which is in the name of the Borrower, title has passed to the Borrower and the purchase of which is supported by a Letter of Credit Accommodation made under this Agreement having an initial expiry, subject to the proviso hereto, within 120 days after the date of initial issuance of such Letter of Credit Accommodation;

(c) except as otherwise agreed by the Agents, for which the Borrower is designated as "shipper" and/or consignor and the document of title or waybill reflects the Borrower as consignee (along with delivery to the Borrower or its customs broker of the documents of title, to the extent applicable, with respect thereto);

(d) as to which an Agent has control over the documents of title, to the extent applicable, which evidence ownership of the subject Inventory;

(e) which is insured in accordance with the provisions of this Agreement and the other Financing Agreements, including, without limitation marine cargo insurance;

(f) except as otherwise agreed by the Agents, as to which an agreement with any Person providing freight, warehousing and consolidation services to the Borrower has been executed and delivered in favor of the Agents, and

(g) which otherwise is not excluded from the definition of Eligible Inventory;

provided that the Administrative Agent may, upon notice to the Borrower, exclude any particular Inventory from the definition of "Eligible Letter of Credit Inventory" in the event that the Administrative Agent determines that such Inventory is subject to any Person's right or claim which is (or is capable of being) senior to, or pari passu with, the Lien of the Collateral Agent (such as, without limitation, a right of stoppage in transit), as applicable, or may otherwise adversely impact the ability of the Administrative Agent or the Collateral Agent to realize upon such Inventory.



1.40 "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.

1.41 "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.

1.42 "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.

1.43 "ERISA" shall mean the United States Employee Retirement Income Security Act of 1974, together with all rules, regulations and interpretations thereunder or related thereto.

1.44 "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.

1.45 "Event of Default" shall mean the occurrence or existence of any event or condition described in Section 10.1 hereof.

1.46 "Excess Availability" shall mean the amount, as determined by Agents, 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 formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves from time to time established by Agents 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 and outstanding Letter of Credit Accommodations, 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.

1.47 "Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Wells Fargo on such day on such transactions as determined by the Administrative Agent. The Administrative Agent's determination of such rate shall be binding and conclusive absent manifest error.

1.48 "Fee Letter" shall mean the letter agreement, dated on or about August 31, 2010, by and between Borrower and Administrative Agent, as the same exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.49 "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 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.

1.50 "Fourth Amendment Effective Date" shall mean the date on which all of the conditions precedent set forth in that certain Amendment No. 4 to Amended and Restated Loan and Security Agreement have been satisfied.

1.51 "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 Sections 9.11 and 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.

1.52 “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.

1.53 “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).

1.54 “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 or any Obligor, as applicable, which (a) provides for an interest rate swap, cap, floor or collar or similar transaction for the purpose of hedging Borrower’s or an Obligor’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 or an Obligor 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 or any Obligor, as applicable, have executed a Swap Acknowledgement Agreement.

1.55 “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.

1.56 “Holdings” means Ulta Beauty, Inc., a Delaware corporation.

1.57 “Information Certificate” shall mean the Information Certificate of Borrower constituting Exhibit B hereto (as supplemented from time to time with revised or new account numbers or other information provided to the Agents) 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.

1.58 "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.

1.59 "Interest Period" shall mean for any LIBO 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 LIBO Rate market; provided, that, Borrower may not elect an Interest Period which will end after the Termination Date.

1.60 "Interest Rate" shall mean, as to Prime Rate Loans, a rate equal to the Prime Rate and, as to LIBO Rate Loans, a rate of one and one-half percent (1.50%) per annum in excess of the Adjusted LIBO Rate (based on the LIBO Rate applicable for the Interest Period selected by Borrower as in effect two (2) Business Days after the date of receipt by Administrative Agent of the request of Borrower for such LIBO 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.

1.61 "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.

1.62 "Investment Property Control Agreement" shall mean an agreement in writing, in form and substance satisfactory to Agents, by and among the Agents, 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 Agents, that it will comply with entitlement orders originated by the Agents with respect to such investment property, or other instructions of the Agents, or (as

the case may be) apply any value distributed on account of any commodity contract as directed by the Agents, in each case, without the further consent of Borrower and including such other terms and conditions as the Agents may require.

1.63 “JPM Control Agreement” shall mean that certain Blocked Account Control Agreement dated as of October 28, 2010 entered into among Borrower, JPMorgan Chase Bank, N.A. and the Agents, as the same may be amended, supplemented or otherwise modified from time to time.

1.64 “Landlord Agreement” shall mean an agreement in writing from the owner and lessor of premises (including, distribution centers, warehouses, and retail stores to the extent required in the definition of Eligible Inventory) leased by Borrower after the date hereof in form and substance reasonably satisfactory to the Agents.

1.65 “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.

1.66 “LC Issuer” shall mean Wells Fargo, in its capacity as the issuer of Letter of Credit Accommodations or any Affiliate of Wells Fargo that may from time to time issue Letter of Credit Accommodations, and their successors and assigns in such capacity.

1.67 “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 (and with respect to Bank Products and Cash Management Services, includes their respective Affiliates); each sometimes being referred to herein individually as a “Lender”.

1.68 “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”.

1.69 “LIBO Rate” means for any Interest Period with respect to a LIBO Rate Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “LIBO Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBO Rate Loan being made,

continued or converted by Wells Fargo and with a term equivalent to such Interest Period would be offered to Wells Fargo by major banks in the London interbank eurodollar market in which Wells Fargo participates at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

1.70 "LIBO Rate Loan" means a Revolving Loan that bears interest at a rate based on the Adjusted LIBO Rate.

1.71 "Loans" shall mean the Revolving Loans and the Swing Line Loans.

1.72 "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.

1.73 "Margin Stock" shall mean any "margin stock" as defined in Regulation U of the Board of Governors of the Federal Reserve System.

1.74 "Master Letter of Credit Agreement" shall mean a Letter of Credit Agreement (to be entered into upon the request of Wells Fargo) between Borrower and Wells Fargo, reasonably acceptable in form and substance to the Borrower and Wells Fargo, as the same may be amended, supplemented or otherwise modified from time to time.

1.75 "Maximum Credit" shall mean, as of any date of determination, the aggregate amount of the Commitments of all Lenders on such date of determination.

1.76 "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.

1.77 “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 the Agents 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.

1.78 “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 or any Obligor 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, any other Financing 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 or any Obligor 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 and Section 9.9 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 or any Obligor arising under or in connection with Cash Management Services, Hedging Agreements and other Bank Products; provided, that, with respect to Hedging Agreements, the Agents 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 or an Obligor, as applicable (the “Swap Acknowledgment Agreement”); provided further, that, obligations arising under or in connection with Cash Management Services or Bank Products other than Hedging Agreements shall only be considered “Obligations” hereunder if such Lender providing such services to Borrower or an Obligor has provided written notice of same to the Administrative Agent within ten (10) days of the date such product becomes effective. The parties acknowledge that, as of the Closing Date, the Cash Management Services and Bank Products described on Schedule II hereto shall constitute “Obligations” hereunder.

1.79 “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.

1.80 “OFAC” shall mean the Office of Foreign Assets Control.

1.81 "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 or foreign exchange swap, cap, floor or collar or similar transaction for the purpose of hedging Borrower's or any Obligor's exposure to fluctuations in interest rates or currency, (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.

1.82 "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.

1.83 "Payment Account" shall have the meaning set forth in Section 6.3 hereof.

1.84 "Permits" shall have the meaning set forth in Section 8.7 hereto.

1.85 "Permitted Acquisition" means an Acquisition in which all of the following conditions are satisfied:

(a) No Default or Event of Default then exists or would arise from the consummation of such Acquisition;

(b) Such Acquisition shall have been approved by the Board of Directors of the Person (or similar governing body if such Person is not a corporation) which is the subject of such Acquisition and such Person shall not have announced that it will oppose such Acquisition or shall not have commenced any action which alleges that such Acquisition shall violate applicable law; and

(c) The Borrower shall have furnished the Administrative Agent with at least ten (10) days' prior written notice of such intended Acquisition and shall have furnished the Administrative Agent with (i) notice of the anticipated closing date for such Acquisition, together with a current draft of the acquisition documents (and final copies thereof as and when executed, which documents shall be made available by the Administrative Agent to the Lenders), (ii) a summary of any due diligence undertaken by or on behalf of the Borrower in connection with such Acquisition (subject to the Administrative Agent's execution of customary non-reliance and confidentiality agreements), which summary the Borrower authorizes the Administrative Agent to make available to the Lenders (subject to the Lenders' execution of customary non-reliance and confidentiality agreements), (iii) the most recent financial statements received by Borrower for the Person which is the subject of such Acquisition, which financial statements shall be made available by the Administrative Agent to the Lenders and (iv) pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month on a consolidated basis for the Borrower and Obligors (including the acquired Person)), which pro forma projected financial statements shall be made available by the Administrative Agent to the Lenders.

1.86 "Permitted Holders" shall mean any Strategic Purchaser.



1.87 “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.

1.88 “Prime Rate” means, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate, as in effect from time to time, plus one-half of one percent (0.50%), (b) the Adjusted LIBO Rate plus one percent (1.00%), or (c) the rate of interest in effect for such day as publicly announced from time to time by Wells Fargo as its “prime rate.” The “prime rate” is a rate set by Wells Fargo based upon various factors including Wells Fargo’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Wells Fargo 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.

1.89 “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.

1.90 “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.

1.91 “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.

1.92 “Qualified Public Offering” shall mean (i) any public offering by Holdings of its Capital Stock or (ii) an acquisition of shares of Holdings in one or a series of related transactions by a Strategic Purchaser, in each case, as long as the aggregate cash proceeds received by Holdings for the shares sold in such offering or acquisition, as the case may, is at least \$15,000,000.

1.93 “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).

1.94 “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).

1.95 “Refunded Swing Line Loan” shall have the meaning set forth in Section 2.5(c) hereof.

1.96 “Register” shall have the meaning set forth in Section 13.6(b) hereof.

1.97 “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.

1.98 “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.

1.99 “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.

1.100 “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.

1.101 "Second Amendment" means the Amendment No. 2 to Amended and Restated Loan and Security Agreement dated as of December 6, 2013 entered into among Borrower, the Agents and the Lenders.

1.102 "Second Amendment Effective Date" means December 6, 2013.

1.103 "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.

1.104 "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.

1.105 "Special Agent Advances" shall have the meaning set forth in Section 12.11.

1.106 "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.

1.107 "Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Federal Reserve Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBO Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

1.108 "Store Bank Accounts" shall have the meaning set forth in Section 6.3(a) hereof.

1.109 "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 shares 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.

1.110 "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. Notwithstanding anything in this definition or this Agreement to the contrary, the term "Subsidiary" as used in the Financing Agreements shall exclude the Unrestricted Subsidiaries except (a) as used in the definition of "Unrestricted Subsidiaries" and (b) as used in Section 9.6(a) in which case the term "Subsidiary" shall include Unrestricted Subsidiaries only under clause (b) of such definition.

1.111 "Swap Acknowledgment Agreement" shall have the meaning set forth in the definition of "Obligations".

1.112 "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.

1.113 "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.

1.114 "Swing Line Lender" shall mean Wells Fargo.

1.115 "Swing Line Loan" shall have the meaning set forth in Section 2.5(a) hereof.

1.116 "Termination Date" shall the meaning set forth in Section 13.1 hereof.

1.117 "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).

1.118 "Unrestricted Subsidiary" means each direct or indirect Subsidiary of the Borrower (a) that is a "not-for-profit" Person whose principal activities involve facilitating charitable fund raising, donations and other charitable activities or (b) that has not owned assets having a value of more than \$1,000,000 for any period of thirty (30) consecutive days.

1.119 “Value” shall mean, as determined by the Agents in good faith, with respect to Inventory, the lower of (a) Cost or (b) market value.

1.120 “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.

1.121 “Wells Fargo” shall mean Wells Fargo Bank, National Association.

## **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 ninety percent (90%) of the Net Recovery Cost Percentage multiplied by the Cost of Eligible Inventory or Eligible Letter of Credit Inventory, as applicable, less the amount of any Availability Reserves.

(b) The Agents may from time to time, and in each case upon not less than ten (10) days prior notice to Borrower, reduce the lending formula with respect to Eligible Inventory to the extent that the Agents determine 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), the Agents may consider events, conditions, contingencies or risks which are also considered in determining Eligible Inventory or in establishing Availability Reserves. To the extent the Agents shall have established an Availability Reserve which is sufficient to address any event, condition or matter in a manner satisfactory to the Agents in good faith, the Agents 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 the Agents 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, 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) Uncommitted Increases in Maximum Credit

(i) Provided no Default or Event of Default then exists or would arise therefrom, the Borrower may, by written notice to Administrative Agent from time to time, request an increase in the Maximum Credit (by way of an increase to any existing Commitment or, in accordance with clause (iii) below, additional Commitments) in an amount (for all such requests) not to exceed the Additional Credit provided that (i) any such request for an increase shall be in minimum increments of \$5,000,000 and a minimum amount of \$10,000,000 or such lesser amount equal to the remaining Additional Credit, and (ii) the Borrower may make a maximum of three (3) such requests. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders).

(ii) Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Pro Rata Share of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(iii) The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase in the Maximum Credit and subject to the approval of the Administrative Agent, the LC Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld), to the extent that the existing Lenders decline to increase their Commitments, or decline to increase their Commitments to the amount requested by the Borrower, the Administrative Agent, in consultation with the Borrower, will use its reasonable efforts to arrange for other Eligible Transferees satisfactory to Borrower or Persons described in Section 13.6(a)(i)(A) or (C) to become a Lender hereunder (each such Lender, an "Additional Commitment Lender") and to issue commitments in an amount equal to the amount of the increase in the Commitments requested by the Borrower and not accepted by the existing Lenders (and the Borrower may also invite additional other Eligible Transferees or Persons described in Section 13.6(a)(i)(A) or (C) to become Lenders), provided, however, that without the consent of the Administrative Agent, at no time shall the Commitment of any Additional Commitment Lender be less than \$10,000,000. The terms and provisions of such additional Commitments and Loans made under such additional Commitments shall be identical to those of the existing Commitments and Loans, respectively.

(iv) If the Maximum Credit is increased in accordance with this Section 2.1(d), the Administrative Agent, in consultation with the Borrower, shall

determine the effective date (the “Increase Effective Date”) and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase and the Increase Effective Date and on the Increase Effective Date (i) the Maximum Credit under, and for all purposes of, this Agreement shall be increased by the aggregate amount of such Commitment increases, and (ii) Schedule I hereto shall be deemed modified, without further action, to reflect the revised Commitments and Pro Rata Share of the Lenders. Each of the parties hereto hereby agrees that, upon the effectiveness of any Additional Credit Assumption Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence of the additional Commitment and additional Loans evidenced thereby, and the Administrative Agent and the Borrower may revise this Agreement to evidence such amendments.

(v) As a condition precedent to any such increase to the Maximum Credit, (i) the Borrower shall deliver to the Administrative Agent a certificate dated as of the Increase Effective Date signed by an authorized corporate officer of the Borrower (A) certifying that the resolutions previously adopted by the Borrower authorizing the increase in the Maximum Credit have not been amended, modified or repealed and remain in full force and effect, (B) certifying that, before and after giving effect to such increase, (1) the representations and warranties contained in Section 8 and in the other Financing Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.1(d), the representations and warranties contained in Section 8.3 shall be deemed to refer to the most recent statements furnished pursuant to clause (a) of Section 9.6, and (2) no Default or Event of Default exists or would arise from such increase to the Maximum Credit, (ii) the Borrower, the Administrative Agent, and any Additional Commitment Lender shall have executed and delivered an Additional Credit Assumption Agreement; (iii) the Borrower shall have paid such fees and other compensation to the Additional Commitment Lenders as the Borrower and such Additional Commitment Lenders shall agree; (iv) the Borrower shall have paid such arrangement fees to the Administrative Agent as the Borrower and the Administrative Agent may agree; (v) the Borrowers shall have executed and delivered any notes requested by Lenders to evidence their Commitments after giving effect to any increases in Commitments; and (vi) no Default or Event of Default exists.

## 2.2 Letter of Credit Accommodations

(a) Upon the request of the LC Issuer, Borrower shall execute and deliver to the LC Issuer a 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, and subject to the provisions of Section 2.2(h) hereof, 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. 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. 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 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 LIBO 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 (A) 1.50% per annum on the daily outstanding balance of the Letter of Credit Accommodations with respect to standby letters of credit and (B) 1.00% per annum on the daily outstanding balance of the Letter of Credit Accommodations with respect to documentary letters of credit, in each case 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, and after giving effect thereto,

(i) Excess Availability is at least \$1.00;

(ii) no order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the LC Issuer from issuing such letter of credit, or no law applicable to the LC Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the LC Issuer shall prohibit, or request that the LC Issuer refrain from, the issuance of letters of credit generally or such letter of credit in particular or shall impose upon the LC Issuer with respect to such letter of credit any restriction, reserve or capital requirement (for which the LC Issuer is not otherwise compensated hereunder) not in effect on the date hereof, or shall impose upon the LC Issuer any unreimbursed loss, cost or expense which was not applicable on the date hereof and which the LC Issuer in good faith deems material to it;

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(iii) the issuance of such letter of credit would violate one or more policies of the LC Issuer applicable to letters of credit generally; or

(iv) any Lender is at such time a Defaulting Lender or Deteriorating Lender hereunder, unless the Administrative Agent or LC Issuer has entered into satisfactory arrangements with the Borrower or such Lender to eliminate the LC Issuer's risk with respect to such Lender.

(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 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 Agents from time to time, 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 the Agents 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)(i) to reflect any rental payments, service charges or other amounts past due to lessors of real or personal property, and (ii) to reflect any rental payments, service charges or other amounts to become due to lessors of real or personal property, which Availability Reserve shall be calculated in accordance with clause (c) of the definition of Eligible Inventory (excluding from this clause (g)(ii) only, (A) lessors from whom a Landlord Agreement is not required to be delivered under the definition of Eligible Inventory or (B) lessors from whom a Landlord Agreement is required to be delivered under the definition of Eligible Inventory and 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) [intentionally deleted], or (i) for Bank Product Reserves and Cash Management Reserves. To the extent the Agents 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 the Agents, the Agents shall not establish an Availability Reserve for the same purpose (and, for clarity, any limitations on the Agents' rights to revise the lending formula set forth in Section 2.1 hereof or to establish new criteria or revise existing criteria for Eligible Inventory, shall in no way limit the right of the Agents to establish or modify Availability Reserves). The amount of any Availability Reserve established by the Agents shall have a reasonable relationship to the event, condition or other matter which, is the basis for such reserve as determined by the Agents 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) the Commitments may not be reduced to less than fifty percent (50%) of the Maximum Credit in effect immediately prior to such reduction, (B) 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 (C) such reduction must be accompanied by 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; provided that the Swing Line Lender shall not be obligated to make any Swing Line Loan at any time when any Lender is at such time a Defaulting Lender or Deteriorating Lender hereunder, unless the Swing Line Lender has entered into satisfactory arrangements with the Borrower or such Lender to eliminate the Swing Line Lender's risk with respect to such Lender. 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. 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 Financing Agreements, 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 therefore 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. in immediately available funds on the date that notice is given (provided that such notice is given by 12:00 noon 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. 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 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 LIBO Rate Loans or that any existing LIBO 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 on the proposed date of such conversion and (ii) in the case of conversion into or continuation of LIBO Rate Loans, 12:00 noon 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, LIBO Rate Loans, the duration of the requested Interest

Period therefore. 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 LIBO Rate Loans or such LIBO 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 LIBO Rate Loans, (iv) no more than ten (10) Interest Periods may be in effect at any one time, (v) the aggregate amount of the LIBO 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 LIBO Rate is available to Administrative Agent and such Lender and can be readily determined as of the date of the request for such LIBO Rate Loan by Borrower. Any request by Borrower to convert Prime Rate Loans to LIBO Rate Loans or to continue any existing LIBO 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 LIBO Rate market to fund any LIBO Rate Loans, but the provisions hereof shall be deemed to apply as if Agents and Lenders had purchased such deposits to fund the LIBO 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 LIBO 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 LIBO Rate Loan at least three (3) Business Days prior to such last day in accordance with the terms hereof. Any LIBO 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 LIBO Rate Loans or existing LIBO 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 LIBO 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 LIBO 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



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Obligations (other than LIBO 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 0.20% 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 the Administrative Agent for the account of each Lender on the Closing Date a closing fee for each Lender of 0.10% of their respective Commitment. Additionally, in consideration of the Lenders entering into the Second Amendment, Borrower agrees to pay the Administrative Agent for the account of each Lender on the Second Amendment Effective Date a closing fee for each Lender of 0.10% of their respective Commitment.

(c) 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 LIBO 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 Law or regulation (or the interpretation or administration thereof) shall either (A) make it unlawful for such Lender to make or maintain LIBO Rate Loans or to comply with the terms hereof in connection with the LIBO Rate Loans, or (B) shall result in the increase in the costs to such Lender of making or maintaining any LIBO 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 LIBO 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

LIBO 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 LIBO 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, or if the Borrower fails to prepay, borrow, continue or convert any LIBO Rate Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower, 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 LIBO 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 (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 and reviewed lien and judgment search results for the jurisdiction of incorporation of Borrower and the jurisdiction of the chief executive office of the Borrower, which search results shall be in form and substance satisfactory to the Agents;
- (c) 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;
- (d) 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);
- (e) the agreements, instruments and documents set forth on the closing checklist attached as Exhibit E hereto shall have been duly executed and delivered to Administrative Agent, in form and substance satisfactory to Administrative Agent.

**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.**

Borrower hereby confirms that, pursuant to the Existing Loan Agreement, it granted 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 assigned to Collateral Agent, for itself and the ratable benefit of Lenders, as security, the Collateral (as hereinafter defined). To secure payment and performance of all Obligations, Borrower hereby (i) ratifies, reaffirms and restates such grant and assignment and (ii) furthermore 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 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);

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- (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.

(d) Notwithstanding anything to the contrary contained in Section 5.1 above, the Collateral shall not include the assets or Capital Stock of (x) any Subsidiary that is a controlled foreign corporation (as defined under Section 957 of the Code (each, a "CFC")) except for Capital Stock representing (i) 65% of the voting Capital Stock of such Subsidiary and (ii) 100% of the non-voting Capital Stock of such Subsidiary and (y) any other Subsidiary to the extent (A) the inclusion of such assets or Capital Stock would result in any adverse tax consequences (including, without limitation, as a result of the operation of Section 956 of the Code or any similar law or regulation in any applicable jurisdiction) to Borrower or any of its Affiliates and (B) the sole assets of such Subsidiary consists of Capital Stock in one or more CFCs.

### 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 the Agents 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 the Agents may otherwise agree. At the Agents' 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 the Agents with the following legend referring to chattel paper or instruments as applicable: "This [chattel paper][instrument] is subject to the security interest of Wells Fargo Retail Finance LLC, 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 the Agents thereof in writing. Promptly upon the Agents' request, Borrower shall take, or cause to be taken, such actions as the Agents 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 direct its credit card processors to deposit any and all payments and other amounts at any time owed by such credit card processors into the concentration account maintained with JPMorgan Chase Bank, N.A. which is subject to the JPM Control Agreement. Within thirty (30) days after the occurrence and during the continuance of a Control Event, Borrower shall execute and deliver (i) Deposit Account Control Agreements with respect to the Blocked Accounts and (ii) Investment Property Control Agreement in respect of any investment accounts or securities accounts containing assets

with a fair market value in excess of \$500,000 in the aggregate, in each case as the Administrative Agent may reasonably require from time to time. In addition, 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 the Agents 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 the Agents, and (iii) on or before the opening of such deposit account, Borrower shall as the Agents may specify either (A) if then required pursuant to the terms of this subsection (d) above, 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 the Agents. Notwithstanding anything to the contrary contained herein, the terms of this subsection (d) shall not apply to Store Bank Accounts or 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 the Agents thereof and shall as the Agents 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) the Agents 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 the Agents 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 the Agents, and (C) to the extent required by Section 5.3(d), 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 the Agents 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 the Agents.

(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 the Agents thereof in writing. Borrower shall immediately, as the Agents 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 the Agents, 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 the Agents 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 the Agents 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 the Agents' request, execute and deliver, or cause to be executed and delivered, to Collateral Agent such other agreements, documents and instruments as the Agents 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 the Agents thereof in writing. Promptly upon the Agents' 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 the Agents 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 therefore, (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, not to exceed \$10,000 for each individual store utilizing such Store Bank Account). 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 and all of the banks in which Borrower's concentration accounts are maintained 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, one or more deposit accounts with such banks as are acceptable to Administrative Agent (the "Blocked Accounts") 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. To the extent required by Section 5.3(d) hereof, the banks at which the Blocked Accounts are established shall enter into an agreement, in form and substance satisfactory to Administrative Agent, providing that all items received or deposited in the Blocked Accounts 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 Accounts, the items received for deposit therein, or the funds from time to time on deposit therein and that upon notice (an "Activation Notice") from either Agent at any time that an Event of Default has occurred and is continuing or that Excess Availability is less than thirty percent (30%) of the lesser of (1) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves from time to time established by Agents hereunder and (2) the Maximum Credit, the depository bank will wire, or otherwise transfer, immediately available funds, on

a daily basis, all funds received or deposited into the Blocked Accounts to such bank account of Administrative Agent as Administrative Agent may from time to time designate for such purpose ("Payment Account"), which agreements, once entered into, shall remain in effect until this Agreement is terminated. Borrower agrees that all amounts deposited in such Blocked Accounts 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, to the extent that there are Obligations outstanding and an Activation Notice has been delivered, be the property of Collateral Agent, for the benefit of Agents and Lenders. Prior to the occurrence of an Event of Default, amounts in the Payment Account in excess of the Loan balance (including any required cash collateralization of Letter of Credit Accommodations) and other Obligations that are then due and not paid by the Borrower shall be promptly returned to a disbursement account designated by the Borrower. An Activation Notice, once furnished, shall remain in effect (i) so long as such Event of Default has not been cured or waived, and/or (ii) if the Activation Notice was furnished as a result of the Borrowers' failure to achieve Excess Availability as required above, until Excess Availability has exceeded thirty percent (30%) of the lesser of (1) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves from time to time established by Agents hereunder and (2) the Maximum Credit for sixty (60) consecutive days, in which case the Agents will rescind the Activation Notice; *provided that* no such rescission shall be required to be furnished (even if an Event of Default is no longer continuing and/or Excess Availability exceeds the required amount for sixty (60) consecutive days) after an Activation Notice has been rescinded once in any twelve consecutive months. At any time that the Agents rescind the Activation Notice as provided above, the Blocked Accounts shall remain in effect and such termination shall in no way limit, waive or delay the obligation of the Borrower, or the right of the Agents, to again require all funds be transferred to the Payment Account upon the Borrower's failure to achieve Excess Availability in the amounts required herein.

(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, consistent with past practices described 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 or other Store Bank Accounts 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 Schedule 6.3 to the Information Certificate. 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 Store Bank Accounts (subject to the provisions of Section 6.3(a)(i)) or 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 or any Obligor (other than in connection with any Hedging Agreements, Bank Products or Cash Management Services); second, to pay interest due in respect of any Loans and Special Agent Advances; third, to pay principal due in respect of the Swing Line Loans and Special Agent Advances; 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, Bank Products or Cash Management Services) then due and owing, in such order and manner as Administrative Agent determines; sixth, to pay any Obligations then due and owing relating to Cash Management Services (including fees, indemnities, expenses and other amounts arising from any Cash Management Services), seventh, to pay any Obligations then due

and owing relating to Hedging Agreements and Bank Products (including fees, indemnities, expenses and other amounts arising from any Hedging Agreements or Bank Products) on a pro rata basis and eighth, 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 LIBO Rate Loans, except on the expiration date of the Interest Period applicable to any such LIBO 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 Lenders entitled to such payments pursuant to 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 LIBO 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 on the proposed date of such borrowing, and (b) in the case of a LIBO Rate borrowing, 12:00 noon 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 LIBO Rate borrowing, the initial Interest Period therefore. Promptly upon receipt of such notice, the Administrative Agent shall advise each Lender thereof. Not later than 3:00 P.M. 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 LIBO 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.

(a) The amount of each Lender's Pro Rata Share of outstanding Revolving Loans shall be computed weekly (or more frequently in the Administrative Agent's discretion) and shall be adjusted upward or downward based on all Revolving Loans and repayments of

Revolving Loans received by the Administrative Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Administrative Agent.

(b) The Administrative Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Lender its Pro Rata Share of repayments, and (ii) each Lender shall transfer to the Administrative Agent (as provided below) or the Administrative Agent shall transfer to each Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Lender shall be equal to such Lender's Pro Rata Share of all Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Lenders and is received prior to 11:00 a.m. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 11:00 a.m., then no later than 3:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in connection with the foregoing.

(c) 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 the Agents with the following documents in a form satisfactory to the Agents (a) on a monthly basis or more frequently as either Agent may reasonably request (i) a Borrowing Base Certificate in the form of Exhibit I hereto (or such other form as the Administrative Agent may require), (ii) inventory reports by category and location (with such details as to the mix of Inventory as either Agent may request), and (iii) agings of accounts payable; (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 (xii) reports of sales for each category of Inventory and (xiii) 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 the Agents to monitor the transactions pursuant to the Credit Card Agreements; and (c) such other reports as to the Collateral as the Agents 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 the Agents and to follow the instructions of the Agents 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) [intentionally deleted].

(b) [intentionally deleted].

(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) The Agents may, 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

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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 (subject to the proviso in this clause (e)), 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; provided, that, so long as no Event of Default exists or has occurred and is continuing, no such appraisals shall be requested unless (i) there ceases to remain at least \$25,000,000 in the aggregate in one or more Blocked Accounts, or (ii) the outstanding principal balance of the Loans and Letter of Credit Accommodations is greater than \$0 and has been outstanding for at least five (5) consecutive

Business Days or (iii) the outstanding principal balance of the Loans and Letter of Credit Accommodations is in excess of \$20,000,000 at any time; (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 may conduct not more than twice per year or at such greater frequency as Administrative Agent shall elect during the

existence of an Event of Default), inspecting, verifying and auditing the Collateral and all of Borrower's books and records, including the Records; provided, that, so long as no Event of Default exists or has occurred and is continuing, no such field examinations, inspections, verifications or audits shall be conducted until such time as either (i) the outstanding principal balance of the Loans and Letter of Credit Accommodations is greater than \$0 and has been outstanding for at least five (5) consecutive Business Days or (ii) the outstanding principal balance of the Loans and Letter of Credit Accommodations is in excess of \$20,000,000 at any time, 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 position 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 \$500,000 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 [intentionally deleted].

#### 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 and Store Bank Accounts (which may be established at any time, subject to the provisions of Section 6.3(a)(i)).

#### 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.

8.17 Exemption from Illinois Interest Act.

Borrower represents and warrants that, for the purposes of 815 Illinois Compiled Statutes 205/4, the Loans and any Special Agent Advances constitute a business loan.

8.18 Unrestricted Subsidiaries.

No Unrestricted Subsidiary owns any assets, other than (a) in the case of any Unrestricted Subsidiary under clause (a) of such definition, those necessary to conduct principal activities involving facilitating charitable fund raising, donations and other charitable activities, including funds raised in connection therewith, (b) in the case of any Unrestricted Subsidiary under clause (b) of such definition, assets having a value of not more than \$1,000,000 for any period of thirty (30) consecutive days, (c) books, records, rights and other assets associated with its existence, and (d) other immaterial assets not used in connection with any of the Obligors' business operations.

**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: (i) 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 under the definition of Eligible Inventory. 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 forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of Holdings, (x) quarterly unaudited consolidated financial statements (including balance sheets, statements of income and loss, statements of cash flow and statements of shareholders' equity) all in reasonable detail, fairly presenting the consolidated financial position and the results of the operations of Holdings and its Subsidiaries, as of the end of and through such fiscal quarter and (y) quarterly unaudited consolidated financial statements (including balance sheets, statements of income and loss and statements of cash flow) 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 through such fiscal quarter; (ii) within ninety (90) days after the end fiscal year, (x) audited consolidated financial statements of Holdings and its subsidiaries (including 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 consolidated financial position and the results of the operations of Holdings 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 Holdings and reasonably acceptable to Lender, that such financial statements have been prepared in accordance with GAAP, and present fairly the results of operations and consolidated financial position of Holdings and its subsidiaries as of the end of and for the fiscal year then ended and (y) unaudited consolidated financial statements of Borrower and its Subsidiaries (including balance sheets, statements of income and loss and statements of cash flow), 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 a certification from a senior officer of Borrower certifying that such financial statements have been prepared in accordance with GAAP, and present fairly the results of operations and financial position of Borrower and its Subsidiaries as of the end of and for the fiscal year then ended; and (iii) contemporaneously with the materials described in the foregoing clause (ii), a true, complete and correct list of all Unrestricted Subsidiaries existing as of the end of the fiscal year that is the subject of such materials. Documents required to be delivered pursuant to this clause (a) (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such documents, or provides a link thereto on Borrower's website on the Internet at the website address <http://www.ulta.com>; or (ii) on which such documents are posted on Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); provided that: (i) Borrower shall deliver paper copies of such documents to Administrative Agent, if requested by Administrative Agent, until a written request to cease delivering paper copies is given by Administrative Agent and (ii) Borrower shall notify Administrative Agent and each Lender (by telecopier or electronic mail) of the posting of any such documents and provide to Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Borrower with any such request for delivery.

(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 or Holdings 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 or Holdings and any reports or management letters prepared by such accountants or auditors on behalf of Borrower or Holdings and to disclose to any Agent or any Lender such information as they may have regarding the business of Borrower or Holdings. 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; provided, that any Obligor may merge into another Obligor or the Borrower (provided that the Borrower is the surviving entity after giving effect thereto) or may dissolve or cease doing business so long as the assets of such Obligor are transferred to the Borrower or another Obligor;

(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 arm's 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, assignments, leases, transfers or other dispositions of assets not to exceed an aggregate fair market value of \$10,000,000 for all such assets in any fiscal year of Borrower;

(v) other sales, assignments, leases, transfers or other dispositions of assets not otherwise permitted hereunder so long as Excess Availability shall not be less than thirty percent (30%) of the lesser of (A) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves from time to time established by Agents hereunder and (B) the Maximum Credit calculated on a pro forma basis both before and after giving effect to such disposition; provided, that the aggregate book value of Inventory that may be subject to such sales, assignments, leases, transfers or other dispositions shall not exceed \$100,000,000 in the aggregate during the term of this Agreement;

(vi) sales and issuance of Capital Stock by the Subsidiaries of Borrower to Borrower or such other wholly owned Subsidiaries and by Borrower or any other Obligor (that is not a Subsidiary of Borrower) to Holdings;

(vii) any sale, release or other disposition of any interest of Borrower in the Studio Gear trademark or any other intellectual property rights with respect to that brand; or

(viii) sales, assignments, leases, transfers or other dispositions of assets from (A) Borrower or any Obligor to Borrower or any other Obligor, (B) any Subsidiary that is not an Obligor to Borrower or any other Subsidiary and (C) Borrower or any Obligor to a Subsidiary that is not an Obligor; provided, that with respect to this clause (C), (1) the conditions set forth in Section 9.10(f)(i)-(iii) shall be satisfied with respect to any such disposition and (2) to the extent any intellectual property which is required to sell Eligible Inventory is subject to such disposition, then either the Administrative Agent shall retain a lien on such intellectual property or the Subsidiary holding such intellectual property shall grant to Administrative Agent a non-exclusive royalty free license (upon terms reasonably acceptable to the Administrative Agent) to use such intellectual property to sell Eligible Inventory during the continuation of an Event of Default;

(c) form or acquire any subsidiaries except that Borrower and its Subsidiaries may (i) acquire Subsidiaries in accordance with Section 9.10(f) and (ii) form additional Subsidiaries; provided, that to the extent any such acquired or formed Subsidiary is organized within the United States (and subject to the limitations set forth in Section 5.2(d)), at the time that such Person becomes a Subsidiary, and promptly thereafter (and in any event within ten (10) days), Borrower shall, and shall cause such Subsidiary to: (A) to the extent such Subsidiary is not a Subsidiary described under clause (y) of Section 5.2(d), become an Obligor by executing and delivering to the Administrative Agent the following documents, which documents shall, for clarity, incorporate as to such Subsidiary, all representations and warranties made by the Borrower under this Agreement and all affirmative and negative covenants applicable to the Borrower under this Agreement: (1) a guaranty of the Obligations in favor of the Administrative Agent, for the ratable benefit of the Lenders, (2) a security agreement, pursuant to which such Subsidiary grants a lien to the Collateral Agent, for the ratable benefit of the Lenders, on substantially all the assets of such Subsidiary to secure such guaranty and the Obligations, on terms and conditions consistent with the Borrower's grant of liens under this Agreement and (3) documents of the type referred to in clauses (a) and (c) of Section 4.1, together with any other documents required by the terms of the guaranty and security agreement referred to in clauses (1) and (2) above, and (B) pledge the Capital Stock of such Subsidiary (subject to Section 5.2(d) to the extent such Subsidiary is described therein) to the Administrative Agent, for the ratable benefit of the Lenders, to secure the Obligations; in each case, in form, content and scope reasonably satisfactory to the Administrative Agent (it being understood and agreed that, with respect to any Person that was an Unrestricted Subsidiary but ceases to satisfy the criteria therefor, at the time that such Person ceases to so satisfy, and promptly thereafter (and in any event within ten (10) days), Borrower shall, and shall cause such Subsidiary to, become an Obligor, pledge the Capital Stock of such Subsidiary, and otherwise comply with the terms of this Section 9.7(c)); or

(d) 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 indebtedness or any obligations in respect of the repayment of borrowed money, 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 arm's 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 arm's 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;

(g) (A) contingent liabilities of Borrower and/or any Obligors pursuant to any Hedging Agreements entered into by Borrower and/or any Obligors; provided that the aggregate principal notional amount of indebtedness that may be subject to Hedging Agreements at any one time shall not exceed \$100,000,000 at any time. 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 and/or any Obligors pursuant to any Other Hedging Agreements entered into by Borrower and/or any Obligors; provided that (i) Lenders shall have been given a reasonable opportunity to match the proposed terms of the Other Hedging Agreements prior to Borrower or any Obligor 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; and

(h) indebtedness and obligations consisting of intercompany loans, advances and other obligations permitted under Sections 9.10(f), (g) and (h).

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 the extent they are permitted by applicable law, 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;



(f) other loans, advances and/or investments (including by capital contribution, dividend or otherwise or by purchase or repurchase of the Capital Stock or indebtedness or all or a substantial part of the assets or property of any Person, or guarantee, assumption, endorsement or otherwise becoming responsible for the indebtedness, performance, obligations or dividends of any Person), in each case to or in a Person that is not the Borrower or an Obligor and as long as (i) no Event of Default has occurred and is continuing at the time of such loan, advance or investment, (ii) the average Excess Availability for the preceding twelve months most recently ended shall not have been less than thirty percent (30%) of the lesser of (A) the average amount of the Loans available to Borrower during such period based on the formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves established by Agents hereunder and (B) the Maximum Credit then in effect and (iii) after giving pro forma effect to any such loans, advances and/or investments, projected Excess Availability as of the end of each of the immediately following twelve months shall be not less than twenty-five percent (25%) of the lesser of (A) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves from time to time established by Agents hereunder and (B) the Maximum Credit, (iv) to the extent any such investment constitutes an Acquisition, the conditions set forth in the definition of Permitted Acquisition are satisfied and (v) any assets acquired in connection with any investment shall not be eligible to be included in the Borrowing Base until the Administrative Agent shall have had the opportunity to conduct such due diligence as the Administrative Agent may require, the results of which shall be satisfactory to the Agents;

(g) loans, advances and/or investments (including capital contributions) (i) from Borrower or any Obligor to or in Borrower or any other Obligor, (ii) from any Subsidiary which is not an Obligor to or in any other Subsidiary which is not an Obligor, and (iii) from any Subsidiary which is not an Obligor to Borrower or any other Obligor so long as, with respect to this clause (iii) only, at the time of any repayment of any such loan or advance, the conditions set forth in Section 9.10(f)(i)-(iii) are satisfied;

(h) guarantees by the Borrower or any other Obligor of the performance by Borrower or any other Obligor under any contract, lease or other obligation; and

(i) loans and advances to Holdings in such amounts (in lieu of making, and without duplication of, dividends and distributions permitted under Section 9.11) as are permitted under Section 9.11 as though such loans and advances were made as dividends.

**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 Borrower may make dividends and distributions consisting of its Capital Stock to Holdings and:

(a) Borrower may make dividends and distributions to Holdings to permit Holdings to repurchase its shares of Capital Stock from any former employee of Holdings or 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 of such dividends and distributions 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 or Holdings shall not in any twelve (12) month period exceed \$25,000,000 less the amount of any dividends and distributions 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 dividends and distributions, 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 (iv) there shall be no limitation on the right of Borrower to make such purchases using net cash proceeds of a Qualified Public Offering;

(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) after giving pro forma effect to any such dividends, Excess Availability shall be not less than twenty percent (20%) of the lesser of (A) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves from time to time established by Agents hereunder and (B) the Maximum Credit, (iv) projected Excess Availability as of the end of each of the subsequent twelve month periods shall be not less than twenty percent (20%) of the lesser of (A) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves from time to time established by Agents hereunder, and (B) the Maximum Credit, 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, together with projections of Excess Availability supported by a set of 12 month financial statements (including profit and loss, balance sheet and cash flow statements) prepared on a basis reasonably acceptable to the Administrative Agent and Lenders (not to be unreasonably withheld);

(c) Borrower may declare and pay any accrued and unpaid dividends, or make dividends and distributions to Holdings for the purpose of redeeming or retiring any shares of Capital Stock of Holdings (in addition to any dividends permitted under Section 9.11(a) and (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), (1) 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 (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) [Reserved];

(e) Borrower may make dividends and distributions to Holdings to permit Holdings to repurchase, redeem or otherwise retire any shares of Capital Stock of Holdings (in addition to any repurchases under Sections 9.11(a) and (c) 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 transaction, (ii) any payments shall be out of funds legally available therefor, (iii) after giving pro forma effect to any such transaction, Excess Availability shall be not less than twenty percent (20%) of the lesser of (A) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves from time to time established by Agents hereunder and (B) the Maximum Credit, (iv) projected Excess Availability as of the end of each of the subsequent twelve month periods shall be not less than twenty percent (20%) of the lesser of (A) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves from time to time established by Agents hereunder, and (B) the Maximum Credit, and (v) Administrative Agent shall have received not less than five (5) Business Days prior written notice of the intention of Borrower to engage in such transaction specifying the amount of payments which Borrower intends to pay, together with projections of Excess Availability supported by a set of 12 month financial statements (including profit and loss, balance sheet and cash flow statements) prepared on a basis reasonably acceptable to the Administrative Agent and Lenders (not to be unreasonably withheld);

(f) in the event Borrower files a consolidated, combined, unitary or similar type income tax return with Holdings, Borrower may make dividends and distributions to Holdings in amounts required for Holdings to pay federal and state income taxes then due and payable which are directly attributable to the income of Borrower; provided, that such amounts are used by Holdings for such purpose and do not, in any fiscal year, exceed the amount Borrower would have been required to pay in respect of federal and state income taxes for such fiscal year had Borrower been a stand-alone taxpayer or stand-alone group (separate from Holdings) for all fiscal years ending after the Fourth Amendment Effective Date; and

(g) Borrower may make dividends and distributions to Holdings to permit Holdings to pay (i) fees and expenses (including franchise or similar taxes) required to maintain its existence, customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers and employees of Holdings, fees and out-of-pocket expenses for board of directors and general operating, compliance and overhead expenses (including legal, accounting and other professional fees and expenses) of Holdings, and (ii) fees and expenses (other than to Affiliates of Borrower) related to any equity or debt offering of Holdings (whether or not successful); provided, that the aggregate amount of all such dividends and distributions made to Holdings to permit Holdings to pay fees and expenses described in this Section 9.11(g), to the extent such fees and expenses are not directly attributable to the ownership or operation of the Obligor and their Subsidiaries, shall not exceed \$5,000,000 in the aggregate in any fiscal year of Borrower.

9.12 Transactions with Affiliates.

Except for (a) transactions between or among Borrower, its Subsidiaries, Unrestricted Subsidiaries and any other Obligors, and (b) transactions between or among Borrower and its Subsidiaries, any Unrestricted Subsidiaries and any other Obligors, on the one hand, and other subsidiaries of Holdings, on the other hand (which exception shall not, in each case of these clauses (a) and (b), apply to any such transactions expressly prohibited by other sections of this Agreement), Borrower shall not directly or indirectly, (i) 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 (ii) 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) comply with the terms of the Credit Card Agreements to which it is a party to the extent the failure to so comply would reasonably be likely to have a Material Adverse Effect and (b) deliver, or cause to be delivered to Collateral Agent, a Credit Card Notification in favor of Collateral Agent with respect to each Credit Card Agreement in effect.

9.14 Minimum Excess Availability.

Borrower shall, at all times, have and maintain Excess Availability of not less than ten percent (10%) of the lesser of (i) the amount of the Loans available to Borrower as of such time based on the formula set forth in Section 2.1(a) hereof, subject to the sublimits and Availability Reserves from time to time established by Agents hereunder and (ii) the Maximum Credit; provided, that Excess Availability shall not be less than \$20,000,000 at any time.

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, to the extent required under Section 7.6 hereof, 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.

#### 9.18 Unrestricted Subsidiaries.

Borrower shall not permit (a) any Unrestricted Subsidiary under clause (a) of the definition of "Unrestricted Subsidiaries" to engage in any activities or acquire any assets (other than those activities described in clause (a) of the definition of "Unrestricted Subsidiaries" and those assets referred to in Section 8.18) and (b) any Unrestricted Subsidiary under clause (b) of the definition of "Unrestricted Subsidiaries" to acquire any assets (other than those assets referred to in Section 8.18), in each case unless, prior to such engagement or acquisition, such Unrestricted Subsidiary shall have become an Obligor hereunder and taken such steps as are required in connection with such joinder to the Financing Agreements pursuant to Section 9.7(c).

### **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 (provided that if an Event of Default has occurred as a result of the Borrower's failure to comply with the provisions of Section 9.14, then, except as provided in the subsequent proviso, to the extent that the Borrower receives a cash capital contribution in a sufficient amount to cure such Event of Default (to the extent such Event of Default may be cured by a cash capital contribution), which additional cash capital contribution shall be received within fifteen (15) days of the date upon which the Borrower has knowledge of the occurrence of such Event of Default, then upon timely satisfaction of the foregoing provisions in this proviso, such Event of Default shall be deemed cured or waived; provided further that if the right to so cure any Event of Default under Section 9.14 has been exercised on two occasions in any fiscal year or on six (6) occasions after the Closing Date, then no further cure of such failure hereunder may be made, or shall be required to be accepted by the Agents and the Lenders, during the remainder of such fiscal year or during the remaining term of this Agreement, as applicable); 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 or any Obligor 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 (except to the extent such Obligor no longer exists as a result of a merger or dissolution permitted under this Agreement);

(d) any judgment for the payment of money is rendered against Borrower or any Obligor in excess of \$5,000,000 in any one case or in excess of \$10,000,000 in the aggregate and shall remain undischarged or unvacated for a period in excess of forty-five (45) 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, except for Obligors which may merge, dissolve, suspend or discontinue doing business in accordance with the terms of this Agreement;

(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 (vii) direct the Collateral Agent to conduct one or more going out of business sales, in the Collateral Agent's own right or by one or more agents and contractors. The Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor); any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and expenses incurred in their disposition) shall be the sole property of the Collateral Agent or such agent or contractor and neither the Borrower nor any Person claiming under or in right of any Borrower shall have any interest therein; 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, general intangibles and other assets described in Section 5.2 of this Agreement, 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, each of the 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; (iii) 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 than 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 Wells Fargo to act as both Administrative Agent and 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 or provider of Bank Products and Cash Management Services); (b) shall not be responsible to Lenders (including any Lender in its capacity as a counterparty to a Hedging Agreement or provider of Bank Products and Cash Management Services) 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 or provider of Bank Products and Cash Management Services) 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 Wells Fargo 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 Wells Fargo 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 Wells Fargo in its individual capacity as Lender hereunder. Wells Fargo (and any successor acting as Administrative Agent or Collateral Agent, respectively) and its Affiliates may (without having to account therefore 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 Wells Fargo and its 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 or provider of Bank Products and Cash Management Services) 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 or provider of Bank Products and Cash Management Services)) 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, any Bank Product, any Cash Management Services, 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 or provider of Bank Products and Cash Management Services) 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, and further provided that if no Event of Default has occurred, the Lenders shall not be obligated to reimburse the Agents for any costs incurred in connection with field examinations under Section 7.6 hereof in excess of \$15,000 in any year.

#### 12.6 Non-Reliance on Agents and Other Lenders.

Each Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement or provider of Bank Products and Cash Management Services) 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 or provider of Bank Products and Cash Management Services) 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 \$10,000,000 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 or provider of Bank Products and Cash Management Services) 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 or provider of Bank Products and Cash Management Services) 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 or provider of Bank Products and Cash Management Services).

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 \$10,000,000 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, shall bear interest at the Interest Rate for Prime Rate Loans in effect after the occurrence of an Event of Default, 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 or provider of Bank Products and Cash Management Services) 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 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 the applicable Lenders pursuant to Section 11.3 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 or provider of Bank Products and Cash Management Services), each Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement or provider of Bank Products and Cash Management Services) 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 provider of Bank Products and Cash Management Services) 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 or provider of Bank Products and Cash Management Services) 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 or provider of Bank Products and Cash Management Services) obtain possession of any such Collateral, such Lender (including any Lender in its capacity as a counterparty to a Hedging Agreement or provider of Bank Products and Cash Management Services) 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; Bank Products; Cash Management Services

Each Lender agrees that in its capacity as a counterparty to a Hedging Agreement with Borrower or as the provider of any Bank Products or Cash Management Services to the 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, or provider of Bank Products and Cash Management Services 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, or as a provider of Bank Products or Cash Management Services, other than in respect of such Lender's entitlements to proceeds of Collateral, as a counterparty to a Hedging Agreement or provider of Bank Products and Cash Management Services, 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 Defaulting Lender.

(a) If for any reason any Lender shall fail or refuse to abide by its obligations under this Agreement, including without limitation its obligation to make available to Administrative Agent its Pro Rata Share of any Loans, expenses or setoff or purchase its Pro Rata Share of a participation interest in the Swing Line Loans or Letter of Credit Accommodations and such failure is not cured within one (1) Business Day after receipt from the Administrative Agent of written notice thereof, then, in addition to the rights and remedies that may be available to the Agents, the other Lenders, the Borrower or any other party at law or in equity, and not at limitation thereof, (i) such Defaulting Lender's right to participate in the administration of, or decision-making rights related to, the Obligations, this Agreement or the other Financing Agreements shall be suspended during the pendency of such failure or refusal, and such Defaulting Lender shall not be entitled to vote or consent on any matter pursuant to Section 11.3 and its Loans and Commitments shall be excluded from the calculation of Required Lenders, and (ii) a Defaulting Lender shall be deemed to have assigned any and all payments due to it from the Borrower and Obligors, whether on account of outstanding Loans, interest, fees or otherwise, to the remaining non-Defaulting Lenders for application to, and reduction of, their proportionate shares of all outstanding Obligations until, as a result of application of such assigned payments the Lenders' respective Pro Rata Shares of all outstanding Obligations shall have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency, and/or (iii) at the option of the Administrative Agent, any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Administrative Agent as cash collateral for future funding obligations of the Defaulting Lender in respect of any Loan or existing or future participating interest in any Swing Line Loan or Letter of Credit Accommodation. The Defaulting Lender's decision-making and participation rights and rights to payments as set forth in clauses (i) and (ii) hereinabove shall be restored only upon the payment by the Defaulting Lender of its Pro Rata Share of any Obligations, any participation obligation, or expenses as to which it is delinquent, together with interest thereon at the Federal Funds Rate from the date when originally due until the date upon which any such amounts are actually paid.

(b) The non-Defaulting Lenders shall also have the right, but not the obligation, in their respective, sole and absolute discretion, to cause the termination and assignment, without any further action by the Defaulting Lender for no cash consideration (pro rata, based on the respective Commitments of those Lenders electing to exercise such right), of the Defaulting Lender's Commitment to fund future Loans. Upon any such purchase of the Pro Rata Share of any Defaulting Lender, the Defaulting Lender's share in future Loans and Letter of Credit Accommodations and its rights under the Financing Agreements with respect thereto shall terminate on the date of purchase, and the Defaulting Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest, including, if so requested, an Assignment and Acceptance. Any assignment of a Defaulting Lender's Loans and/or Commitments shall be made in accordance with Section 13.6.

(c) If any Lender is a Deteriorating Lender or a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and

subject to the restrictions contained in, and consents required by, Section 13.6), all of its interests, rights and obligations under this Agreement and the related Financing Agreements to an Eligible Transferee that shall assume such obligations (which Eligible Transferee may be another Lender, if a Lender accepts such assignment), provided that: (i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and Letter of Credit Accommodations owed to such Lender, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Financing Agreements from the Eligible Transferee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (ii) such assignment does not conflict with applicable law, and (iii) to the extent that such Eligible Transferee is not a Lender, such assignment shall be subject to the written consent of the Administrative Agent, which consent shall not be unreasonably withheld. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(d) Each Defaulting Lender shall indemnify the Administrative Agent and each non-Defaulting Lender from and against any and all loss, damage or expenses, including but not limited to reasonable attorneys' fees and funds advanced by the Administrative Agent or by any non-Defaulting Lender, on account of a Defaulting Lender's failure to timely fund its Pro Rata Share of a Loan or to otherwise perform its obligations under the Financing Agreements.

#### 12.16 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 December 6, 2018 (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, outstanding Bank Products, Hedging Agreements and Cash Management Services, 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. 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.

### 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) Unless otherwise specified, all references herein to times of day shall be references to Central time (daylight or standard, as applicable).

(l) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(m) 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.

(n) 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: Ultra Salon, Cosmetics & Fragrance, Inc.  
Suite 120  
1000 Remington Blvd.  
Bolingbrook, IL 60440-4708  
Attention: Gregg Bodnar  
Telephone No.: (630) 410-4633  
Telecopy No.: (630) 410-4864

with a copy, in the case of a Default  
or Event of Default, to: Latham & Watkins  
Suite 5800  
233 S. Wacker Drive  
Chicago, Illinois 60606  
Attention: Vik Puri  
Telephone No.: (312) 876-7700  
Telecopy No.: (312) 993-9767

If to Administrative Agent or the  
Collateral Agent: Wells Fargo Bank, National Association  
One Boston Place  
Boston, Massachusetts 02109  
Attention: Jason Searle  
Telephone No.: (617) 854-7292  
Telecopy No.: (617) 523-4029

with a copy to: Riemer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
Attention: Jason DelMonico  
Telephone No.: (617) 880-3496  
Telecopy No.: (617) 880-3456

Notices and other communications to the Lenders and the LC Issuer hereunder may also be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

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#### 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 pursuant to clause (ii) above 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 position 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) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(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 Information promulgated by 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 supersedes 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 No Advisory or Fiduciary Responsibility

In connection with all aspects of each transaction contemplated hereby, the Borrower and the Obligors each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Financing Agreement) are an arm's-length commercial transaction between the Borrower and Obligors, on the one hand, and the Agents and the Lenders, on the other hand, and each of the Borrowers and Obligors is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Financing Agreements (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the each Agent and Lender is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower, the Obligors or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Agents or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower or Obligors with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Financing Agreement (irrespective of whether any of the Agents or Lenders has advised or is currently advising the Borrower, any Obligor or any of its Affiliates on other matters) and none of the Agents and Lenders has any obligation to the Borrower, any Obligor or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Financing Agreements; (iv) the Agents and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and Obligors and their respective Affiliates, and none of the Agents or Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Agent and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Financing



Agreement) and each of the Borrower and Obligors has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Borrower and Obligors hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Agents and Lenders with respect to any breach or alleged breach of agency or fiduciary duty.

#### 13.11 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.

#### 13.12 Foreign Asset Control Regulations

Neither of the advance of the Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)). Furthermore, none of the Borrower or Obligors (a) is or will become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person" or in any manner violative of any such order.

#### 13.13 Waiver of Consequential Damages, Etc.

To the fullest extent permitted by applicable law, each of the parties hereto agrees not to assert, and hereby waives, any claim against any other party hereto and its Affiliates on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Financing Agreement or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or letter of credit or the use of the proceeds thereof.

#### 13.14 Press Releases

The Borrower consents to the publication by Administrative Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using the Borrower's name, product photographs, logo or trademark. Administrative Agent or such Lender shall provide a draft reasonably in advance of any advertising material to the Borrower

for its approval prior to the publication thereof (which approval shall not be unreasonably withheld or delayed). Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

13.15 Amendment and Restatement.

(a) Amendment and Restatement; No Novation. On the Closing Date, the Existing Credit Agreement shall be amended and restated in its entirety by this Agreement and (i) all references to the Existing Credit Agreement in any Financing Agreement other than this Agreement (including any amendment, waiver or consent) shall be deemed to refer to the Existing Credit Agreement as amended and restated hereby, (ii) all references to any section (or subsection) of the Existing Credit Agreement in any Financing Agreement (but not herein) shall be amended to be, mutatis mutandis, references to the corresponding provisions of this Agreement, (iii) except as the context otherwise provides, all references to this Agreement herein (including for purposes of indemnification and reimbursement of fees) shall be deemed to be references to the Existing Credit Agreement as amended and restated hereby, (iv) the term “Lenders” as defined in the other Financing Documents shall be deemed to refer to the term “Lenders” as amended and restated hereby and (v) Borrower hereby reaffirms all of its obligations under each of the Financing Documents to which it is a party. This Agreement is not intended to constitute, and does not constitute, a novation of the obligations and liabilities under the Existing Credit Agreement (including the Obligations) or to evidence payment of all or any portion of such obligations and liabilities except to the extent expressly provided for herein.

(b) Effect on Existing Credit Agreement and on the Obligations. On and after the Closing Date, (i) subject to clause (iii) below, the Existing Credit Agreement shall be of no further force and effect except to evidence the incurrence by Borrower of the “Obligations” under and as defined therein (whether or not such “Obligations” are contingent as of the Closing Date), (ii) all “Obligations under the Existing Credit Agreement as of the Closing Date shall be deemed to be Obligations outstanding under this Agreement (whether or not such “Obligations” are contingent as of the Closing Date) and (iii) all security interests and liens granted under the Financing Documents shall survive the execution and delivery of this Agreement and shall continue to secure all Obligations.

[SIGNATURE PAGES FOLLOW]



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PNC BANK, NATIONAL ASSOCIATION,  
as Documentation Agent

By:       /s/        
Title: \_\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_



Company Contacts:  
Scott Settersten  
Chief Financial Officer  
(630) 410-4807  
  
Laurel Lefebvre  
Vice President, Investor Relations  
(630) 410-5230  
  
Karen May  
Director, Public Relations  
(630) 410-5457

**ULTA BEAUTY ANNOUNCES FORMATION OF NEW HOLDING COMPANY**

Bolingbrook, IL – January 27, 2017 – Ulta Beauty [NASDAQ: ULTA] today announced that the Company will implement a holding company reorganization on January 29, 2017, the beginning of the Company’s new fiscal year. The primary purpose of the reorganization is to create a more efficient corporate structure. Business operations for the Company will not change as a result of the reorganization.

Pursuant to this holding company reorganization, Ulta Beauty, Inc. will replace Ulta Salon, Cosmetics & Fragrance, Inc. as the publicly-traded entity. All outstanding shares of common stock of Ulta Salon, Cosmetics & Fragrance, Inc. will automatically convert into the same number of shares of common stock of Ulta Beauty, Inc. with all of the same rights, powers and preferences, and qualifications, limitations and restrictions. The common stock of the Company will continue to trade on The NASDAQ Global Select Market under the symbol “ULTA.” There is no change to the directors and executive officers of the Company as a result of the creation of the holding company.

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**About Ulta Beauty**

Ulta Beauty (NASDAQ: ULTA) is the largest beauty retailer in the United States and the premier beauty destination for cosmetics, fragrance, skin, hair care products and salon services. Since opening its first store in 1990, Ulta Beauty has grown to become the top national retailer providing All Things Beauty, All in One Place™. The Company offers more than 20,000 products from over 500 well-established and emerging beauty brands across all categories and price points, including Ulta Beauty's own private label. Ulta Beauty also offers a full-service salon in every store featuring hair, skin and brow services. Ulta Beauty is recognized for its commitment to personalized service, fun and inviting stores and its industry-leading Ultamate Rewards loyalty program. As of January 27, 2017, Ulta Beauty operates 974 retail stores across 48 states and the District of Columbia and also distributes its products through its website, which includes a collection of tips, tutorials and social content. For more information, visit [www.ulta.com](http://www.ulta.com).