

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

**FORM 10-Q**

(Mark one)

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

**For the quarterly period ended May 5, 2007**

or

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

For the transition period from        to       

Commission file number: 0-14678

**Ross Stores, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or  
organization)

**94-1390387**

(I.R.S. Employer Identification No.)

**4440 Rosewood Drive, Pleasanton, California**

(Address of principal executive offices)

**94588-3050**

(Zip Code)

Registrant's telephone number, including area code

**(925) 965-4400**

Former name, former address and former fiscal year, if  
changed since last report.

N/A

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one): Large accelerated filer   X   Accelerated filer        Non-accelerated filer       

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

The number of shares of Common Stock, with \$.01 par value, outstanding on May 24, 2007 was 138,636,599.

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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**Condensed Consolidated Statements of Earnings**

	<b>Three Months Ended</b>	
	<b>May 5, 2007</b>	<b>April 29, 2006</b>
(\$000, except per share data, unaudited)		
<b>Sales</b>	<b>\$ 1,410,541</b>	<b>\$ 1,291,676</b>
<b>Costs and expenses</b>		

Cost of goods sold	1,071,278	988,836
Selling, general and administrative	230,203	207,167
Interest income, net	(1,391)	(1,884)
Total costs and expenses	1,300,090	1,194,119
Earnings before taxes	110,451	97,557
Provision for taxes on earnings	43,407	38,340
Net earnings	\$ 67,044	\$ 59,217

<b>Earnings per share</b>		
Basic	\$ .49	\$ .42
Diluted	\$ .48	\$ .41

<b>Weighted average shares outstanding (000)</b>		
Basic	137,087	141,710
Diluted	139,576	144,193

<b>Dividends per share</b>		
Cash dividends declared per share	\$ .00	\$ .00

Stores open at end of period	830	746
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See notes to condensed consolidated financial statements.

## Condensed Consolidated Balance Sheets

(\$000, unaudited)	May 5, 2007	February 3, 2007	April 29, 2006
		(Note A)	
<b>Assets</b>			
<b>Current Assets</b>			
Cash and cash equivalents	\$ 199,123	\$ 367,388	\$ 145,230
Short-term investments	6,821	5,247	43,072
Accounts receivable	36,940	30,105	36,035
Merchandise inventory	1,101,525	1,051,729	979,995
Prepaid expenses and other	51,029	44,245	43,064
Deferred income taxes	29,516	16,242	20,014
Total current assets	1,424,954	1,514,956	1,267,410
<b>Property and Equipment</b>			
Land and buildings	137,677	134,804	75,408
Fixtures and equipment	882,441	859,750	756,054
Leasehold improvements	420,656	402,921	376,315
Construction-in-progress	17,978	22,681	19,631
	1,458,752	1,420,156	1,227,408
Less accumulated depreciation and amortization	696,407	671,923	594,183
Property and equipment, net	762,345	748,233	633,225
Other long-term assets	69,299	64,266	58,902
Long-term investments	33,548	31,136	14,100
Total assets	\$ 2,290,146	\$ 2,358,591	\$ 1,973,637
<b>Liabilities and Stockholders' Equity</b>			

<b>Current Liabilities</b>			
Accounts payable	\$ 608,789	\$ 698,063	\$ 546,329
Accrued expenses and other	198,990	206,516	183,950
Accrued payroll and benefits	111,631	145,101	121,985
Income taxes payable	33,575	33,577	38,223
Total current liabilities	952,985	1,083,257	890,487
Long-term debt	150,000	150,000	-
Other long-term liabilities	166,165	129,303	123,600
Deferred income taxes	84,987	86,201	98,828
<b>Commitments and contingencies</b>			
<b>Stockholders' Equity</b>			
Common stock	1,387	1,402	1,437
Additional paid-in capital	561,173	545,702	505,372
Treasury stock	(24,614)	(22,031)	(20,434)
Accumulated other comprehensive income	64	(163)	(181)
Retained earnings	397,999	384,920	374,528
Total stockholders' equity	936,009	909,830	860,722
Total liabilities and stockholders' equity	\$ 2,290,146	\$ 2,358,591	\$ 1,973,637

See notes to condensed consolidated financial statements.

## Condensed Consolidated Statements of Cash Flows

	Three Months Ended	
	May 5, 2007	April 29, 2006
(\$000, unaudited)		
<b>Cash Flows From Operating Activities</b>		
Net earnings	\$ 67,044	\$ 59,217
Adjustments to reconcile net earnings to net cash (used in) provided by operating activities:		
Depreciation and amortization	28,522	24,261
Stock-based compensation	6,370	6,905
Deferred income taxes	(14,489)	(1,270)
Tax benefit from equity issuance	4,565	5,088
Excess tax benefits from stock-based compensation	(3,826)	(2,547)
Change in assets and liabilities:		
Merchandise inventory	(49,796)	(41,904)
Other current assets, net	(13,619)	(12,887)
Accounts payable	(78,829)	80,355
Other current liabilities	(36,889)	(12,754)
Other long-term, net	24,902	1,001
Net cash (used in) provided by operating activities	(66,045)	105,465
<b>Cash Flows From Investing Activities</b>		
Additions to property and equipment	(47,381)	(18,024)
Purchases of investments	(9,016)	(46,550)
Proceeds from investments	5,257	13,142
Net cash used in investing activities	(51,140)	(51,432)
<b>Cash Flows From Financing Activities</b>		
Payment of term debt	-	(50,000)
Issuance of common stock related to stock plans	8,863	6,577

Excess tax benefits from stock-based compensation	3,826	2,547
Treasury stock purchased	(2,592)	(2,190)
Repurchase of common stock	(50,868)	(48,882)
Dividends paid	(10,309)	(8,622)
Net cash used in financing activities	(51,080)	(100,570)
Net decrease in cash and cash equivalents	(168,265)	(46,537)

Cash and cash equivalents:		
Beginning of period	367,388	191,767
End of period	\$ 199,123	\$ 145,230

#### Non-Cash Investing Activities

Change in fair value of investment securities	\$ 227	\$ (201)
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See notes to condensed consolidated financial statements.

## Notes to Interim Condensed Consolidated Financial Statements

Three Months Ended May 5, 2007 and April 29, 2006  
(Unaudited)

### Note A: Summary of Significant Accounting Policies

**Basis of Presentation.** The accompanying unaudited interim condensed consolidated financial statements have been prepared from the records of Ross Stores, Inc. and subsidiaries (the "Company") without audit and, in the opinion of management, include all adjustments (consisting of only normal, recurring adjustments) necessary to present fairly the Company's financial position as of May 5, 2007 and April 29, 2006, the results of operations for the three months ended May 5, 2007 and April 29, 2006, and cash flows for the three months ended May 5, 2007 and April 29, 2006. The Condensed Consolidated Balance Sheet as of February 3, 2007, presented herein, has been derived from the Company's audited consolidated financial statements for the fiscal year then ended.

Accounting policies followed by the Company are described in Note A to the audited consolidated financial statements for the fiscal year ended February 3, 2007. Certain information and disclosures normally included in the notes to annual consolidated financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted for purposes of the interim condensed consolidated financial statements. The interim condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements, including notes thereto, contained in the Company's Annual Report on Form 10-K for the year ended February 3, 2007.

The results of operations for the three-month periods herein presented are not necessarily indicative of the results to be expected for the full fiscal year.

**Total comprehensive income.** The components of total comprehensive income for the three-month periods ended May 5, 2007 and April 29, 2006 were as follows (in \$000):

	Three Months Ended	
	May 5, 2007	April 29, 2006
Net income	\$ 67,044	\$ 59,217
Unrealized gain (loss) on investments, net of taxes	138	(122)
<b>Total comprehensive income</b>	<b>\$ 67,182</b>	<b>\$ 59,095</b>

**FIN 48.** Effective in fiscal year 2007, the Company adopted the Financial Accounting Standards Board (FASB) Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement 109" ("FIN 48"). This interpretation prescribes a recognition threshold of more-likely-than-not and a measurement attribute for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. See Note E for more information on the Company's adoption of FIN 48.

**Stock-based compensation.** Effective in fiscal year 2006, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 123(R), "Share-Based Payment," and elected to adopt the standard using the modified prospective transition method. This accounting standard requires recognition of compensation expense based upon the grant date fair value of all stock-based awards, typically over the vesting period. See Note B for more information on the Company's stock-based compensation plans.

**Dividends.** Dividends included in the Condensed Consolidated Statements of Cash Flows reflect actual dividends paid during the periods

shown. Dividends per share reported in the Condensed Consolidated Statements of Earnings reflect dividends declared during the periods shown. In January 2007 the Company's Board of Directors declared a quarterly cash dividend payment of \$.075 per common share that was paid in March 2007. In January 2006 the Company's Board of Directors declared a quarterly cash dividend of \$.06 per common share that was paid in March 2006.

**Provision for litigation expense and other legal proceedings.** Like many California retailers, the Company has been named in class action lawsuits regarding misclassification of assistant store managers. In February 2007, the Orange County Superior Court approved a settlement of the cases involving whether the Company's assistant store managers in California are correctly classified as exempt under California Wage Orders. The approved settlement obligation was paid during the quarter ended May 5, 2007.

Other class action litigation involving allegations that hourly associates have missed meal and/or rest break periods remains pending as of May 5, 2007. Resolution of these cases is not expected to have a material adverse effect on the Company's financial condition or results of operations.

The Company is a party in various legal proceedings arising in the normal course of business. Actions filed against the Company include commercial, customer, and labor and employment-related claims, including lawsuits in which plaintiffs allege that the Company violated state and/or federal wage and hour and related laws. Actions against the Company are in various procedural stages. Many of these proceedings raise factual and legal issues and are subject to uncertainties. In the opinion of management, resolution of these matters is not expected to have a material adverse effect on the Company's financial condition or results of operations.

#### **Note B: Stock-Based Compensation**

**Stock options and restricted stock.** The Company has one equity incentive compensation plan, the 2004 Equity Incentive Plan (the "2004 Plan"). The 2004 Plan provides for various types of incentive awards, which may potentially include the grant of non-qualified and incentive stock options, stock appreciation rights, restricted stock purchase rights, restricted stock shares, restricted stock units, performance shares, performance units and deferred stock units. The 2004 Plan also provides for the automatic grant of stock options to each non-employee director at pre-established times and at a predetermined formula to determine the number of stock options. Under the 2004 Plan, stock options are granted at exercise prices not less than the fair market value on the date the option is granted, expire not more than ten years from the date of grant, and normally vest over a period not exceeding five years from the date of grant. The Company grants restricted shares to officers and key employees. The fair value of these shares at the date of grant is expensed on a straight-line basis over the vesting period of generally two to five years.

**Restricted stock.** During the three month period ended May 5, 2007, restricted stock awards totaling 411,000 shares were issued and awards totaling 17,000 shares were forfeited. The aggregate unamortized compensation expense at May 5, 2007 was \$37.5 million. During the period, shares withheld for tax withholding totaled 78,000 shares, and are considered treasury shares which are available for reissuance. As of May 5, 2007, shares subject to repurchase related to unvested restricted stock totaled 2.1 million shares. A total of 2.9 million shares were available for new restricted stock awards under the 2004 Plan as of May 5, 2007.

**Performance shares.** Beginning in fiscal 2007, the Company initiated a performance share award program for senior executives. The performance share program represents a right to receive shares of common stock on a specified settlement date if the performance share vests based on the Company's attainment of a profitability-based performance goal during a performance period.

**Employee stock purchase plan.** Under the Employee Stock Purchase Plan ("ESPP"), eligible full-time employees participating in the offering period can choose to have up to the lesser of 10% or \$21,250 of their annual base earnings withheld to purchase the Company's common stock. The purchase price of the stock is the lower of 85% of the market price at the beginning of the offering period, or end of the offering period.

**Stock-based compensation.** For the three month periods ended May 5, 2007 and April 29, 2006, the Company recognized stock-based compensation expense as follows (in \$000):

	Three Months Ended	
	May 5, 2007	April 29, 2006
Stock options and ESPP	\$ 2,413	\$ 3,463
Restricted stock and performance shares	3,957	3,442
Total	\$ 6,370	\$ 6,905

Capitalized stock-based compensation cost was not significant.

The determination of the fair value of stock options and ESPP shares, using the Black-Scholes model, is affected by the Company's stock price as well as assumptions as to the Company's expected stock price volatility over the term of the awards, actual and projected employee stock option exercise behavior, the risk-free interest rate, and expected dividends.

The Company estimates the expected term of options granted taking into account historical and expected future exercise, cancellation and forfeiture behavior. The Company estimates the volatility of the common stock by using historical volatility over a period equal to the award's expected term. The risk-free interest rates used in the valuation models are based upon yields of U.S. Treasury issues with remaining terms similar to the expected term of the options. Dividend yield has been estimated based on the Company's expectation as to future dividend payouts.

The Company uses historical data to estimate pre-vesting forfeiture rates in determining the amount of stock-based compensation expense to recognize. All stock-based compensation awards are amortized on a straight-line basis over the requisite service periods of the awards.

The fair value of stock options and ESPP rights granted during the respective periods were estimated using the Black-Scholes option pricing model and the following weighted average assumptions:

<b>Stock Options</b>	<b>Three Months Ended</b>	
	<b>May 5, 2007</b>	<b>April 29, 2006</b>
Expected life from grant date (years)	<b>3.9</b>	4.3
Expected volatility	<b>28.5%</b>	32.9%
Risk-free interest rate	<b>4.7%</b>	4.5%
Dividend yield	<b>0.9%</b>	0.8%

<b>Employee Stock Purchase Plan</b>	<b>Three Months Ended</b>	
	<b>May 5, 2007</b>	<b>April 29, 2006</b>
Expected life from grant date (years)	<b>1.0</b>	1.0
Expected volatility	<b>26.7%</b>	26.0%
Risk-free interest rate	<b>5.1%</b>	4.5%
Dividend yield	<b>0.9%</b>	0.8%

Total stock-based compensation recognized in the Company's Condensed Consolidated Statements of Earnings for the periods ended May 5, 2007 and April 29, 2006 was as follows (in \$000):

<b>Statements of Earnings Classification</b>	<b>Three Months Ended</b>	
	<b>May 5, 2007</b>	<b>April 29, 2006</b>
Cost of goods sold	<b>\$ 2,848</b>	\$ 2,953
Selling, general and administrative	<b>3,522</b>	3,952
<b>Total</b>	<b>\$ 6,370</b>	\$ 6,905

The weighted average fair values per share of stock options granted for the three-month periods ended May 5, 2007 and April 29, 2006, were \$9.26 and \$8.70, respectively. The weighted average fair values per share of employee stock purchase awards for the three month periods ended May 5, 2007 and April 29, 2006, were \$8.12 and \$8.50, respectively.

**Stock option activity.** The following table summarizes stock option activity for the three months ended May 5, 2007:

(000, except per share data)	Number of shares	Weighted average exercise price	Weighted average remaining contractual term	Aggregate intrinsic value
Outstanding at February 3, 2007	7,227	\$ 22.47		
Granted	523	\$ 34.37		
Exercised	(549)	\$ 16.13		
Forfeited	(92)	\$ 27.39		
<b>Outstanding at May 5, 2007</b>	<b>7,109</b>	<b>\$ 23.77</b>	<b>6.44</b>	<b>\$ 67,906</b>
<b>Vested or Expected to Vest at May 5, 2007</b>	<b>6,936</b>	<b>\$ 23.62</b>	<b>6.38</b>	<b>\$ 67,262</b>
<b>Exercisable at May 5, 2007</b>	<b>4,353</b>	<b>\$ 20.39</b>	<b>5.17</b>	<b>\$ 55,953</b>

The following table summarizes information about the weighted average remaining contractual life (in years) and the weighted average

exercise prices for stock options both outstanding and exercisable as of May 5, 2007 (number of shares in thousands):

Exercise price range	Options outstanding			Options exercisable	
	Number of shares	Remaining life	Exercise price	Number of shares	Exercise price
\$ 6.69 to \$ 18.89	1,632	2.82	\$ 12.30	1,632	\$ 12.30
18.90 to 26.15	1,429	6.17	21.67	1,198	21.20
26.19 to 28.26	1,468	7.94	27.57	681	27.51
28.28 to 28.69	1,439	7.70	28.60	453	28.60
\$ 28.71 to \$ 34.37	1,141	8.41	31.81	389	29.73
<b>Totals</b>	<b>7,109</b>	<b>6.44</b>	<b>\$ 23.77</b>	<b>4,353</b>	<b>\$ 20.39</b>

#### Note C: Earnings Per Share

SFAS No. 128, "Earnings Per Share," requires both basic and diluted earnings per share ("EPS") to be computed and reported. Basic EPS is computed by dividing net earnings by the weighted average number of common shares outstanding for the period. Diluted EPS is computed by dividing net earnings by the sum of the weighted average number of common shares and dilutive common stock equivalents outstanding during the period. Dilutive EPS reflects the potential dilution that could occur if outstanding options to issue common stock were exercised into common stock.

For the three month periods ended May 5, 2007 and April 29, 2006, there were approximately 368,800 and 3,164,400 shares, respectively, that could potentially dilute basic EPS in the future that were excluded from the calculation of diluted EPS because their effect would have been anti-dilutive in the periods presented.

The following is a reconciliation of the number of shares (denominator) used in the basic and diluted EPS computations (shares in thousands):

	Three Months Ended		
	Basic EPS	Effect of Dilutive Common Stock Equivalents	Diluted EPS
<b>May 5, 2007</b>			
<b>Shares</b>	<b>137,087</b>	<b>2,489</b>	<b>139,576</b>
<b>Amount</b>	<b>\$ .49</b>	<b>\$ (.01)</b>	<b>\$ .48</b>
<b>April 29, 2006</b>			
<b>Shares</b>	<b>141,710</b>	<b>2,483</b>	<b>144,193</b>
<b>Amount</b>	<b>\$ .42</b>	<b>\$ (.01)</b>	<b>\$ .41</b>

#### Note D: Debt and Revolving Credit

In July 2006, the Company amended its existing \$600.0 million revolving credit facility, extending the expiration date to July 2011, and changing the interest pricing to LIBOR plus 45 basis points.

In October 2006, the Company entered into a Note Purchase Agreement with various institutional investors for \$150.0 million of unsecured, senior notes. The notes were issued in two series and funding occurred in December 2006. The series A notes were issued, for an aggregate of \$85.0 million, are due in December 2018, and bear interest at a rate of 6.38%. The series B notes were issued, for an aggregate of \$65.0 million, are due in December 2021, and bear interest at a rate of 6.53%. Borrowings under these notes are subject to certain operating and financial covenants including maintaining certain interest coverage and leverage ratios. As of May 5, 2007, the Company was in compliance with these covenants.

#### Note E: Income Taxes

In June 2006, the FASB issued FIN 48. This statement clarifies the criteria that an individual tax position must satisfy for some or all of the benefits of that position to be recognized in a Company's financial statements. FIN 48 prescribes a recognition threshold of more-likely-than-not, and a measurement attribute for all tax positions taken or expected to be taken on a tax return, in order for those tax positions to be recognized in the financial statements.

Effective February 4, 2007, the Company adopted the provisions of FIN 48. As a result of the implementation, the Company established a

\$26.3 million reserve for unrecognized tax benefits, inclusive of \$6.0 million of related interest. The reserve is classified as a long-term liability and included in other long-term liabilities on the Company's condensed consolidated balance sheet. Also upon adoption of FIN 48, the Company recognized a reduction in retained earnings of \$7.4 million and certain other deferred income tax assets and liabilities were reclassified.

As of May 5, 2007, the reserve for unrecognized tax benefits has increased to \$27.5 million inclusive of \$6.5 million of related interest. The Company accounts for interest related to unrecognized tax benefits as a part of its provision for taxes on earnings. If recognized, \$14.8 million would impact the Company's effective tax rate. The difference between the total amount of unrecognized tax benefits and the amounts that would impact the effective tax rate relate to amounts attributable to deferred income tax assets and liabilities. These amounts are net of federal and state income taxes.

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During the next twelve months, it is reasonably possible that the Company will receive guidance from the Internal Revenue Service, or the statute of limitations may lapse pertaining to positions taken by the Company in prior year tax returns. As a result, the total amount of unrecognized tax benefits may decrease, with an impact of reducing the provision for taxes on earnings of up to \$3.5 million net of federal tax benefits.

The Company is currently open to audit under the statute of limitations by the Internal Revenue Service for fiscal years 2004 through 2006. The Company's state income tax returns are open to audit under the statute of limitations for the fiscal years 2003 through 2006. Certain state tax returns are currently under audit by the state tax authorities. The Company does not expect the result of these audits to have a material impact on the financial statements.

#### **Note F: Recently Issued Accounting Standards**

Emerging Issues Task Force ("EITF") Issue 06-2, "Accounting for Sabbatical Leave and Other Similar Benefits Pursuant to FASB No. 43, Accounting for Compensated Absences" ("EITF No. 06-2") is effective for fiscal years beginning after December 15, 2006. Under EITF No. 06-2 compensation cost associated with sabbatical or other similar benefit programs should be accrued over the requisite service period. Adoption of this standard did not have a material impact on the Company's operating results or financial position.

SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157") is effective for fiscal years beginning after November 15, 2007. SFAS No. 157 defines fair value, establishes a framework for measuring fair value and expands required disclosures regarding fair value measurements. The Company does not believe the adoption of SFAS No. 157 will have a material impact on our operating results or financial position.

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#### **Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders of  
Ross Stores, Inc.  
Pleasanton, California

We have reviewed the accompanying condensed consolidated balance sheets of Ross Stores, Inc. and subsidiaries (the "Company") as of May 5, 2007 and April 29, 2006, and the related condensed consolidated statements of earnings and cash flows for the three-month periods then ended. These condensed consolidated interim financial statements are the responsibility of the Company's management.

We conducted our reviews in accordance with the standards of the Public Company Accounting Oversight Board (United States). A review of interim financial information consists principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States), the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our reviews, we are not aware of any material modifications that should be made to such condensed consolidated interim financial statements for them to be in conformity with accounting principles generally accepted in the United States of America.

We have previously audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Ross Stores, Inc. and subsidiaries as of February 3, 2007, and the related consolidated statements of earnings, stockholders' equity, and cash flows for the year then ended (not presented herein); and in our report (which includes an explanatory paragraph regarding the adoption of a new accounting standard) dated March 29, 2007, we expressed an unqualified opinion on those consolidated financial statements. In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of February 3, 2007, is fairly stated, in all material respects, in relation to the consolidated balance sheet from which it has been derived.

/s/Deloitte & Touche LLP

San Francisco, California  
June 12, 2007



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

This section and other parts of this Form 10-Q contain forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from the results discussed in the forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in Part II, Item 1A (Risk Factors) below. The following discussion should be read in conjunction with the condensed consolidated financial statements and notes thereto included elsewhere in this Form 10-Q and the consolidated financial statements and notes thereto in our 2006 Form 10-K. All information is based on our fiscal calendar.

### Overview

We are the second largest off-price apparel and home goods retailer in the United States, with 796 Ross Dress for Less<sup>®</sup> ("Ross") stores in 27 states and Guam, and 34 dd's DISCOUNTS<sup>®</sup> stores in two states at May 5, 2007. Ross offers first-quality, in-season, name brand and designer apparel, accessories, footwear and home fashions at everyday savings of 20% to 60% off department and specialty store regular prices. dd's DISCOUNTS features a more moderately-priced assortment of first-quality, in-season, name brand apparel, accessories, footwear and home fashions at everyday savings of 20% to 70% off moderate department and discount store regular prices.

Our primary strategy is to pursue and refine our existing off-price business, and steadily expand our store base. In establishing growth objectives for our business, we closely monitor market share trends for the off-price industry. Sales for the off-price sector grew by 8% during 2006, which is significantly faster than total national apparel sales, which grew by 5%, according to data from the NPD Group, which provides global sales and marketing information on the retail industry. Our strategies are designed to take advantage of these growth trends and continued customer demand for name-brand fashions for the family and the home at competitive everyday discounts.

### Results of Operations

The following table summarizes the results of operations for the three month periods ended May 5, 2007 and April 29, 2006:

	Three Months Ended	
	May 5, 2007	April 29, 2006
<b>Sales</b>		
Sales (millions)	\$ 1,411	\$ 1,292
Sales growth	9%	15%
Comparable store sales growth	0%	6%
<b>Costs and expenses</b> (as a percent of sales)		
Cost of goods sold	76.0%	76.6%
Selling, general and administrative	16.3%	16.0%
Interest income, net	(0.1)%	(0.2)%
<b>Earnings before taxes</b>	7.8%	7.6%
<b>Net earnings</b>	4.8%	4.6%

**Stores.** Our operating strategy is to open additional stores based on local market penetration, local demographic characteristics including population, competition, and the ability to leverage overhead expenses. We continually evaluate opportunistic real estate acquisitions and opportunities for potential new store locations. We also evaluate our current store locations and determine store closures based on similar criteria.

	Three Months Ended	
	May 5, 2007	April 29, 2006
Stores at the beginning of the period	797	734
Stores opened in the period	33	12
Stores closed in the period	-	-
Stores at the end of the period	830	746

**Sales.** Sales for the three months ended May 5, 2007 increased \$118.9 million, or 9.2%, compared to the three months ended April 29,

2006. This revenue growth was due to the addition of 84 net new stores during the twelve months ended May 5, 2007.

Our sales mix for Ross is shown below for the three-month periods ended May 5, 2007 and April 29, 2006:

	Three Months Ended	
	May 5, 2007	April 29, 2006
Ladies	35%	35%
Home accents and bed and bath	21%	20%
Men's	14%	15%
Fine jewelry, accessories, lingerie and fragrances	11%	11%
Children's	8%	9%
Shoes	11%	10%
Total	100%	100%

We expect to address the competitive climate for off-price merchandise by pursuing and refining our existing strategies and by continuing to strengthen our organization, to diversify the merchandise mix, and to more fully develop the organization and systems to strengthen regional and local merchandise offerings. Although our strategies and store expansion program contributed to sales gains for the three-month period ended May 5, 2007, we cannot be sure that they will result in a continuation of revenue or profit growth.

**Cost of goods sold.** Cost of goods sold for the three months ended May 5, 2007 increased \$82.4 million compared to the same period in the prior year mainly due to increased sales from the opening of 84 net new stores between April 29, 2006 and May 5, 2007.

Cost of goods sold as a percentage of sales for the three months ended May 5, 2007 decreased approximately 60 basis points compared with the same period in the prior year. This decrease was driven by a 65 basis point increase in merchandise gross margin which benefited from lower markdowns and shortage accrual, a 20 basis point improvement in buying, incentive and equity compensation costs, and a 10 basis point decline in distribution costs. These margin improvements more than offset a 20 basis point increase in freight costs and a 15 basis increase in occupancy expense.

We cannot be sure that the gross profit margins realized for the three-month period ended May 5, 2007 will continue in the future.

**Selling, general and administrative expenses.** For the three months ended May 5, 2007, selling, general and administrative expenses increased \$23.0 million compared to the same period in the prior year, mainly due to increased store operating costs reflecting the opening of 84 net new stores between April 29, 2006 and May 5, 2007.

Selling, general and administrative expenses as a percentage of sales for the three months ended May 5, 2007 increased approximately 30 basis points compared to the same period in the prior year. This increase was mainly driven by a 45 basis point increase in store operating costs partially offset by a 15 basis point decline in corporate overhead costs compared to the prior year.

**Taxes on earnings.** Our effective tax rate for the three-month periods ended May 5, 2007 and April 29, 2006 was approximately 39%, which represents the applicable combined federal and state statutory rates reduced by the federal benefit of state taxes deductible on federal returns. The effective rate is affected by changes in law, location of new stores, level of earnings and the result of tax audits. We anticipate that our effective tax rate for fiscal 2007 will be approximately 38% to 40%.

**Earnings per share.** Diluted earnings per share increased 17% to \$.48 for the three months ended May 5, 2007, from \$.41 in the prior year period. This growth was due to a 14% increase in net earnings and a 3% decline in weighted average diluted shares outstanding, which was largely attributable to the repurchase of common stock under the Company's stock repurchase program.

## Financial Condition

### Liquidity and Capital Resources

Our primary sources of funds for our business activities are existing cash balances, cash flows from operations and short-term trade credit. Our primary ongoing cash requirements are for seasonal and new store merchandise inventory purchases, capital expenditures in connection with opening new stores, and the acquisition of and spending in distribution centers, information systems and infrastructure. We also use cash to repay debt, repurchase stock under our stock repurchase program and to pay dividends. Our quarterly cash flows were as follows:

	Three Months Ended	
	May 5, 2007	April 29, 2006
(\$000)		
Cash flows (used in) provided by operating activities	\$ (66,045)	\$ 105,465

Cash flows used in investing activities	(51,140)	(51,432)
Cash flows used in financing activities	(51,080)	(100,570)
Net decrease in cash and cash equivalents	<b>\$ (168,265)</b>	<b>\$ (46,537)</b>

### Operating Activities

Net cash used in operating activities was \$66.0 million for the three months ended May 5, 2007 compared to net cash provided by operations of \$105.5 million for the three months ended April 29, 2006. The primary sources of cash from operations for the three months ended May 5, 2007 and April 29, 2006 were net earnings plus non-cash expenses for depreciation and amortization. The decrease in cash flows from operations for the three months ended May 5, 2007 was primarily due to a decline in accounts payable from the higher than normal level at February 3, 2007, which was mainly due to the timing of payments and receipts associated with the 53<sup>rd</sup> week in fiscal 2006. Accounts payable leverage (defined as accounts payable divided by merchandise inventory) was 66.4% as of February 3, 2007 and declined to 55.3% as of May 5, 2007.

Working capital (defined as current assets less current liabilities) was \$472.0 million as of May 5, 2007, compared to \$376.9 million as of April 29, 2006. Our primary source of liquidity is the sale of our merchandise inventory. We regularly review the age and condition of our merchandise and are able to maintain current merchandise inventory in our stores through replenishment processes and liquidation of slower-moving merchandise through clearance markdowns.

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### Investing Activities

During the three-month periods ended May 5, 2007 and April 29, 2006, we spent approximately \$47.4 million and \$18.0 million, respectively, on capital expenditures (excluding leased equipment) for fixtures and leasehold improvements to open new stores, to implement information technology systems, implement materials handling equipment and related distribution center systems, and for various other expenditures related to stores and buying and corporate offices. We opened 33 and 12 new stores during the three months ended May 5, 2007 and April 29, 2006, respectively. In addition, for the three months ended May 5, 2007 and April 29, 2006, we purchased investments of \$9.0 million and \$46.6 million, respectively, and received proceeds from the sale of investments of \$5.3 million and \$13.1 million, respectively.

We are forecasting approximately \$290.0 million in capital expenditures for 2007 to fund store opening improvements for new Ross and dd's DISCOUNTS stores, to fund the relocation or upgrade of existing stores, and to fund investments in store and merchandising systems, distribution center land, buildings, equipment and systems, and various buying and corporate office expenditures. We expect to fund remaining 2007 capital expenditures out of existing cash balances and cash flows from operations.

### Financing Activities

During the three-month periods ended May 5, 2007 and April 29, 2006, our liquidity and capital requirements were provided by cash flows from operations and trade credit. Substantially all of our store locations, buying offices, our corporate headquarters, and one distribution center are leased and, except for certain leasehold improvements and equipment, do not represent long-term capital investments. We own our distribution centers in Carlisle, Pennsylvania, Moreno Valley, California, and Fort Mill, South Carolina.

In March 2006, we repaid a \$50.0 million term debt in full.

Under our \$400.0 million two-year 2005 stock repurchase program we repurchased 1.5 million and 1.7 million shares of common stock for an aggregate purchase price of approximately \$50.9 million and \$48.9 million during the three-month periods ended May 5, 2007 and April 29, 2006, respectively.

Short-term trade credit represents a significant source of financing for merchandise inventory. Trade credit arises from customary payment terms and trade practices with our vendors. We regularly review the adequacy of credit available to us from all sources and expect to be able to maintain adequate trade, bank and other credit lines to meet our capital and liquidity requirements, including lease obligations in 2007.

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The table below presents our significant contractual payment obligations as of May 5, 2007:

(\$000)	Less than 1 year	1 – 3 years	3 – 5 years	After 5 years	Total <sup>1</sup>
<b>Contractual Obligations</b>					
Senior notes	\$ -	\$ -	\$ -	\$ 150,000	\$ 150,000

Interest payment obligations	9,667	19,335	19,335	79,198	127,535
Operating Leases:					
Rent obligations	286,595	518,771	402,493	459,784	1,667,643
Synthetic leases	9,039	8,592	8,182	5,113	30,926
Other synthetic lease obligations	7,670	1,834	-	56,000	65,504
Purchase obligations	954,534	16,765	1,930	-	973,229
Total contractual obligations	\$ 1,267,505	\$ 565,297	\$ 431,940	\$ 750,095	\$ 3,014,837

<sup>1</sup> Pursuant to the guidelines of FIN 48, a \$27.5 million reserve for unrecognized tax benefits is included in other long-term liabilities on the Company's condensed consolidated balance sheet. These obligations are excluded from the schedule above as the timing of payments cannot be reasonably estimated.

**Senior notes.** In October 2006, we entered into a Note Purchase Agreement with various institutional investors for \$150.0 million of unsecured, senior notes. The notes were issued in two series and funding occurred in December 2006. Series A notes were issued for an aggregate of \$85.0 million, are due in December 2018, and bear interest at a rate of 6.38%. Series B notes were issued for an aggregate of \$65.0 million, are due in December 2021, and bear interest at a rate of 6.53%. Interest on these notes is included in interest payment obligations in the table above.

#### Off-Balance Sheet Arrangements

**Operating leases.** Substantially all of our store sites, one of our distribution centers, and our buying offices and corporate headquarters are leased and, except for certain leasehold improvements and equipment, do not represent long-term capital investments.

We have lease arrangements for certain equipment in our stores for our point-of-sale ("POS") hardware and software systems. These leases are accounted for as operating leases for financial reporting purposes. The initial terms of these leases are two years, and we typically have options to renew the leases for two to three one-year periods. Alternatively, we may purchase or return the equipment at the end of the initial or each renewal term. We have guaranteed the value of the equipment of \$9.5 million, at the end of the respective initial lease terms, which is included in other synthetic lease obligations in the table above.

**Other financings.** We lease a 1.3 million square foot distribution center in Perris, California. The land and building for this distribution center is financed under a \$70.0 million ten-year synthetic lease that expires in July 2013. Rent expense on this center is payable monthly at a fixed annual rate of 5.8% on the lease balance of \$70.0 million. At the end of the lease term, we have the option to either refinance the \$70.0 million synthetic lease facility, purchase the distribution center at the amount of the then-outstanding lease obligation, or arrange a sale of the distribution center to a third party. If the distribution center is sold to a third party for less than \$70.0 million, we have agreed under a residual value guarantee to pay the lessor any shortfall amount up to \$56.0 million. Our contractual obligation of \$56.0 million is included in other synthetic lease obligations in the above table.

In accordance with Financial Accounting Standards Board ("FASB") Interpretation ("FIN") No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," we have recognized a liability and corresponding asset for the fair value of the residual value guarantee in the amount of \$8.3 million for the Perris, California distribution center and \$1.8 million for the POS lease. These residual value guarantees are being amortized on a straight-line basis over the original terms of the leases. The current portion of the related asset and liability is recorded in prepaid expenses and other and accrued expenses and other, respectively, and the long-term portion of the related assets and liabilities is recorded in other long-term assets and other long-term liabilities, respectively, in the accompanying Condensed Consolidated Balance Sheets.

In addition, we lease two separate warehouse facilities for packaway storage in Carlisle, Pennsylvania under operating leases expiring through 2011. In June 2006, we entered into a two-year lease extension with one one-year option for a warehouse facility in Fort Mill, South Carolina, extending the term to February 2009. These three leased facilities are being used primarily to store packaway merchandise.

The synthetic lease facilities described above, as well as our revolving credit facility and senior notes, have covenant restrictions requiring us to maintain certain interest coverage and leverage ratios. In addition, the interest rates under these agreements may vary depending on actual interest coverage ratios achieved. As of May 5, 2007 we were in compliance with these covenants.

**Purchase obligations.** As of May 5, 2007 we had purchase obligations of \$973.2 million. These purchase obligations primarily consist of merchandise inventory purchase orders, commitments related to store fixtures and supplies, and information technology service and maintenance contracts. Merchandise inventory purchase orders of \$918.3 million represent purchase obligations of less than one year as of May 5, 2007.

**Albertsons real estate transaction.** In October 2006, we announced an agreement with Albertsons LLC to acquire certain leasehold rights

to 46 former Albertsons sites in California, Florida, Texas, Arizona, Colorado and Oklahoma. We plan to incorporate about 40 of these sites into our 2007 new store expansion program, of which 14 sites were opened during the first quarter of 2007. This real estate opportunity gives us the ability to acquire a substantial number of store sites in several of our established, top performing markets. We expect to realize contributions to earnings and cash flow from these additional locations beginning in fiscal year 2007.

### Commercial Credit Facilities

The table below presents our significant available commercial credit facilities at May 5, 2007:

(\$000)	Amount of Commitment Expiration Per Period				Total amount committed
	Less than 1 year	1 - 3 years	3 - 5 years	After 5 years	
<b>Commercial Credit Commitments</b>					
Revolving credit facility	\$ -	\$ -	\$ 600,000	\$ -	\$ 600,000
Total commercial commitments	\$ -	\$ -	\$ 600,000	\$ -	\$ 600,000

**Revolving credit facility.** We have available a \$600.0 million revolving credit facility with our banks, which contains a \$300.0 million sublimit for issuances of standby letters of credit, of which \$229.4 million was available at May 5, 2007. In July 2006, we amended this facility to change the expiration date and interest pricing. Interest is LIBOR-based plus an applicable margin (currently 45 basis points) and is payable upon maturity but not less than quarterly. Our borrowing ability under this credit facility is subject to our maintaining certain interest coverage and leverage ratios. We have had no borrowings under this facility, which expires in July 2011.

**Standby letters of credit.** We use standby letters of credit to collateralize certain obligations related to our self-insured workers' compensation and general liability claims. We had \$70.6 million and \$62.8 million in standby letters of credit outstanding at May 5, 2007 and April 29, 2006, respectively.

**Trade letters of credit.** We had \$17.7 million and \$21.5 million in trade letters of credit outstanding at May 5, 2007 and April 29, 2006, respectively.

**Dividends.** In May 2007, our Board of Directors declared a cash dividend payment of \$.075 per common share, payable on or about July 2, 2007. Our Board of Directors declared quarterly cash dividends of \$.075 per common share in January 2007 and \$.06 in November 2006, and \$.06 per common share in January, May, and August 2006.

**Stock repurchase programs.** In November 2005, we announced that our Board of Directors authorized a new two-year stock repurchase program of up to \$400.0 million for 2006 and 2007. We repurchased 1.5 million and 1.7 million shares of common stock for aggregate purchase prices of approximately \$50.9 million and \$48.9 million for the three months ended May 5, 2007 and April 29, 2006, respectively.

We estimate that cash flows from operations, bank credit lines and trade credit are adequate to meet operating cash needs, fund our planned capital investments, repurchase common stock and make quarterly dividend payments for at least the next twelve months.

### Critical Accounting Policies

The preparation of our consolidated financial statements requires management to make estimates and assumptions that affect the amounts reported in the financial statements. These estimates and assumptions are evaluated on an ongoing basis and are based on historical experience and on various other factors that management believes to be reasonable. We believe the following critical accounting policies describe the more significant judgments and estimates used in the preparation of our condensed consolidated financial statements.

**Merchandise inventory.** Our merchandise inventory is stated at the lower of cost or market, with cost determined on a weighted average cost method. We purchase manufacturer overruns and canceled orders both during and at the end of a season which are referred to as "packaway" inventory. Packaway inventory is purchased with the intent that it will be stored in our warehouses until a later date, which may even be the beginning of the same selling season in the following year. Included in the carrying value of our merchandise inventory is a provision for shortage. The shortage reserve is based on historical shortage rates as evaluated through our periodic physical merchandise inventory counts and cycle counts. If actual market conditions, markdowns, or shortage are less favorable than those projected by us, or if sales of the merchandise inventory are more difficult than anticipated, additional merchandise inventory write-downs may be required.

**Long-lived assets.** We record a long-lived asset impairment charge when events or changes in circumstances indicate that the carrying amount of a long-lived asset may not be recoverable based on estimated future cash flows. An impairment loss would be recognized if analysis of the undiscounted cash flow of an asset group was less than the carrying value of the asset group. If our actual results differ materially from projected results, an impairment charge may be required in the future. In the course of performing this analysis, we determined that no long-lived asset impairment charge was required for the three months ended May 5, 2007 and April 29, 2006.

**Depreciation and amortization expense.** Property and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation is calculated using the straight-line method over the estimated useful life of the asset, typically ranging from five to twelve years for equipment and 20 to 40 years for real property. The cost of leasehold improvements is amortized over the useful life of the asset or the

applicable lease term, whichever is less.

**Lease accounting.** Beginning in the first quarter of 2006, we implemented prospectively FASB Staff Position (“FSP”) 13-1, “Accounting for Rental Costs Incurred During a Construction Period,” which requires that rental costs incurred during a construction period be expensed, not capitalized. Implementation of this new standard did not have a significant impact on our financial results for the year ended February 3, 2007. When a lease contains “rent holidays” or requires fixed escalations of the minimum lease payments, we record rental expense on a straight-line basis and the difference between the average rental amount charged to expense and the amount payable under the lease is recorded as deferred rent. We amortize deferred rent on a straight-line basis over the lease term commencing on the possession date. Tenant improvement allowances are included in other long-term liabilities and are amortized over the lease term. Tenant improvement allowances are included as a component of operating cash flows in the consolidated Statement of Cash Flows.

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**Self-insurance.** We self insure certain of our workers’ compensation and general liability risks as well as certain coverages under our health plans. Our self-insurance liability is determined actuarially, based on claims filed and an estimate of claims incurred but not reported. Should a greater amount of claims occur compared to what is estimated or the costs of medical care and state statutory requirements increase beyond what was anticipated, our recorded reserves may not be sufficient and additional charges could be required.

**Stock-based compensation.** We account for stock-based compensation under the provisions of SFAS No. 123(R). The determination of the fair value of stock options and ESPP shares, using the Black-Scholes model, is affected by our stock price as well as assumptions as to our expected stock price volatility over the term of the awards, actual and projected employee stock option exercise behavior, the risk-free interest rate and expected dividends.

SFAS No. 123(R) requires companies to estimate future expected forfeitures at the date of grant and revise those estimates in subsequent periods if actual forfeitures differ from those estimates. We use historical data to estimate pre-vesting forfeitures and to recognize stock-based compensation expense. All stock-based compensation awards are amortized on a straight-line basis over the requisite service periods of the awards.

The critical accounting policies noted above are not intended to be a comprehensive list of all of our accounting policies. In many cases, the accounting treatment of a particular transaction is specifically dictated by Generally Accepted Accounting Principles (“GAAP”), with no need for management’s judgment in their application. There are also areas in which management’s judgment in selecting one alternative accounting principle over another would not produce a materially different result.

### **New Accounting Pronouncements**

Emerging Issues Task Force (“EITF”) Issue 06-2, “Accounting for Sabbatical Leave and Other Similar Benefits Pursuant to FASB No. 43, Accounting for Compensated Absences” (“EITF No. 06-2”) is effective for fiscal years beginning after December 15, 2006. Under EITF No. 06-2 compensation cost associated with sabbatical or other similar benefit programs should be accrued over the requisite service period. Adoption of this standard did not have a material impact on our operating results or financial position.

SFAS No. 157, “Fair Value Measurements” (“SFAS No. 157”) is effective for fiscal years beginning after November 15, 2007. SFAS No. 157 defines fair value, establishes a framework for measuring fair value and expands required disclosures regarding fair value measurements. We do not believe the adoption of SFAS No. 157 will have a material impact on our operating results or financial position.

### **Forward-Looking Statements**

This report may contain a number of forward-looking statements regarding, without limitation, planned store growth, new markets, expected sales, projected earnings levels, capital expenditures and other matters. These forward-looking statements reflect our then current beliefs, projections and estimates with respect to future events and our projected financial performance, growth, operations and competitive position. The words “plan,” “expect,” “anticipate,” “estimate,” “believe,” “forecast,” “projected,” “guidance,” “looking ahead” and similar expressions identify forward-looking statements.

Future economic and industry trends that could potentially impact revenue, profitability, and growth remain difficult to predict. As a result, our forward-looking statements are subject to risks and uncertainties which could cause our actual results to differ materially from those forward-looking statements and our previous expectations and projections. Refer to Part II, Item 1A in this quarterly report on Form 10-Q for a more complete discussion of risk factors for Ross and dd’s DISCOUNTS. The factors underlying our forecasts are dynamic and subject to change. As a result, any forecasts or forward-looking statements speak only as of the date they are given and do not necessarily reflect our outlook at any other point in time. We disclaim any obligation to update or revise these forward-looking statements.

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Other risk factors are detailed in our filings with the Securities and Exchange Commission including, without limitation, our annual report on Form 10-K for 2006.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to market risks, which primarily include changes in interest rates. We do not engage in financial transactions for trading or speculative purposes.

We occasionally use forward contracts to hedge against fluctuations in foreign currency exchange rates. We had no outstanding forward contracts at May 5, 2007.

Interest that is payable on our revolving credit facilities is based on variable interest rates and is, therefore, affected by changes in market interest rates. As of May 5, 2007, we had no borrowings outstanding under our revolving credit facilities.

A hypothetical 100 basis point increase in prevailing market interest rates would not have materially impacted our consolidated financial position, results of operations, or cash flows as of and for the three-month period ended May 5, 2007. We do not consider the potential losses in future earnings and cash flows from reasonably possible, near term changes in interest rates to be material.

#### **Item 4. Controls and Procedures**

##### **Disclosure Controls and Procedures**

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our “disclosure controls and procedures” (as defined in Exchange Act Rule 13a-15(e)) as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

It should be noted that any system of controls, however well designed and operated, can provide only reasonable, and not absolute, assurance that the objectives of the system will be met. In addition, the design of any control system is based in part upon certain assumptions about the likelihood of future events.

##### **Quarterly Evaluation of Changes in Internal Control Over Financial Reporting**

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, also conducted an evaluation of our internal control over financial reporting to determine whether any change occurred during the first fiscal quarter of 2007 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. Based on that evaluation, our management concluded that there was no such change during the first fiscal quarter.

## **PART II – OTHER INFORMATION**

### **Item 1. Legal Proceedings**

The two paragraphs under the caption “Provision for litigation expense and other legal proceedings” in Note A of Notes to Condensed Consolidated Financial Statements are incorporated herein by reference.

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### **Item 1A. Risk Factors**

Our quarterly report on Form 10-Q for our first fiscal quarter 2007, and information we provide in our press releases, telephonic reports and other investor communications, including those on our website, may contain a number of forward-looking statements with respect to anticipated future events and our projected financial performance, growth, operations and competitive position that are subject to risk factors that could cause our actual results to differ materially from those forward-looking statements and our prior expectations and projections. Refer to Management’s Discussion and Analysis for a more complete identification and discussion of “Forward-Looking Statements.”

Our financial condition, results of operations, cash flows and the performance of our common stock may be adversely affected by a number of risk factors. Risks and uncertainties that apply to both Ross and dd’s DISCOUNTS include, without limitation, the following:

#### **We are subject to the economic and industry risks that affect large retailers operating in the United States.**

Our business is exposed to the risks of a large, multi-store retailer, which must continually and efficiently obtain and distribute a supply of fresh merchandise throughout a large and growing network of stores. These risks include a number of factors, including:

- An increase in the level of competitive pressures in the retail apparel or home-related merchandise industry.
- Potential changes in the level of consumer spending on or preferences for apparel or home-related merchandise, including the potential impact from higher gas prices and/or lower home prices on consumer spending.
- Potential changes in geopolitical and/or general economic conditions that could affect the availability of product and/or the level of consumer spending.
- Unseasonable weather trends that could affect consumer demand for seasonal apparel and apparel-related products.
- A change in the availability, quantity or quality of attractive brand-name merchandise at desirable discounts that could impact our ability to purchase product and continue to offer customers a wide assortment of merchandise at competitive prices.
- Potential disruptions in supply chain that could impact our ability to deliver product to our stores in a timely and cost-effective manner.
- A change in the availability, quality or cost of new store real estate locations.
- A downturn in the economy or a natural disaster in California or in another region where we have a concentration of stores or a distribution center. Our corporate headquarters, two distribution centers and 28% of our stores are located in California.
- Potential pressure on freight costs from higher-than-expected fuel surcharges.

**We are subject to operating risks as we attempt to execute on our merchandising and growth strategies.**

The continued success of our business depends, in part, upon our ability to increase sales at our existing store locations, and to open new stores and to operate stores on a profitable basis. Our existing strategies and store expansion programs may not result in a continuation of our anticipated revenue growth or profit growth. In executing our off-price retail strategies and working to improve our efficiency, expand our store network, and reduce our costs, we face a number of operational risks, including:

- Our ability to attract and retain personnel with the retail expertise necessary to execute our strategies.
- Our ability to effectively implement and operate our various supply chain, core merchandising and other information systems, including generation of all necessary data and reports for merchants, allocators and other business users in a timely and cost-effective manner.
- Our ability to successfully implement new processes and systems enhancements that are expected to improve our merchandising capabilities with the goal of being able to plan, buy and allocate product at a more local versus regional level.
- Our ability to improve new store sales and profitability, especially in newer regions and markets.

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- Our ability to achieve and maintain targeted levels of productivity and efficiency in our distribution centers.
- Our ability to continue to acquire or lease acceptable new store locations.
- Our ability to identify and to successfully enter new geographic markets.
- Lower than planned gross margin, including higher than planned markdowns, inventory shortage or freight costs.
- Greater than planned operating costs including, among other factors, increases in occupancy costs, advertising costs, and wage and benefit costs, including the impact of changes in labor laws or as a result of class action or other lawsuits relating to wage and hour claims and other labor-related matters.
- Our ability to convert certain Albertsons real estate sites to the Ross and dd's DISCOUNTS formats in a timely and cost effective manner and on acceptable terms, and the ability to achieve targeted levels of sales, profits and cash flows from these acquired store locations.

The above risks could significantly affect our operating results and financial condition.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

Information regarding shares of common stock we repurchased during the first quarter of 2007 is as follows:

Period	Total number of shares (or units) purchased <sup>1</sup>	Average price paid per share (or unit)	Total number of shares (or units) purchased as part of publicly announced plans or programs	Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (\$000)
February (2/4/2007-3/3/2007)	490,567	\$ 33.69	480,187	\$ 184,000
March (3/4/2007-4/7/2007)	584,176	\$ 33.42	518,522	\$ 166,000
April (4/8/2007-5/5/2007)	511,480	\$ 34.04	509,445	\$ 149,000
Total	1,586,223	\$ 33.70	1,508,154	\$ 149,000

<sup>1</sup> We acquired 78,069 shares during the quarter ended May 5, 2007 related to income tax withholdings for restricted stock. All remaining shares were repurchased under the two-year \$400.0 million stock repurchase program publicly announced in November 2005.

**Item 6. Exhibits**

Incorporated herein by reference to the list of Exhibits contained in the Exhibit Index within this Report.

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**SIGNATURES**

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



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**ROSS STORES, INC.**(Registrant)

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Date: June 13, 2007

By: /s/ J. Call

John G. Call

Senior Vice President, Chief Financial Officer,

Principal Accounting Officer and Corporate Secretary

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**INDEX TO EXHIBITS**

Exhibit Number	Exhibit
3.1	Amendment of Certificate of Incorporation dated May 21, 2004 and Amendment of Certificate of Incorporation dated June 5, 2002 and Corrected First Restated Certificate of Incorporation, incorporated by reference to Exhibit 3.1 to the Form 10-Q filed by Ross Stores for its quarter ended July 31, 2004.
3.2	Amended By-laws, dated August 25, 1994, incorporated by reference to Exhibit 3.2 to the Form 10-Q filed by Ross Stores for its quarter ended July 30, 1994.
10.1	Form of Employment Agreement between Ross Stores, Inc., and Executive Vice Presidents or Senior Vice Presidents.
10.2	Employment Agreement executed May 2007 between James S. Fassio and Ross Stores, Inc.
10.3	Employment Agreement executed April 2007 between Lisa Panattoni and Ross Stores, Inc.
10.4	Employment Agreement executed April 2007 between Barbara Rentler and Ross Stores, Inc.
10.5	First Amendment to the Employment executed April 2007 between Barbara Rentler and Ross Stores, Inc.
10.6	Form of Performance Share Award Agreement.
10.7	Second Amendment to the Ross Stores, Inc. 2004 Equity Incentive Plan effective March 22, 2007.
10.8	Third Amendment to the Employment Agreement executed April 2007 between Michael Balmuth and Ross Stores, Inc.
15	Letter re: Unaudited Interim Financial Information from Deloitte & Touche LLP dated June 12, 2007.
21	Subsidiaries of the Registrant.
31.1	Certification of Chief Executive Officer Pursuant to Sarbanes-Oxley Act Section 302(a).
31.2	Certification of Chief Financial Officer Pursuant to Sarbanes-Oxley Act Section 302(a).
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350.
32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350.

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## EXECUTIVE EMPLOYMENT AGREEMENT

**THIS EXECUTIVE EMPLOYMENT AGREEMENT** (this "Agreement") is made effective [REDACTED], (the "Effective Date") by and between Ross Stores, Inc. (the "Company"), a Delaware corporation, and [REDACTED] (the "Executive").

### RECITALS

A. The Company wishes to employ the Executive, and the Executive is willing to accept such employment, as [REDACTED].

B. It is now the mutual desire of the Company and the Executive to enter into a written employment agreement to govern the terms of the Executive's employment by the Company as of and following the Effective Date on the terms and conditions set forth below.

### TERMS AND CONDITIONS

In consideration for the promises of the parties set forth below, the Company and the Executive hereby agree as follows:

1. **Term.** Subject to the provisions of Section 6 of this Agreement, the term of employment of the Executive by the Company under this Agreement (the "Term of Employment") shall be as follows:

(a) **Initial Term.** The initial Term of Employment of the Executive by the Company under this Agreement shall begin on the Effective Date and end on [REDACTED] (the "Initial Term"), unless extended or terminated earlier in accordance with this Agreement.

(b) **Renewal Term.** Upon the timely written request of the Executive to extend the Term of Employment, the Compensation Committee (the "Committee") of the Board of Directors (the "Board") of the Company shall consider extending the Executive's employment with the Company under this Agreement. To be timely, such request must be delivered to the Company's Chief Executive Officer not earlier than twelve (12) months prior to the end of the then effective Initial Term or Renewal Term and, in any case, while the Executive remains an employee of the Company. Such request must contain no proposed modification to the provisions of this Agreement other than an extension of the Term of Employment as then in effect for an additional two (2) years. Within thirty (30) days following the receipt of such notice, the Chief Executive Officer will discuss such request with the Committee and advise the Executive, in writing, within thirty (30) days following its consideration of the Executive's written request, of the approval or disapproval of such extension request. The failure to provide such written advice shall constitute a denial of the Executive's request for extension. If the Executive's request for an extension is approved, the Term of Employment shall be extended for two (2) additional years commencing on the date immediately following the date of expiration of the Term of Employment in effect at the time of the Executive's written request. Such additional two-year period is referred to herein as a "Renewal Term."

2. **Position and Duties.** During the Term of Employment, the Executive shall serve as [REDACTED]. As used in this Agreement, the term "Company" includes Ross Stores, Inc. and each and any of its divisions, affiliates or subsidiaries (except that, where the term relates to stock, stockholders, stock options or other stock-based awards or the Board, it means Ross Stores, Inc.). The Executive's employment may be transferred, assigned, or re-assigned to Ross Stores, Inc. or a division, affiliate or subsidiary of Ross Stores, Inc., and such transfer, assignment, or re-assignment will not constitute a termination of employment or "Good Reason" for the Executive's termination of employment under this Agreement. During the Term of Employment, the Executive may engage in outside activities provided those activities (including but not limited to membership on boards of directors of not-for-profit and for-profit organizations) do not conflict with the Executive's duties and responsibilities hereunder, and provided further that the Executive gives written notice to the Board of any significant outside business activity in which the Executive plans to become involved, whether or not such activity is pursued for profit.

3. **Principal Place of Employment.** The Executive shall be employed at the Company's offices in [Pleasanton, California] [New York, New York], except for required travel on the Company's business to an extent substantially consistent with present business travel obligations of the Executive's position.

#### 4. Compensation and Related Matters.

(a) **Salary.** During the Term of Employment, the Company shall pay to the Executive a salary at a rate of not less than [REDACTED] Dollars (\$ [REDACTED]) per annum. The Executive's salary shall be payable in substantially equal installments in accordance with the Company's normal payroll practices applicable to senior executives. Subject to the first sentence of this Section 4(a), the Executive's salary may be adjusted from time to time by the Committee in accordance with normal business practices of the Company.

(b) **Bonus.** During the Term of Employment, the Executive shall be eligible to receive an annual bonus paid under the Company's existing incentive bonus plan under which the Executive is eligible (which is currently the Incentive Compensation Plan) or any replacement plan that may subsequently be established and in effect during the Term of Employment. The current target annual bonus the Executive is eligible to earn upon achievement of 100% of all applicable performance targets under such incentive bonus plan is \_\_\_\_% of the Executive's then effective annual salary rate. The Executive's death, termination for Cause or Voluntary Termination (as described in Sections 6(a), 6(c) and 6(f), respectively) prior to the Company's payment of the bonus for a fiscal year of the Company will cause the Executive to be ineligible for any annual bonus for that fiscal year or any pro-rata portion of such bonus.

(c) **Expenses.** During the Term of Employment, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in performing services hereunder, including all reasonable expenses of travel and living while away from home, provided that such expenses are incurred and accounted for in accordance with the policies and procedures established by the Company.

(d) **Benefits.** During the Term of Employment, the Executive shall be entitled to participate in all of the Company's employee benefit plans and arrangements in which senior executives of the Company are eligible to participate. The Company shall not make any changes in such plans or arrangements which would adversely affect the Executive's rights or benefits thereunder, unless such change occurs pursuant to a program applicable to all senior executives of the Company and does not result in a proportionately greater reduction in the rights or benefits of the Executive as compared with any other similarly situated senior executive of the Company. The Executive shall be entitled to participate in, or receive benefits under, any employee benefit plan or arrangement made available by the Company in the future to its senior executives, subject to, and on a basis consistent with, the terms, conditions and overall administration of such plans and arrangements. Except as otherwise specifically provided herein, nothing paid to the Executive under any plan or arrangement presently in effect or made available in the future shall be in lieu of the salary or bonus otherwise payable under this Agreement.

(e) **Vacations.** During the Term of Employment, the Executive shall be entitled to twenty (20) vacation days in each calendar year, and to compensation in respect of earned but unused vacation days, determined in accordance with the Company's vacation plan. The Executive shall also be entitled to all paid holidays given by the Company to its senior executives. Unused vacation days shall not be forfeited once they have been earned and, if still unused at the time of the Executive's termination of employment with the Company, shall be promptly paid to the Executive at their then-current value, based on the Executive's daily salary rate at the time of the Executive's termination of employment.

(f) **Services Furnished.** The Company shall furnish the Executive with office space and such services as are suitable to the Executive's position and adequate for the performance of the Executive's duties during the Term of Employment.

## 5. Confidential Information and Intellectual Property.

(a) Other than in the performance of the Executive's duties hereunder, the Executive agrees not to use in any manner or disclose, distribute, publish, communicate or in any way cause to be used, disclosed, distributed, published, or communicated in any way or at any time, either while in the Company's employ or at any time thereafter, to any person not employed by the Company, or not engaged to render services to the Company, any Confidential Information (as defined below) obtained while in the employ of the Company.

(b) Confidential Information includes any written or unwritten information which relates to and/or is used by the Company or its subsidiaries, affiliates or divisions, including, without limitation (i) the names, addresses, buying habits and other special information regarding past, present and potential customers, employees and suppliers of the Company, (ii) customer and supplier contracts and transactions or price lists of the Company and suppliers, (iii) methods of distribution, (iv) all agreements, files, books, logs, charts, records, studies, reports, processes, schedules and statistical information, (v) data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, (vi) supplier information, tax records, personnel histories and records, sales information, and property information, (vii) information regarding the present or future phases of business, (viii) ideas, inventions, trademarks, business information, know-how, processes, techniques, improvements, designs, redesigns, creations, discoveries, trade secrets, and developments, (ix) all computer software licensed or developed by the Company or its subsidiaries, affiliates or divisions, computer programs, computer-based and web-based training programs, and systems, and (x) finances and financial information, but Confidential Information will not include information of the Company or its subsidiaries, affiliates or divisions that (1) became or becomes a matter of public knowledge through sources independent of the Executive, (2) has been or is disclosed by the Company or its subsidiaries, affiliates or divisions without restriction on its use, or (3) has been or is required or specifically permitted to be disclosed by law or governmental order or regulation. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's Chief Executive Officer confirms to the Executive that the information is public knowledge.

(c) The provisions of this Section 5 shall not preclude the Executive from disclosing such information to the Executive's professional tax advisor or legal counsel solely to the extent necessary to the rendering of their professional services to the Executive if such individuals agree to keep such information confidential.

(d) The Executive agrees that upon leaving the Company's employ the Executive will remain reasonably available to answer questions from Company officers regarding the Executive's former duties and responsibilities and the knowledge the Executive obtained in connection therewith.

(e) The Executive agrees that upon leaving the Company's employ the Executive will not communicate with, or give statements to, any member of the media (including print, television, or radio media) relating to any matter (including pending or threatening lawsuits or administrative investigations) about which the Executive has knowledge or information (other than knowledge or information that is not Confidential Information) as a result of employment with the Company. The Executive further agrees to notify the Chief Executive Officer or his or her designee immediately after being contacted by any member of the media with respect to any matter affected by this section.

(f) The Executive agrees that all information, inventions, and discoveries, whether or not patented or patentable, made or conceived by the Executive, either alone or with others, at any time while employed by the Company, which arises out of such employment or is pertinent to any field of business or research in which, during such employment, the Company, its subsidiaries, affiliates or divisions is engaged or (if such is known to or ascertainable by the Executive) is considering engaging ("Intellectual Property") shall (i) be and remain the sole property of the Company and the Executive shall not seek a patent with respect to such Intellectual Property without the prior consent of an authorized representative of the Company and (ii) be disclosed promptly to an authorized representative of the Company along with all information the Executive possesses with regard to possible applications and uses. Further, at the request of the Company, and without expense or

additional compensation to the Executive, the Executive agrees to execute such documents and perform such other acts as the Company deems necessary to obtain patents on such Intellectual Property in a jurisdiction or jurisdictions designated by the Company, and to assign to the Company or its designee such Intellectual Property and all patent applications and patents relating thereto.

(g) The Executive and the Company agree that the Executive intends all original works of authorship within the purview of the copyright laws of the United States authored or created by the Executive in the course of the Executive's employment with the Company will be works for hire within the meaning of such copyright law.

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(h) Upon termination of the Executive's employment, or at any time upon request of the Company, the Executive will return to the Company all Confidential Information and Intellectual Property, in any form, including but not limited to letters, memoranda, reports, notes, notebooks, books of account, drawings, prints, specifications, formulae, data printouts, microfilms, magnetic tapes, disks, recordings, documents, and all copies thereof.

**6. Termination.** The Executive's employment may be terminated during the Term of Employment only as follows:

(a) **Death.** The Executive's employment shall terminate upon the Executive's death.

(b) **Disability.** If, as a result of the Executive's Disability (as defined below), the Executive shall have been absent from the Executive's duties hereunder on a full-time basis for the entire period of six consecutive months, and, within thirty days after written notice of termination is given by the Company (which may occur before or after the end of such six-month period), the Executive shall not have returned to the performance of the Executive's duties hereunder on full-time basis, the Executive's employment shall terminate. For purposes of this Agreement, the term "Disability" shall mean a physical or mental illness, impairment or condition reasonably determined by the Board that prevents the Executive from performing the duties of the Executive's position under this Agreement.

(c) **For Cause.** The Company may terminate the Executive's employment for Cause. For this purpose, "Cause" means the occurrence of any of the following (i) the Executive's continuous failure to substantially perform the Executive's duties hereunder (unless such failure is a result of a Disability as defined in Section 6(b)), (ii) the Executive's theft, dishonesty, breach of fiduciary duty for personal profit or falsification of any documents of the Company, (iii) the Executive's material failure to abide by the applicable code(s) of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct) of the Company, (iv) misconduct by the Executive within the scope of Section 304 of the Sarbanes-Oxley Act of 2002 as a result of which the Company is required to prepare an accounting restatement, (v) the Executive's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company (including, without limitation, the Executive's improper use or disclosure of confidential or proprietary information of the Company), (vi) any intentional misconduct or illegal or grossly negligent conduct by the Executive which is materially injurious to the Company monetarily or otherwise, (vii) any material breach by the Executive of the provisions of Section 9 [Certain Employment Obligations] of this Agreement, or (viii) the Executive's conviction (including any plea of guilty or nolo contendere) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which materially impairs the Executive's ability to perform his or her duties with the Company. A termination for Cause shall not take effect unless: (1) the Executive is given written notice by the Company of its intention to terminate the Executive for Cause; (2) the notice specifically identifies the particular act or acts or failure or failures to act which are the basis for such termination; (3) the notice is given within sixty (60) days of the Company's learning of such act or acts or failure or failures to act; and (4) only in the case of clause (i), (iii), (v), (vi) or (vii) of the second sentence of this Section 6(c), the Executive fails to substantially cure such breach, to the extent such cure is possible, within sixty (60) days after the date that such written notice is given to the Executive.

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(d) **Without Cause.** The Company may terminate the Executive's employment at any time Without Cause. A termination "Without Cause" is a termination by the Company of the Executive's employment with the Company for any reasons other than the death or Disability of the Executive or the termination by the Company of the Executive for Cause as described in Section 6(c).

(e) **Termination by the Executive for Good Reason.** The Executive may terminate the Executive's employment with the Company for "Good Reason," which shall be deemed to occur if the Executive terminates the Executive's employment with the Company within sixty (60) days after written notice to the Company by the Executive of the occurrence of one or more of the following conditions, which condition(s) have not been cured within ten (10) business days after the Company's receipt of such written notice: (1) a failure by the Company to comply with any material provision of this Agreement (including but not limited to the reduction of the Executive's salary or the target annual bonus opportunity set forth in Section 4(b), (2) a significant diminishment in the nature or scope of the authority, power, function or duty attached to the position which the Executive currently maintains without the express written consent of the Executive, or (3) the relocation of the Executive's Principal Place of Employment as described in Section 3 to a location that increases the regular one-way commute distance between the Executive's residence and Principal Place of Employment by more than 25 miles without the Executive's prior written consent. The Executive's failure to give reasonably prompt written notice to the Company of the occurrence of a condition constituting Good Reason or to terminate employment for Good Reason within the 60-day period following the Executive's written notice of the occurrence of such condition shall waive the Executive's right to terminate employment for Good Reason based upon such occurrence of such condition.

(f) **Voluntary Termination.** The Executive may voluntarily resign from the Executive's employment with the Company at any time (a "Voluntary Termination"). A voluntary resignation from employment by the Executive for Good Reason pursuant to Section 6(e) shall not be deemed a Voluntary Termination.

(g) **Non-Renewal Termination.** If the Executive fails to request an extension of the Term of Employment in accordance with Section 1(b) or if the Committee fails to approve such request, this Agreement shall automatically expire at the end of the then current Term of Employment (a "Non-Renewal Termination").

## 7. Notice and Effective Date of Termination

(a) **Notice.** Any termination of the Executive's employment by the Company or by the Executive during the Term of Employment (other than as a result of the death of the Executive or a Non-Renewal Termination described in Section 6(g)) shall be communicated by written notice of termination to the other party hereto. Such notice shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under that provision.

(b) **Date of Termination.** The date of termination of the Executive's employment shall be:

(i) if the Executive's employment is terminated by the Executive's death, the date of the Executive's death;

(ii) if the Executive's employment is terminated due to Disability pursuant to Section 6(b), the date of termination shall be the last to occur of the 31st day following delivery of the notice of termination to the Executive by the Company or the end of the consecutive six-month period referred to in Section 6(b).

(iii) if the Executive's employment is terminated for any other reason by either party, the date on which a notice of termination is delivered to the other party; and

(iv) if the Agreement expires pursuant to a Non-Renewal Termination described in Section 6(g), the parties' employment relationship shall terminate on the last day of the then current Term of Employment without any notice.

## 8. Compensation and Benefits Upon Termination.

(a) **Termination Due To Disability, Without Cause or For Good Reason.** If the Executive's employment terminates pursuant to Section 6(b) [Disability], Section 6(d) [Without Cause], or Section 6(e) [Termination by Executive for Good Reason], then, subject to Section 22 [Compliance with Section 409A], in addition to all salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment, the Executive shall be entitled to the following, provided that within sixty (60) days following the Executive's termination of employment the Executive executes a general release of claims against the Company and its subsidiaries, affiliates, stockholders, directors, officers, employees, agents, successors and assigns in a form approved by the Company (the "Release") and the period for revocation, if any, of such Release has expired without the Release having been revoked:

(i) **Salary.** The Company shall continue to pay to the Executive the Executive's salary, at the rate in effect immediately prior to such termination of employment, through the remainder of the Term of Employment then in effect.

(ii) **Bonus.** The Company shall continue to pay to the Executive an annual bonus through the remainder of the Term of Employment then in effect; provided, however, that the amount of the annual bonus determined in accordance with this Section 8(a)(ii) for the fiscal year of the Company in which such Term of Employment ends shall be prorated on the basis of the number of days of such Term of Employment occurring within such fiscal year. The amount of each annual bonus payable pursuant to this Section 8(a)(ii), prior to any proration, shall be equal to the greater of (A) the annual bonus earned by the Executive for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or (B) the annual bonus that the Executive would have earned under the Company's bonus plan for the fiscal year of the Company in which the Executive's termination of employment occurs had the Executive remained in its employment. However, in no case shall any such post-termination annual bonus exceed the lesser of 100% of the Executive's target bonus for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or 100% of the Executive's target bonus for the fiscal year of the Company in which the Executive's termination of employment occurs. Such bonuses shall not be paid until due under the applicable Company bonus plan.

(iii) **Stock Options.** Stock options granted to the Executive by the Company and which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested in full upon such termination of employment.

(iv) **Restricted Stock.** Shares of restricted stock granted to the Executive by the Company which have not become vested as of the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested on a pro rata basis. The number of such additional shares of restricted stock that shall become vested as of the date of the Executive's termination of employment shall be that number of additional shares that would have become vested through the date of such termination of employment at the rate(s) determined under the vesting schedule applicable to such shares had such vesting schedule provided for the accrual of vesting on a daily basis (based on a 365 day year). The pro rata amount of shares vesting through the date of termination/non-renewal shall be calculated by multiplying the number of unvested shares scheduled to vest in each respective vesting year by the ratio of (a) the number of days from the date of grant through the date of termination/non-renewal, and the number of days from the date of grant through the original vesting date of

the respective vesting tranche. Any shares of restricted stock remaining unvested after such pro rata acceleration of vesting shall automatically be reacquired by the Company in accordance with the provisions of the applicable restricted stock agreement, and the Executive shall have no further rights in such unvested portion of the restricted stock.

(v) **Other Equity Awards.** Except as set forth in Sections 8(a)(iii) and 8(a)(iv), performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall vest and be settled in accordance with their terms.

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The Company shall have no further obligations to the Executive as a result of termination of employment described in this Section 8(a) except as set forth in Section 12.

(b) **Death, Termination for Cause or Voluntary Termination.** If the Executive's employment terminates pursuant to Section 6(a) [Death], Section 6(c) [For Cause] or Section 6(f) [Voluntary Termination], the Executive (or the Executive's designee or the Executive's estate) shall be entitled to receive only the salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment. The Executive shall not be entitled to any bonus not paid prior to the date of the Executive's termination of employment, and the Executive shall not be entitled to any prorated bonus payment for the year in which the Executive's employment terminates. Any stock options granted to the Executive by the Company shall continue to vest only through the date on which the Executive's employment terminates, and unless otherwise provided by their terms, any restricted stock, performance share awards or other equity awards that were granted to the Executive by the Company that remain unvested as of the date on which the Executive's employment terminates shall automatically be forfeited and the Executive shall have no further rights with respect to such awards. The Company shall have no further obligations to the Executive as a result of termination of employment described in this Section 8(b) ) except as set forth in Section 12.

(c) **Non-Renewal Termination.** If the Agreement expires as set forth in Section 6(g) [Non-Renewal Termination], then, subject to Section 22 [Compliance with Section 409A], in addition to all salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment, the Executive shall be entitled to the following, provided that within sixty (60) days following the Executive's termination of employment the Executive executes the Release and the period for revocation, if any, of such Release has expired without the Release having been revoked:

(i) **Bonus.** The Company shall pay the Executive an annual bonus for the fiscal year of the Company in which the date of the Executive's termination of employment occurs, which shall be prorated for the portion of such fiscal year that the Executive is employed by the Company. The amount of such annual bonus, prior to proration, shall be equal to the greater of (A) the annual bonus earned by the Executive for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or (B) the annual bonus that the Executive would have earned under the Company's bonus plan for the fiscal year of the Company in which the Executive's termination of employment occurs had the Executive remained in its employment. However, in no case shall any such post-termination annual bonus exceed the lesser of 100% of the Executive's target bonus for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or 100% of the Executive's target bonus for the fiscal year of the Company in which the Executive's termination of employment occurs. Such bonus shall not be paid until due under the applicable Company bonus plan.

(ii) **Stock Options.** Stock options granted to the Executive by the Company and which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall be vested and exercisable in accordance with their terms.

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(iii) **Restricted Stock.** Shares of restricted stock granted to the Executive by the Company which have not become vested as of the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested on a pro rata basis. The number of such additional shares of restricted stock that shall become vested as of the date of the Executive's termination of employment shall be that number of additional shares that would have become vested through the date of such termination of employment at the rate(s) determined under the vesting schedule applicable to such shares had such vesting schedule provided for the accrual of vesting on a daily basis (based on a 365 day year). The pro rata amount of shares vesting through the date of termination/non-renewal shall be calculated by multiplying the number of unvested shares scheduled to vest in each respective vesting year by the ratio of (a) the number of days from the date of grant through the date of termination/non-renewal, and the number of days from the date of grant through the original vesting date of the respective vesting tranche. Any shares of restricted stock remaining unvested after such pro rata acceleration of vesting shall automatically be reacquired by the Company in accordance with the provisions of the applicable restricted stock agreement, and the Executive shall have no further rights in such unvested portion of the restricted stock.

(iv) **Other Equity Awards.** Except as set forth in Sections 8(c)(ii) and 8(c)(iii), performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall vest and be settled in accordance with their terms.

The Company shall have no further obligations to the Executive as a result of termination of employment described in this Section 8(c) except as set forth in Section 12.

(d) **Special Change in Control Provisions.**

(i) **Change in Control Benefits.**

(1) **Without Regard to Termination of Employment.** In the event of a Change in Control (as defined below), all shares of restricted stock granted to the Executive by the Company shall become vested in full immediately prior to the consummation of such Change in Control, and, subject to Section 22 [Compliance with Section 409A], the Executive shall be entitled to receive an additional salary equal to \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per month for a period of two (2) years following the Change in Control unless and until the Voluntary Termination (as defined in Section 6(f)) of the Executive's employment or the termination for Cause (as defined in Section 6(c)) of the Executive's employment. Except as set forth in this Section 8(d)(i)(1) or Section 8(d)(i)(2) below, the treatment of stock options, performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of such Change in Control shall be determined in accordance with their terms.

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(2) **Upon Certain Termination of Employment.** In addition to the payments and benefits provided by Section 8(d)(i)(1) above, if the Executive's employment is terminated either by the Company Without Cause (as defined in Section 6(d)) or by the Executive for Good Reason (as defined in Section 6(e)), in either case within a period commencing one (1) month prior to and ending twelve (12) months following a Change in Control, then, subject to Section 22 [Compliance with Section 409A], the Executive shall be entitled to the following (in addition to any other payments or benefits provided under this Agreement), provided that within sixty (60) days following the Executive's termination of employment the Executive executes the Release and the period for revocation, if any, of such Release has expired without the Release having been revoked:

a. **Salary.** The salary that shall be payable to the Executive under Section 8(a)(i) shall be paid for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of the Executive's termination of employment.

b. **Bonus.** The annual bonus that shall be payable to the Executive under Section 8(a)(ii) shall be paid for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of the Executive's termination of employment; provided, however, that the amount of the annual bonus determined in accordance with Section 8(a)(ii) for the fiscal year of the Company in which such Term of Employment or two-year period, as the case may be, ends shall be prorated on the basis of the number of days of such Term of Employment or two-year period occurring within such fiscal year.

c. **Health Care Coverage.** The Executive shall be entitled to the continuation of the Executive's health care coverage under the Company's employee benefit plans (including medical, dental, vision and mental coverage) which the Executive had at the time of the termination of employment (including coverage for the Executive's dependents to the extent such dependents were covered immediately prior to such termination of employment) at the Company's expense for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of the Executive's termination of employment. Such health care continuation rights will be in addition to any rights the Executive may have under ERISA Sections 600 and thereafter and Section 4980B of the Internal Revenue Code ("COBRA coverage").

d. **Estate Planning.** The Executive shall be entitled to reimbursement of the Executive's estate planning expenses (including attorneys' fees) on the same basis, if any, as to which the Executive was entitled to such reimbursements immediately prior to such termination of employment for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of termination of employment.

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(ii) **Change in Control Defined.** A "Change in Control" shall be deemed to have occurred if: (1) any person or group (within the meaning of Rule 13d-3 of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended) shall acquire during the twelve-month period ending on the date of the most recent acquisition by such person or group, in one or a series of transactions, whether through sale of stock or merger, ownership of stock of the Company that constitutes 35% or more of the total voting power of the stock of the Company or any successor to the Company; (2) a merger in which the Company is a party pursuant to which any person or such group acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Company, or (3) the sale, exchange, or transfer of all or substantially all of the Company's assets (other than a sale, exchange, or transfer to one or more corporations where the stockholders of the Company before and after such sale, exchange, or transfer, directly or indirectly, are the beneficial owners of at least a majority of the voting stock of the corporation(s) to which the assets were transferred).

(iii) **Excise Tax Gross-Up.** If the Executive becomes entitled to one or more payments (with a "payment" for this purpose including the accelerated vesting of restricted stock, stock options or other equity awards, or other non-cash benefits or property), whether pursuant to the terms of this Agreement or any other plan or agreement with the Company or any affiliated company (collectively, "Change in Control Payments"), which are or become subject to the tax (the "Excise Tax") imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall pay to the Executive at the time specified below such amount (the "Gross-up Payment") as may be necessary to place the Executive in the same after-tax position as if no portion of the Change in Control Payments and any amounts paid to the Executive pursuant to Section 8 had been subject to the Excise Tax. The Gross-up Payment shall include, without limitation, reimbursement for any penalties and interest that may accrue in respect of such Excise Tax. For purposes of determining the amount of the Gross-up Payment, the Executive shall be deemed: (A) to pay federal income taxes at the highest marginal rate of federal income taxation for the year in which the Gross-up Payment is to be made; and (B) to pay any applicable state and local income taxes at the highest marginal

rate of taxation for the calendar year in which the Gross-up Payment is to be made, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes if paid in such year. If the Excise Tax is subsequently determined to be less than the amount taken into account hereunder at the time the Gross-up Payment is made, the Executive shall repay to the Company at the time that the amount such reduction in Excise Tax is finally determined (but, if previously paid to the taxing authorities, not prior to the time the amount of such reduction is refunded to the Executive or otherwise realized as a benefit by the Executive) the portion of the Gross-up Payment that would not have been paid if such Excise Tax had been used in initially calculating the Gross-up payment, plus interest on the amount of such repayment at the rate provided in Section 1274 (b)(2)(B) of the Code. In the event that the Excise Tax is determined to exceed the amount taken into account hereunder at the time the Gross-up Payment is made, the Company shall make an additional Gross-up Payment in respect of such excess (plus any interest and penalties payable with respect to such excess) at the time that the amount of such excess is finally determined.

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(iv) The Gross-up Payment provided for above shall be paid, subject to Section 22 [Compliance with Section 409A], on the 30th day (or such earlier date as the Excise Tax becomes due and payable to the taxing authorities) after it has been determined that the Change in Control Payments (or any portion thereof) are subject to the Excise Tax; provided, however, that if the amount of such Gross-up Payment or portion thereof cannot be finally determined on or before such day, the Company shall pay to the Executive on such day an estimate, as determined by counsel or auditors selected by the Company and reasonably acceptable to the Executive, of the minimum amount of such payments. The Company shall pay to the Executive the remainder of such payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount thereof can be determined. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the Executive shall repay such amount on the fifth day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code). The Company shall have the right to control all proceedings with the Internal Revenue Service that may arise in connection with the determination and assessment of any Excise Tax and, at its sole option, the Company may pursue or forego any and all administrative appeals, proceedings, hearings, and conferences with any taxing authority in respect of such Excise Tax (including any interest or penalties thereon); provided, however, that the Company's control over any such proceedings shall be limited to issues with respect to which a Gross-up Payment would be payable hereunder, and the Executive shall be entitled to settle or contest any other issue raised by the Internal Revenue Service or any other taxing authority. The Executive shall cooperate with the Company in any proceedings relating to the determination and assessment of any Excise Tax and shall not take any position or action that would materially increase the amount of any Gross-up Payment hereunder.

## **9. Certain Employment Obligations .**

(a) **Employee Acknowledgement.** The Company and the Executive acknowledge that (i) the Company has a special interest in and derives significant benefit from the unique skills and experience of the Executive; (ii) as a result of the Executive's service with the Company, the Executive will use and have access to some of the Company's proprietary and valuable Confidential Information during the course of the Executive's employment; (iii) the Confidential Information has been developed and created by the Company at substantial expense and constitutes valuable proprietary assets of the Company, and the Company will suffer substantial damage and irreparable harm which will be difficult to compute if, during the term of the Executive's employment or thereafter, the Executive should disclose or improperly use such Confidential Information in violation of the provisions of this Agreement; (iv) the Company will suffer substantial damage and irreparable harm which will be difficult to compute if the Executive competes with the company in violation of this Agreement; (v) the Company will suffer substantial damage which will be difficult to compute if, the Executive solicits or interferes with the Company's employees, clients, or customers; (vi) the provisions of this Agreement are reasonable and necessary for the protection of the business of the Company; and (vii) the provisions of this Agreement will not preclude the Executive from obtaining other gainful employment or service.

### **(b) Non-Compete.**

(i) During the Term of Employment and for a period of twenty-four (24) months following the Executive's termination of employment with the Company, the Executive shall not, directly or indirectly, own, manage, control, be employed by, consult with, participate in, or be connected in any manner with the ownership, management, operation, control of, or otherwise become involved with, any Competing Business, nor shall the Executive undertake any planning to engage in any such activity.

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For purposes of this Agreement, a Competing Business shall mean any of the following: (1) any business that is in whole or in substantial part competitive with the business of the Company then being conducted or under consideration, (2) any off-price retailer or retailer of discount merchandise, including without limitation, \_\_\_\_\_, and (3) any affiliates, subsidiaries or successors of businesses identified above.

(ii) The foregoing restrictions in Section 9(b)(i) shall have no force or effect in the event that: (i) the Executive's employment with the Company is terminated either by the Company pursuant to Section 6(d)[Without Cause] or by the Executive pursuant to Section 6(e) [Termination by the Executive for Good Reason]; or (ii) the Company fails to approve or grant an extension of this Agreement in accordance with Section 1 hereof.

(iii) Section 9(b)(i) shall not prohibit the Executive from making any investment of 1% or less of the equity securities of any publicly-traded corporation which is considered to be a Competing Business.

### **(c) Non-Solicitation of Employees.** During the Term of Employment and for a period of 24 months following the Executive's



termination of that employment with the Company, the Executive shall not, without the written permission of the Company or an affected affiliate, directly or indirectly (i) solicit, employ or retain, or have or cause any other person or entity to solicit, employ or retain, any person who is employed by the Company or was employed by the Company during the 6-month period prior to such solicitation, employment, or retainer, (ii) encourage any such person not to devote his or her full business time to the Company, or (iii) agree to hire or employ any such person.

(d) **Non-Solicitation of Third Parties.** During the Term of Employment and for a period of 24 months following the Executive's termination of employment with the Company, the Executive shall not directly or indirectly solicit or otherwise influence any entity with a business arrangement with the Company, including, without limitation, customers, suppliers, sales representatives, lenders, lessors, and lessees, to discontinue, reduce, or otherwise materially or adversely affect such relationship.

(e) **Non-Disparagement.** The Executive acknowledges and agrees that the Executive will not defame or criticize the services, business, integrity, veracity, or personal or professional reputation of the Company or any of its directors, officers, employees, affiliates, or agents of any of the foregoing in either a professional or personal manner either during the term of the Executive's employment or thereafter.

#### 10. Company Remedies for Executive's Breach of Certain Obligations.

(a) The Executive acknowledges and agrees that in the event that the Executive breaches or threatens to breach Sections 5 or 9 of this Agreement, all compensation and benefits otherwise payable pursuant to this Agreement and the vesting and/or exercisability of all stock options, restricted stock, performance shares and other forms of equity compensation previously awarded to the Executive, notwithstanding the provisions of any agreement evidencing any such award to the contrary, shall immediately cease.

(b) The Company shall give prompt notice to the Executive of its discovery of a breach by the Executive of Section 9 of this Agreement. If it is determined by a vote of not less than two-thirds of the members of the Board that the Executive has breached Section 9 of this Agreement and has not cured such breach within ten (10) business days of such notice, then:

(i) the Executive shall forfeit to the Company (A) all stock options, stock appreciation rights, performance shares and other equity compensation awards (other than shares of restricted stock, restricted stock units or similar awards) granted to the Executive by the Company which remain outstanding and unexercised or unpaid as of the date of such determination by the Board (the "Breach Determination Date") and (B) all shares of restricted stock, restricted stock units and similar awards granted to the Executive by the Company which continue to be held by the Executive as of the Breach Determination Date to the extent that such awards vested during the Forfeiture Period (as defined below); and

(ii) the Executive shall pay to the Company all gains realized by the Executive upon (A) the exercise by or payment in settlement to the Executive on and after the commencement of the Forfeiture Period of stock options, stock appreciation rights, performance shares and other equity compensation awards (other than shares of restricted stock, restricted stock units or similar awards) granted to the Executive by the Company and (B) the sale on and after the commencement of the Forfeiture Period of shares or other property received by the Executive pursuant to awards of restricted stock, restricted stock units or similar awards granted to the Executive by the Company and which vested during the Forfeiture Period.

(c) For purposes of this Section, the gain realized by the Executive upon the exercise or payment in settlement of stock options, stock appreciation rights, performance shares and other equity compensation awards shall be equal to (A) the closing sale price on the date of exercise or settlement (as reported on the stock exchange or market system constituting the principal market for the shares subject to the applicable award) of the number of vested shares issued to the Executive upon such exercise or settlement, reduced by the purchase price, if any, paid by the Executive to acquire such shares, or (B) if any such award was settled by payment in cash to the Executive, the gain realized by the Executive shall be equal to the amount of cash paid to the Executive. Further, for purposes of this Section, the gain realized by the Executive upon the sale of shares or other property received by the Executive pursuant to awards of restricted stock, restricted stock units or similar awards shall be equal to the gross proceeds of such sale realized by the Executive. Gains determined for purposes of this Section shall be determined without regard to any subsequent increase or decrease in the market price of the Company's stock or taxes paid by or withheld from the Executive with respect to such transactions.

(d) For the purposes of this Section, the "Forfeiture Period" shall be the period ending on the Breach Determination Date and beginning on the earlier of (A) the date six months prior to the Breach Determination Date or (B) the business day immediately preceding the date of the Executive's termination of employment with the Company.

(e) The Company shall have the right (but not the obligation) to deduct from any amounts payable from time to time to the Executive by the Company pursuant to this Agreement or otherwise (including wages or other compensation, vacation pay or other benefits, and any other amounts owed to the Executive by the Company) any and all amounts the Executive is required to pay to the Company pursuant to this Section. The Executive agrees to pay to the Company immediately upon the Breach Determination Date the amount payable by the Executive to the Company pursuant to this Section which the Company has not recovered by means of such deductions.

(f) The Executive acknowledges that money will not adequately compensate the Company for the substantial damages that will arise upon the breach or threatened breach of Sections 5 or 9 of this Agreement and that the Company will not have any adequate remedy at law. For this reason, such breach or threatened breach will not be subject to the arbitration clause in Section 19; rather, the Company will be

entitled, in addition to other rights and remedies, to specific performance, injunctive relief, and other equitable relief to prevent or restrain such breach or threatened breach. The Company may obtain such relief from (1) any court of competent jurisdiction, (2) an arbitrator pursuant to Section 19 hereof, or (3) a combination of the two (e.g., by simultaneously seeking arbitration under Section 19 and a temporary injunction from a court pending the outcome of the arbitration). It shall be the Company's sole and exclusive right to elect which approach to use to vindicate its rights. The Executive further agrees that in the event of a breach or threatened breach, the Company shall be entitled to obtain an immediate injunction and restraining order to prevent such breach and/or threatened breach and/or continued breach, without posting a bond or having to prove irreparable harm or damages, and to obtain all costs and expenses, including reasonable attorneys' fees and costs. In addition, the existence of any claim or cause of action by the Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of the restrictive covenants in this Agreement.

**11. Exercise of Stock Options Following Termination.** If the Executive's employment terminates, Executive (or the Executive's estate) may exercise the Executive's right to purchase any vested stock under the stock options granted to Executive by the Company as provided in the applicable stock option agreement. All such purchases must be made by the Executive in accordance with the applicable stock option plans and agreements between the parties.

**12. Successors; Binding Agreement.** This Agreement and all rights of the Executive hereunder shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive should die while any amounts would still be payable to the Executive hereunder, all such amounts shall be paid in accordance with the terms of this Agreement and applicable law to the Executive's beneficiary pursuant to a written designation of beneficiary, or, if there is no effective written designation of beneficiary by the Executive, to the Executive's estate.

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**13. Insurance and Indemnity.** The Company shall, to the extent permitted by law, include the Executive during the Term of Employment under any directors and officers liability insurance policy maintained for its directors and officers, with coverage at least as favorable to the Executive in amount and each other material respect as the coverage of other officers covered thereby. The Company's obligation to provide insurance and indemnify the Executive shall survive expiration or termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions of the Executive occurring during the Executive's employment with the Company. Such obligations shall be binding upon the Company's successors and assigns and shall inure to the benefit of the Executive's heirs and personal representatives.

**14. Notice.** For the purposes of this Agreement, notices, demands and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or (unless otherwise specified) mailed by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

[REDACTED]  
[REDACTED]  
Ross Stores, Inc.  
4440 Rosewood Drive  
Pleasanton, CA 94588

[1372 Broadway, 8th Floor  
New York, NY 10018]

If to the Company:

Ross Stores, Inc.  
4440 Rosewood Drive  
Pleasanton, CA 94588  
Attention: General Counsel

or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

**15. Complete Agreement; Modification, Waiver; Entire Agreement.** This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, promises or representations of the parties, except those relating to repayment of signing and related bonuses, or relocation expense reimbursements. To the extent that the bonus payment provisions (i.e., post-termination bonus payments) provided in this Agreement differ from the provisions of the Company's incentive bonus plans (currently the Incentive Compensation Plan) or any replacement plans, such bonus payments shall be paid pursuant to the provisions of this Agreement except to the extent expressly prohibited by law. Except as provided by Section 22 [Compliance with Section 409A], no provision of this Agreement may be amended or modified except in a document signed by the Executive and the chairman of the Committee or such other person as may be designated by the Board. No waiver by the Executive or the Company of any breach of, or lack of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or the same condition or provision at another time. This Agreement, along with any stock option, restricted stock, performance share or other equity compensation award agreements between the parties, constitute the entire agreement between the parties regarding their employment relationship. To the extent that this Agreement is in any way inconsistent with any prior or contemporaneous stock option,

restricted stock, performance share or other equity compensation award agreements between the parties, this Agreement shall control. No agreements or representations, oral or otherwise, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement.

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**16. Governing Law - Severability.** The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the state in which the Executive's principal place of employment described in Section 3 is located without reference to that state's choice of law rules. If any provision of this Agreement shall be held or deemed to be invalid, illegal, or unenforceable in any jurisdiction, for any reason, the invalidity of that provision shall not have the effect of rendering the provision in question unenforceable in any other jurisdiction or in any other case or of rendering any other provisions herein unenforceable, but the invalid provision shall be substituted with a valid provision which most closely approximates the intent and the economic effect of the invalid provision and which would be enforceable to the maximum extent permitted in such jurisdiction or in such case.

**17. Mitigation Not Required.** In the event the Executive's employment with the Company terminates for any reason, the Executive shall not be obligated to seek other employment following such termination. However, any amounts due the Executive under Sections 8(a)(i); 8(a)(ii); 8(d)(i)(2)(a),(b),(c) or (d); and/or any additional salary provided under Section 8(d)(i)(1) of this Agreement shall be offset by any cash remuneration, health care coverage and/or estate planning reimbursements attributable to any subsequent employment that the Executive may obtain during the period of payment of compensation under this Agreement following the termination of the Executive's employment with the Company.

**18. Withholding.** All payments required to be made by the Company hereunder to the Executive or the Executive's estate or beneficiaries shall be subject to the withholding of such amounts as the Company may reasonably determine it should withhold pursuant to any applicable law. To the extent permitted, the Executive may provide all or any part of any necessary withholding by contributing Company stock with value, determined on the date such withholding is due, equal to the number of shares contributed multiplied by the closing price per share as reported on the securities exchange constituting the primary market for the Company's stock on the date preceding the date the withholding is determined.

**19. Arbitration.** In the event of any dispute or claim relating to or arising out of the parties' employment relationship or this Agreement (including, but not limited to, any claims of breach of contract, wrongful termination, or age, race, sex, disability or other discrimination), all such disputes shall be fully, finally and exclusively resolved by binding arbitration conducted by the American Arbitration Association in the city in which the Executive's principal place of employment is located by an arbitrator mutually agreed upon by the parties hereto or, in the absence of such agreement, by an arbitrator selected in accordance with the Employment Arbitration Rules of the American Arbitration Association, provided, however, that this arbitration provision shall not apply, unless the Company elects otherwise, to any disputes or claims relating to or arising out of the Executive's breach of Sections 5 or 9 of this Agreement. If either the Company or the Executive shall request, arbitration shall be conducted by a panel of three arbitrators, one selected by the Company, one selected by the Executive, and the third selected by agreement of the first two, or, in the absence of such agreement, in accordance with such Rules.

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If there is termination of the Executive's employment with the Company followed by a dispute as to whether the Executive is entitled to the benefits provided under this Agreement, then, during the period of that dispute the Company shall pay the Executive fifty percent (50%) of the amount specified in Section 8 hereof (except that the Company shall pay one hundred percent (100%) of any insurance premiums provided for in Section 8), if, and only if, the Executive agrees in writing that if the dispute is resolved against the Executive, the Executive shall promptly refund to the Company all such payments received by, or made by the Company on behalf of, the Executive. If the dispute is resolved in the Executive's favor, promptly after resolution of the dispute the Company shall pay the Executive the sum that was withheld during the period of the dispute plus interest at the rate provided in Section 1274(d) of the Code, compounded quarterly.

**20. Attorney's Fees.** Each party shall bear its own attorney's fees and costs incurred in any action or dispute arising out of this Agreement.

**21. Miscellaneous.** No right or interest to, or in, any payments shall be assignable by the Executive; provided, however, that the Executive shall not be precluded from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and the legal representative of the Executive's estate shall not be precluded from assigning any right hereunder to the person or persons entitled thereto. This Agreement shall be binding upon and shall inure to the benefit of the Executive, the Executive's heirs and legal representatives and, the Company and its successors.

**22. Compliance with Section 409A.** Notwithstanding any other provision of this Agreement to the contrary, the provision, time and manner of payment or distribution of all compensation and benefits provided by this Agreement that constitute nonqualified deferred compensation subject to and not exempted from the requirements of Code Section 409A ("Section 409A Deferred Compensation") shall be subject to, limited by and construed in accordance with the requirements of Code Section 409A and all regulations and other guidance promulgated by the Secretary of the Treasury pursuant to such Section (such Section, regulations and other guidance being referred to herein as "Section 409A"), including the following:

(a) **Separation from Service.** Payments and benefits constituting Section 409A Deferred Compensation otherwise payable or provided pursuant to Section 8 upon the Executive's termination of employment shall be paid or provided only at the time of a termination of the Executive's employment which constitutes a Separation from Service. For the purposes of this Agreement, a "Separation from Service" is a separation from service within the meaning of Section 409A.

(b) **Six-Month Delay Applicable to Specified Employees.** If, at the time of a Separation from Service of the Executive, the Executive is a "specified employee" within the meaning of Section 409A (a "Specified Employee"), then any payments and benefits constituting Section 409A Deferred Compensation to be paid or provided pursuant to Section 8 upon the Separation from Service of the Executive shall be paid or provided commencing on the later of (i) the date that is six (6) months after the date of such Separation from Service or, if earlier, the date of death of the Executive (in either case, the "Delayed Payment Date"), or (ii) the date or dates on which such Section 409A Deferred Compensation would otherwise be paid or provided in accordance with Section 8. All such amounts that would, but for this Section 22(b), become payable prior to the Delayed Payment Date shall be accumulated and paid on the Delayed Payment Date.

(c) **Health Care and Estate Planning Benefits.** In the event that all or any of the health care or estate planning benefits to be provided pursuant to Sections 8(d)(i)(2)(c) or 8(d)(i)(2)(d) as a result of a Participant's Separation from Service constitute Section 409A Deferred Compensation, the Company shall provide for such benefits constituting Section 409A Deferred Compensation in a manner that complies with Section 409A. To the extent necessary to comply with Section 409A, the Company shall determine the health care premium cost necessary to provide such benefits constituting Section 409A Deferred Compensation for the applicable coverage period and shall pay such premium cost which becomes due and payable during the applicable coverage period on the applicable due date for such premiums; provided, however, that if the Executive is a Specified Employee, the Company shall not pay any such premium cost until the Delayed Payment Date. If the Company's payment pursuant to the previous sentence is subject to a Delayed Payment Date, the Executive shall pay the premium cost otherwise payable by the Company prior to the Delayed Payment Date, and on the Delayed Payment Date the Company shall reimburse the Executive for such Company premium cost paid by the Executive and shall pay the balance of the Company's premium cost necessary to provide such benefit coverage for the remainder of the applicable coverage period as and when it becomes due and payable over the applicable period.

(d) **Stock-Based Awards.** The vesting of any stock-based compensation awards which constitute Section 409A Deferred Compensation and are held by the Executive, if the Executive is a Specified Employee, shall be accelerated in accordance with this Agreement to the extent applicable; provided, however, that the payment in settlement of any such awards shall occur on the Delayed Payment Date. Any stock-based compensation which vests and becomes payable upon a Change in Control in accordance with Section 8(d)(i)(1) shall not be subject to this Section 22(d).

(e) **Rights of the Company; Release of Liability.** It is the mutual intention of the Executive and the Company that the provision of all payments and benefits pursuant to this Agreement be made in compliance with the requirements of Section 409A. To the extent that the provision of any such payment or benefit pursuant to the terms and conditions of this Agreement would fail to comply with the applicable requirements of Section 409A, the Company may, in its sole and absolute discretion and without the consent of the Executive, make such modifications to the timing or manner of providing such payment and/or benefit to the extent it determines necessary or advisable to comply with the requirements of Section 409A; provided, however, that the Company shall not be obligated to make any such modifications. Any such modifications made by the Company shall, to the maximum extent permitted in compliance with the requirements of Section 409A, preserve the aggregate monetary face value of such payments and/or benefits provided by this Agreement in the absence of such modification; provided, however, that the Company shall in no event be obligated to pay any interest or other compensation in respect of any delay in the provision of such payments or benefits in order to comply with the requirements of Section 409A. The Executive acknowledges that (i) the provisions of this Section 22 may result in a delay in the time at which payments would otherwise be made pursuant to this Agreement and (ii) the Company is authorized to amend this Agreement, to void or amend any election made by the Executive under this Agreement and/or to delay the payment of any monies and/or provision of any benefits in such manner as may be determined by the Company, in its discretion, to be necessary or appropriate to comply with Section 409A (including any transition or grandfather rules thereunder) without prior notice to or consent of the Executive. The Executive hereby releases and holds harmless the Company, its directors, officers and stockholders from any and all claims that may arise from or relate to any tax liability, penalties, interest, costs, fees or other liability incurred by the Executive as a result of the application of Code Section 409A.

**23. Future Equity Compensation.** The Executive understands and acknowledges that all awards, if any, of stock options, restricted stock, performance shares and other forms of equity compensation by the Company are made at the sole discretion of the Board of Directors of the Company or a committee thereof. The Executive further understands and acknowledges, however, that unless the Executive has executed this Agreement and each successive amendment extending the Initial Term or any subsequent Renewal Term of the Agreement as may be agreed to by the Company and the Executive, it is the intention of the Board of Directors and the Executive that, notwithstanding any continued employment with the Company, (a) the Company shall have no obligation to grant any award of stock options, restricted stock, performance shares or any other form of equity compensation which might otherwise have been granted to the Executive on or after the intended commencement of the Initial Term or such successive Renewal Term for which the Executive has failed to sign the Agreement or the applicable Term of Employment extension amendment and (b) any such award which is nevertheless granted to the Executive after the intended commencement of the Initial Term or Renewal Term for which the Executive has failed to sign such Agreement or applicable extension amendment shall not vest unless and until the Executive has executed the Agreement or applicable extension amendment, notwithstanding the provisions of any agreement evidencing such award to the contrary.

**IN WITNESS WHEREOF**, the parties have executed this Executive Employment Agreement effective as of the date and year first above written.

\_\_\_\_\_  
By: Michael Balmuth  
Vice Chairman, President and Chief  
Executive Officer

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## EXECUTIVE EMPLOYMENT AGREEMENT

**THIS EXECUTIVE EMPLOYMENT AGREEMENT** (this "Agreement") is made effective March 22, 2007, (the "Effective Date") by and between Ross Stores, Inc. (the "Company"), a Delaware corporation, and **Jim Fassio** (the "Executive").

### RECITALS

A. The Company wishes to employ the Executive, and the Executive is willing to accept such employment, as **Executive Vice President, Property Development, Construction and Store Design**.

B. It is now the mutual desire of the Company and the Executive to enter into a written employment agreement to govern the terms of the Executive's employment by the Company as of and following the Effective Date on the terms and conditions set forth below.

### TERMS AND CONDITIONS

In consideration for the promises of the parties set forth below, the Company and the Executive hereby agree as follows:

1. **Term.** Subject to the provisions of Section 6 of this Agreement, the term of employment of the Executive by the Company under this Agreement (the "Term of Employment") shall be as follows:

(a) **Initial Term.** The initial Term of Employment of the Executive by the Company under this Agreement shall begin on the Effective Date and end on **March 31, 2011**, (the "Initial Term"), unless extended or terminated earlier in accordance with this Agreement.

(b) **Renewal Term.** Upon the timely written request of the Executive to extend the Term of Employment, the Compensation Committee (the "Committee") of the Board of Directors (the "Board") of the Company shall consider extending the Executive's employment with the Company under this Agreement. To be timely, such request must be delivered to the Company's Chief Executive Officer not earlier than twelve (12) months prior to the end of the then effective Initial Term or Renewal Term and, in any case, while the Executive remains an employee of the Company. Such request must contain no proposed modification to the provisions of this Agreement other than an extension of the Term of Employment as then in effect for an additional two (2) years. Within thirty (30) days following the receipt of such notice, the Chief Executive Officer will discuss such request with the Committee and advise the Executive, in writing, within thirty (30) days following its consideration of the Executive's written request, of the approval or disapproval of such extension request. The failure to provide such written advice shall constitute a denial of the Executive's request for extension. If the Executive's request for an extension is approved, the Term of Employment shall be extended for two (2) additional years commencing on the date immediately following the date of expiration of the Term of Employment in effect at the time of the Executive's written request. Such additional two-year period is referred to herein as a "Renewal Term."

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2. **Position and Duties.** During the Term of Employment, the Executive shall serve as **Executive Vice President, Property Development, Construction and Store Design**. As used in this Agreement, the term "Company" includes Ross Stores, Inc. and each and any of its divisions, affiliates or subsidiaries (except that, where the term relates to stock, stockholders, stock options or other stock-based awards or the Board, it means Ross Stores, Inc.). The Executive's employment may be transferred, assigned, or re-assigned to Ross Stores, Inc. or a division, affiliate or subsidiary of Ross Stores, Inc., and such transfer, assignment, or re-assignment will not constitute a termination of employment or "Good Reason" for the Executive's termination of employment under this Agreement. During the Term of Employment, the Executive may engage in outside activities provided those activities (including but not limited to membership on boards of directors of not-for-profit and for-profit organizations) do not conflict with the Executive's duties and responsibilities hereunder, and provided further that the Executive gives written notice to the Board of any significant outside business activity in which the Executive plans to become involved, whether or not such activity is pursued for profit.

3. **Principal Place of Employment.** The Executive shall be employed at the Company's offices in **Pleasanton, California**, except for required travel on the Company's business to an extent substantially consistent with present business travel obligations of the Executive's position.

#### 4. Compensation and Related Matters.

(a) **Salary.** During the Term of Employment, the Company shall pay to the Executive a salary at a rate of not less than **Five Hundred Ninety Five Thousand Dollars (\$595,000)** per annum. The Executive's salary shall be payable in substantially equal installments in accordance with the Company's normal payroll practices applicable to senior executives. Subject to the first sentence of this Section 4(a), the Executive's salary may be adjusted from time to time by the Committee in accordance with normal business practices of the Company.

(b) **Bonus.** During the Term of Employment, the Executive shall be eligible to receive an annual bonus paid under the Company's existing incentive bonus plan under which the Executive is eligible (which is currently the Incentive Compensation Plan) or any replacement plan that may subsequently be established and in effect during the Term of Employment. The current target annual bonus the Executive is eligible to earn upon achievement of 100% of all applicable performance targets under such incentive bonus plan is **65%** of the Executive's then effective annual salary rate. The Executive's death, termination for Cause or Voluntary Termination (as described in Sections 6(a), 6(c) and 6(f), respectively) prior to the Company's payment of the bonus for a fiscal year of the Company will cause the Executive to be ineligible for any annual bonus for that fiscal year or any pro-rata portion of such bonus.

(c) **Expenses.** During the Term of Employment, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in performing services hereunder, including all reasonable expenses of travel and living while away from home, provided that such expenses are incurred and accounted for in accordance with the policies and procedures established by the

(d) **Benefits.** During the Term of Employment, the Executive shall be entitled to participate in all of the Company's employee benefit plans and arrangements in which senior executives of the Company are eligible to participate. The Company shall not make any changes in such plans or arrangements which would adversely affect the Executive's rights or benefits thereunder, unless such change occurs pursuant to a program applicable to all senior executives of the Company and does not result in a proportionately greater reduction in the rights or benefits of the Executive as compared with any other similarly situated senior executive of the Company. The Executive shall be entitled to participate in, or receive benefits under, any employee benefit plan or arrangement made available by the Company in the future to its senior executives, subject to, and on a basis consistent with, the terms, conditions and overall administration of such plans and arrangements. Except as otherwise specifically provided herein, nothing paid to the Executive under any plan or arrangement presently in effect or made available in the future shall be in lieu of the salary or bonus otherwise payable under this Agreement.

(e) **Vacations.** During the Term of Employment, the Executive shall be entitled to twenty five (25) vacation days in each calendar year, and to compensation in respect of earned but unused vacation days, determined in accordance with the Company's vacation plan. The Executive shall also be entitled to all paid holidays given by the Company to its senior executives. Unused vacation days shall not be forfeited once they have been earned and, if still unused at the time of the Executive's termination of employment with the Company, shall be promptly paid to the Executive at their then-current value, based on the Executive's daily salary rate at the time of the Executive's termination of employment.

(f) **Services Furnished.** The Company shall furnish the Executive with office space and such services as are suitable to the Executive's position and adequate for the performance of the Executive's duties during the Term of Employment.

#### 5. Confidential Information and Intellectual Property.

(a) Other than in the performance of the Executive's duties hereunder, the Executive agrees not to use in any manner or disclose, distribute, publish, communicate or in any way cause to be used, disclosed, distributed, published, or communicated in any way or at any time, either while in the Company's employ or at any time thereafter, to any person not employed by the Company, or not engaged to render services to the Company, any Confidential Information (as defined below) obtained while in the employ of the Company.

(b) Confidential Information includes any written or unwritten information which relates to and/or is used by the Company or its subsidiaries, affiliates or divisions, including, without limitation (i) the names, addresses, buying habits and other special information regarding past, present and potential customers, employees and suppliers of the Company, (ii) customer and supplier contracts and transactions or price lists of the Company and suppliers, (iii) methods of distribution, (iv) all agreements, files, books, logs, charts, records, studies, reports, processes, schedules and statistical information, (v) data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, (vi) supplier information, tax records, personnel histories and records, sales information, and property information, (vii) information regarding the present or future phases of business, (viii) ideas, inventions, trademarks, business information, know-how, processes, techniques, improvements, designs, redesigns, creations, discoveries, trade secrets, and developments, (ix) all computer software licensed or developed by the Company or its subsidiaries, affiliates or divisions, computer programs, computer-based and web-based training programs, and systems, and (x) finances and financial information, but Confidential Information will not include information of the Company or its subsidiaries, affiliates or divisions that (1) became or becomes a matter of public knowledge through sources independent of the Executive, (2) has been or is disclosed by the Company or its subsidiaries, affiliates or divisions without restriction on its use, or (3) has been or is required or specifically permitted to be disclosed by law or governmental order or regulation. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's Chief Executive Officer confirms to the Executive that the information is public knowledge.

(c) The provisions of this Section 5 shall not preclude the Executive from disclosing such information to the Executive's professional tax advisor or legal counsel solely to the extent necessary to the rendering of their professional services to the Executive if such individuals agree to keep such information confidential.

(d) The Executive agrees that upon leaving the Company's employ the Executive will remain reasonably available to answer questions from Company officers regarding the Executive's former duties and responsibilities and the knowledge the Executive obtained in connection therewith.

(e) The Executive agrees that upon leaving the Company's employ the Executive will not communicate with, or give statements to, any member of the media (including print, television, or radio media) relating to any matter (including pending or threatening lawsuits or administrative investigations) about which the Executive has knowledge or information (other than knowledge or information that is not Confidential Information) as a result of employment with the Company. The Executive further agrees to notify the Chief Executive Officer or his or her designee immediately after being contacted by any member of the media with respect to any matter affected by this section.

(f) The Executive agrees that all information, inventions, and discoveries, whether or not patented or patentable, made or conceived by the Executive, either alone or with others, at any time while employed by the Company, which arises out of such employment or is pertinent to any field of business or research in which, during such employment, the Company, its subsidiaries, affiliates or divisions is engaged or (if such is known to or ascertainable by the Executive) is considering engaging (" Intellectual Property") shall (i) be and remain the sole property

of the Company and the Executive shall not seek a patent with respect to such Intellectual Property without the prior consent of an authorized representative of the Company and (ii) be disclosed promptly to an authorized representative of the Company along with all information the Executive possesses with regard to possible applications and uses. Further, at the request of the Company, and without expense or additional compensation to the Executive, the Executive agrees to execute such documents and perform such other acts as the Company deems necessary to obtain patents on such Intellectual Property in a jurisdiction or jurisdictions designated by the Company, and to assign to the Company or its designee such Intellectual Property and all patent applications and patents relating thereto.

(g) The Executive and the Company agree that the Executive intends all original works of authorship within the purview of the copyright laws of the United States authored or created by the Executive in the course of the Executive's employment with the Company will be works for hire within the meaning of such copyright law.

(h) Upon termination of the Executive's employment, or at any time upon request of the Company, the Executive will return to the Company all Confidential Information and Intellectual Property, in any form, including but not limited to letters, memoranda, reports, notes, notebooks, books of account, drawings, prints, specifications, formulae, data printouts, microfilms, magnetic tapes, disks, recordings, documents, and all copies thereof.

**6. Termination.** The Executive's employment may be terminated during the Term of Employment only as follows:

(a) **Death.** The Executive's employment shall terminate upon the Executive's death.

(b) **Disability.** If, as a result of the Executive's Disability (as defined below), the Executive shall have been absent from the Executive's duties hereunder on a full-time basis for the entire period of six consecutive months, and, within thirty days after written notice of termination is given by the Company (which may occur before or after the end of such six-month period), the Executive shall not have returned to the performance of the Executive's duties hereunder on full-time basis, the Executive's employment shall terminate. For purposes of this Agreement, the term "Disability" shall mean a physical or mental illness, impairment or condition reasonably determined by the Board that prevents the Executive from performing the duties of the Executive's position under this Agreement.

(c) **For Cause.** The Company may terminate the Executive's employment for Cause. For this purpose, "Cause" means the occurrence of any of the following (i) the Executive's continuous failure to substantially perform the Executive's duties hereunder (unless such failure is a result of a Disability as defined in Section 6(b)), (ii) the Executive's theft, dishonesty, breach of fiduciary duty for personal profit or falsification of any documents of the Company, (iii) the Executive's material failure to abide by the applicable code(s) of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct) of the Company, (iv) misconduct by the Executive within the scope of Section 304 of the Sarbanes-Oxley Act of 2002 as a result of which the Company is required to prepare an accounting restatement, (v) the Executive's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company (including, without limitation, the Executive's improper use or disclosure of confidential or proprietary information of the Company), (vi) any intentional misconduct or illegal or grossly negligent conduct by the Executive which is materially injurious to the Company monetarily or otherwise, (vii) any material breach by the Executive of the provisions of Section 9 [Certain Employment Obligations] of this Agreement, or (viii) the Executive's conviction (including any plea of guilty or nolo contendere) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which materially impairs the Executive's ability to perform his or her duties with the Company. A termination for Cause shall not take effect unless: (1) the Executive is given written notice by the Company of its intention to terminate the Executive for Cause; (2) the notice specifically identifies the particular act or acts or failure or failures to act which are the basis for such termination; (3) the notice is given within sixty (60) days of the Company's learning of such act or acts or failure or failures to act; and (4) only in the case of clause (i), (iii), (v), (vi) or (vii) of the second sentence of this Section 6(c), the Executive fails to substantially cure such breach, to the extent such cure is possible, within sixty (60) days after the date that such written notice is given to the Executive.

(d) **Without Cause.** The Company may terminate the Executive's employment at any time Without Cause. A termination "Without Cause" is a termination by the Company of the Executive's employment with the Company for any reasons other than the death or Disability of the Executive or the termination by the Company of the Executive for Cause as described in Section 6(c).

(e) **Termination by the Executive for Good Reason.** The Executive may terminate the Executive's employment with the Company for "Good Reason," which shall be deemed to occur if the Executive terminates the Executive's employment with the Company within sixty (60) days after written notice to the Company by the Executive of the occurrence of one or more of the following conditions, which condition(s) have not been cured within ten (10) business days after the Company's receipt of such written notice: (1) a failure by the Company to comply with any material provision of this Agreement (including but not limited to the reduction of the Executive's salary or the target annual bonus opportunity set forth in Section 4(b), (2) a significant diminishment in the nature or scope of the authority, power, function or duty attached to the position which the Executive currently maintains without the express written consent of the Executive, or (3) the relocation of the Executive's Principal Place of Employment as described in Section 3 to a location that increases the regular one-way commute distance between the Executive's residence and Principal Place of Employment by more than 25 miles without the Executive's prior written consent. The Executive's failure to give reasonably prompt written notice to the Company of the occurrence of a condition constituting Good Reason or to terminate employment for Good Reason within the 60-day period following the Executive's written notice of the occurrence of such condition shall waive the Executive's right to terminate employment for Good Reason based upon such occurrence of such condition.

(f) **Voluntary Termination.** The Executive may voluntarily resign from the Executive's employment with the Company at any time (a



"Voluntary Termination"). A voluntary resignation from employment by the Executive for Good Reason pursuant to Section 6(e) shall not be deemed a Voluntary Termination.

(g) **Non-Renewal Termination.** If the Executive fails to request an extension of the Term of Employment in accordance with Section 1(b) or if the Committee fails to approve such request, this Agreement shall automatically expire at the end of the then current Term of Employment (a "Non-Renewal Termination").

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## 7. Notice and Effective Date of Termination

(a) **Notice.** Any termination of the Executive's employment by the Company or by the Executive during the Term of Employment (other than as a result of the death of the Executive or a Non-Renewal Termination described in Section 6(g)) shall be communicated by written notice of termination to the other party hereto. Such notice shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under that provision.

(b) **Date of Termination.** The date of termination of the Executive's employment shall be:

(i) if the Executive's employment is terminated by the Executive's death, the date of the Executive's death;

(ii) if the Executive's employment is terminated due to Disability pursuant to Section 6(b), the date of termination shall be the last to occur of the 31st day following delivery of the notice of termination to the Executive by the Company or the end of the consecutive six-month period referred to in Section 6(b).

(iii) if the Executive's employment is terminated for any other reason by either party, the date on which a notice of termination is delivered to the other party; and

(iv) if the Agreement expires pursuant to a Non-Renewal Termination described in Section 6(g), the parties' employment relationship shall terminate on the last day of the then current Term of Employment without any notice.

## 8. Compensation and Benefits Upon Termination.

(a) **Termination Due To Disability, Without Cause or For Good Reason.** If the Executive's employment terminates pursuant to Section 6(b) [Disability], Section 6(d) [Without Cause], or Section 6(e) [Termination by Executive for Good Reason], then, subject to Section 22 [Compliance with Section 409A], in addition to all salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment, the Executive shall be entitled to the following, provided that within sixty (60) days following the Executive's termination of employment the Executive executes a general release of claims against the Company and its subsidiaries, affiliates, stockholders, directors, officers, employees, agents, successors and assigns in a form approved by the Company (the "Release") and the period for revocation, if any, of such Release has expired without the Release having been revoked:

(i) **Salary.** The Company shall continue to pay to the Executive the Executive's salary, at the rate in effect immediately prior to such termination of employment, through the remainder of the Term of Employment then in effect.

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(ii) **Bonus.** The Company shall continue to pay to the Executive an annual bonus through the remainder of the Term of Employment then in effect; provided, however, that the amount of the annual bonus determined in accordance with this Section 8(a)(ii) for the fiscal year of the Company in which such Term of Employment ends shall be prorated on the basis of the number of days of such Term of Employment occurring within such fiscal year. The amount of each annual bonus payable pursuant to this Section 8(a)(ii), prior to any proration, shall be equal to the greater of (A) the annual bonus earned by the Executive for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or (B) the annual bonus that the Executive would have earned under the Company's bonus plan for the fiscal year of the Company in which the Executive's termination of employment occurs had the Executive remained in its employment. However, in no case shall any such post-termination annual bonus exceed the lesser of 100% of the Executive's target bonus for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or 100% of the Executive's target bonus for the fiscal year of the Company in which the Executive's termination of employment occurs. Such bonuses shall not be paid until due under the applicable Company bonus plan.

(iii) **Stock Options.** Stock options granted to the Executive by the Company and which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested in full upon such termination of employment.

(iv) **Restricted Stock.** Shares of restricted stock granted to the Executive by the Company which have not become vested as of the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested on a pro rata basis. The number of such additional shares of restricted stock that shall become vested as of the date of the Executive's termination of employment shall be that number of additional shares that would have become vested through the date of such termination of employment at the rate(s) determined under the vesting schedule applicable to such shares had such vesting schedule provided for the accrual of vesting on a daily

basis (based on a 365 day year). For example, if the vesting schedule applicable to a restricted stock award provides for vesting of 20%, 30% and 50% of the award on the first, second and third anniversaries, respectively, of the date of grant of the award, then pro rata vesting under this Section 8(a)(iv) shall be accrued at daily rates of 0.05479%, 0.08219% and 0.13699%, respectively, from the date of grant through the date of termination of employment. Any shares of restricted stock remaining unvested after such pro rata acceleration of vesting shall automatically be reacquired by the Company in accordance with the provisions of the applicable restricted stock agreement, and the Executive shall have no further rights in such unvested portion of the restricted stock.

(v) **Other Equity Awards.** Except as set forth in Sections 8(a)(iii) and 8(a)(iv), performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall vest and be settled in accordance with their terms.

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The Company shall have no further obligations to the Executive as a result of termination of employment described in this Section 8(a) except as set forth in Section 12.

(b) **Death, Termination for Cause or Voluntary Termination.** If the Executive's employment terminates pursuant to Section 6(a) [Death], Section 6(c) [For Cause] or Section 6(f) [Voluntary Termination], the Executive (or the Executive's designee or the Executive's estate) shall be entitled to receive only the salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment. The Executive shall not be entitled to any bonus not paid prior to the date of the Executive's termination of employment, and the Executive shall not be entitled to any prorated bonus payment for the year in which the Executive's employment terminates. Any stock options granted to the Executive by the Company shall continue to vest only through the date on which the Executive's employment terminates, and unless otherwise provided by their terms, any restricted stock, performance share awards or other equity awards that were granted to the Executive by the Company that remain unvested as of the date on which the Executive's employment terminates shall automatically be forfeited and the Executive shall have no further rights with respect to such awards. The Company shall have no further obligations to the Executive as a result of termination of employment described in this Section 8(b) except as set forth in Section 12.

(c) **Non-Renewal Termination.** If the Agreement expires as set forth in Section 6(g) [Non-Renewal Termination], then, subject to Section 22 [Compliance with Section 409A], in addition to all salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment, the Executive shall be entitled to the following, provided that within sixty (60) days following the Executive's termination of employment the Executive executes the Release and the period for revocation, if any, of such Release has expired without the Release having been revoked:

(i) **Bonus.** The Company shall pay the Executive an annual bonus for the fiscal year of the Company in which the date of the Executive's termination of employment occurs, which shall be prorated for the portion of such fiscal year that the Executive is employed by the Company. The amount of such annual bonus, prior to proration, shall be equal to the greater of (A) the annual bonus earned by the Executive for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or (B) the annual bonus that the Executive would have earned under the Company's bonus plan for the fiscal year of the Company in which the Executive's termination of employment occurs had the Executive remained in its employment. However, in no case shall any such post-termination annual bonus exceed the lesser of 100% of the Executive's target bonus for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or 100% of the Executive's target bonus for the fiscal year of the Company in which the Executive's termination of employment occurs. Such bonus shall not be paid until due under the applicable Company bonus plan.

(ii) **Stock Options.** Stock options granted to the Executive by the Company and which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall be vested and exercisable in accordance with their terms.

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(iii) **Restricted Stock.** Shares of restricted stock granted to the Executive by the Company which have not become vested as of the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested on a pro rata basis. The number of such additional shares of restricted stock that shall become vested as of the date of the Executive's termination of employment shall be that number of additional shares that would have become vested through the date of such termination of employment at the rate(s) determined under the vesting schedule applicable to such shares had such vesting schedule provided for the accrual of vesting on a daily basis (based on a 365 day year). For example, if the vesting schedule applicable to a restricted stock award provides for vesting of 20%, 30% and 50% of the award on the first, second and third anniversaries, respectively, of the date of grant of the award, then pro rata vesting under this Section 8(c)(iii) shall be accrued at daily rates of 0.05479%, 0.08219% and 0.13699%, respectively, from the date of grant through the date of termination of employment. Any shares of restricted stock remaining unvested after such pro rata acceleration of vesting shall automatically be reacquired by the Company in accordance with the provisions of the applicable restricted stock agreement, and the Executive shall have no further rights in such unvested portion of the restricted stock.

(iv) **Other Equity Awards.** Except as set forth in Sections 8(c)(ii) and 8(c)(iii), performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall vest and be settled in accordance with their terms.

The Company shall have no further obligations to the Executive as a result of termination of employment described in this Section 8(c) except as set forth in Section 12.

(d) **Special Change in Control Provisions.**

(i) **Change in Control Benefits.**

(1) **Without Regard to Termination of Employment.** In the event of a Change in Control (as defined below), all shares of restricted stock granted to the Executive by the Company shall become vested in full immediately prior to the consummation of such Change in Control, and, subject to Section 22 [Compliance with Section 409A], the Executive shall be entitled to receive an additional salary equal to **Sixty Two Thousand Five Hundred Dollars (\$62,500)** per month for a period of two (2) years following the Change in Control unless and until the Voluntary Termination (as defined in Section 6(f)) of the Executive's employment or the termination for Cause (as defined in Section 6(c)) of the Executive's employment. Except as set forth in this Section 8(d)(i)(1) or Section 8(d)(i)(2) below, the treatment of stock options, performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of such Change in Control shall be determined in accordance with their terms.

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(2) **Upon Certain Termination of Employment.** In addition to the payments and benefits provided by Section 8(d)(i)(1) above, if the Executive's employment is terminated either by the Company Without Cause (as defined in Section 6(d)) or by the Executive for Good Reason (as defined in Section 6(e)), in either case within a period commencing one (1) month prior to and ending twelve (12) months following a Change in Control, then, subject to Section 22 [Compliance with Section 409A], the Executive shall be entitled to the following (in addition to any other payments or benefits provided under this Agreement), provided that within sixty (60) days following the Executive's termination of employment the Executive executes the Release and the period for revocation, if any, of such Release has expired without the Release having been revoked:

a. **Salary.** The salary that shall be payable to the Executive under Section 8(a)(i) shall be paid for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of the Executive's termination of employment.

b. **Bonus.** The annual bonus that shall be payable to the Executive under Section 8(a)(ii) shall be paid for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of the Executive's termination of employment; provided, however, that the amount of the annual bonus determined in accordance with Section 8(a)(ii) for the fiscal year of the Company in which such Term of Employment or two-year period, as the case may be, ends shall be prorated on the basis of the number of days of such Term of Employment or two-year period occurring within such fiscal year.

c. **Health Care Coverage.** The Executive shall be entitled to the continuation of the Executive's health care coverage under the Company's employee benefit plans (including medical, dental, vision and mental coverage) which the Executive had at the time of the termination of employment (including coverage for the Executive's dependents to the extent such dependents were covered immediately prior to such termination of employment) at the Company's expense for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of the Executive's termination of employment. Such health care continuation rights will be in addition to any rights the Executive may have under ERISA Sections 600 and thereafter and Section 4980B of the Internal Revenue Code ("COBRA coverage").

d. **Estate Planning.** The Executive shall be entitled to reimbursement of the Executive's estate planning expenses (including attorneys' fees) on the same basis, if any, as to which the Executive was entitled to such reimbursements immediately prior to such termination of employment for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of termination of employment.

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(ii) **Change in Control Defined.** A "Change in Control" shall be deemed to have occurred if: (1) any person or group (within the meaning of Rule 13d-3 of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended) shall acquire during the twelve-month period ending on the date of the most recent acquisition by such person or group, in one or a series of transactions, whether through sale of stock or merger, ownership of stock of the Company that constitutes 35% or more of the total voting power of the stock of the Company or any successor to the Company; (2) a merger in which the Company is a party pursuant to which any person or such group acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Company, or (3) the sale, exchange, or transfer of all or substantially all of the Company's assets (other than a sale, exchange, or transfer to one or more corporations where the stockholders of the Company before and after such sale, exchange, or transfer, directly or indirectly, are the beneficial owners of at least a majority of the voting stock of the corporation(s) to which the assets were transferred).

(iii) **Excise Tax Gross-Up.** If the Executive becomes entitled to one or more payments (with a "payment" for this purpose including the accelerated vesting of restricted stock, stock options or other equity awards, or other non-cash benefits or property), whether pursuant to the terms of this Agreement or any other plan or agreement with the Company or any affiliated company (collectively, "Change in Control Payments"), which are or become subject to the tax (the "Excise Tax") imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall pay to the Executive at the time specified below such amount (the "Gross-up Payment") as may be necessary to place the Executive in the same after-tax position as if no portion of the Change in Control Payments and any amounts paid to the Executive pursuant to Section 8 had been subject to the Excise Tax. The Gross-up Payment shall include, without limitation,

reimbursement for any penalties and interest that may accrue in respect of such Excise Tax. For purposes of determining the amount of the Gross-up Payment, the Executive shall be deemed: (A) to pay federal income taxes at the highest marginal rate of federal income taxation for the year in which the Gross-up Payment is to be made; and (B) to pay any applicable state and local income taxes at the highest marginal rate of taxation for the calendar year in which the Gross-up Payment is to be made, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes if paid in such year. If the Excise Tax is subsequently determined to be less than the amount taken into account hereunder at the time the Gross-up Payment is made, the Executive shall repay to the Company at the time that the amount such reduction in Excise Tax is finally determined (but, if previously paid to the taxing authorities, not prior to the time the amount of such reduction is refunded to the Executive or otherwise realized as a benefit by the Executive) the portion of the Gross-up Payment that would not have been paid if such Excise Tax had been used in initially calculating the Gross-up payment, plus interest on the amount of such repayment at the rate provided in Section 1274 (b)(2)(B) of the Code. In the event that the Excise Tax is determined to exceed the amount taken into account hereunder at the time the Gross-up Payment is made, the Company shall make an additional Gross-up Payment in respect of such excess (plus any interest and penalties payable with respect to such excess) at the time that the amount of such excess is finally determined.

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(iv) The Gross-up Payment provided for above shall be paid, subject to Section 22 [Compliance with Section 409A], on the 30th day (or such earlier date as the Excise Tax becomes due and payable to the taxing authorities) after it has been determined that the Change in Control Payments (or any portion thereof) are subject to the Excise Tax; provided, however, that if the amount of such Gross-up Payment or portion thereof cannot be finally determined on or before such day, the Company shall pay to the Executive on such day an estimate, as determined by counsel or auditors selected by the Company and reasonably acceptable to the Executive, of the minimum amount of such payments. The Company shall pay to the Executive the remainder of such payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount thereof can be determined. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the Executive shall repay such amount on the fifth day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code). The Company shall have the right to control all proceedings with the Internal Revenue Service that may arise in connection with the determination and assessment of any Excise Tax and, at its sole option, the Company may pursue or forego any and all administrative appeals, proceedings, hearings, and conferences with any taxing authority in respect of such Excise Tax (including any interest or penalties thereon); provided, however, that the Company's control over any such proceedings shall be limited to issues with respect to which a Gross-up Payment would be payable hereunder, and the Executive shall be entitled to settle or contest any other issue raised by the Internal Revenue Service or any other taxing authority. The Executive shall cooperate with the Company in any proceedings relating to the determination and assessment of any Excise Tax and shall not take any position or action that would materially increase the amount of any Gross-up Payment hereunder.

## **9. Certain Employment Obligations.**

(a) **Employee Acknowledgement.** The Company and the Executive acknowledge that (i) the Company has a special interest in and derives significant benefit from the unique skills and experience of the Executive; (ii) as a result of the Executive's service with the Company, the Executive will use and have access to some of the Company's proprietary and valuable Confidential Information during the course of the Executive's employment; (iii) the Confidential Information has been developed and created by the Company at substantial expense and constitutes valuable proprietary assets of the Company, and the Company will suffer substantial damage and irreparable harm which will be difficult to compute if, during the term of the Executive's employment or thereafter, the Executive should disclose or improperly use such Confidential Information in violation of the provisions of this Agreement; (iv) the Company will suffer substantial damage and irreparable harm which will be difficult to compute if the Executive competes with the company in violation of this Agreement; (v) the Company will suffer substantial damage which will be difficult to compute if, the Executive solicits or interferes with the Company's employees, clients, or customers; (vi) the provisions of this Agreement are reasonable and necessary for the protection of the business of the Company; and (vii) the provisions of this Agreement will not preclude the Executive from obtaining other gainful employment or service.

### **(b) Non-Compete.**

(i) During the Term of Employment and for a period of twenty-four (24) months following the Executive's termination of employment with the Company, the Executive shall not, directly or indirectly, own, manage, control, be employed by, consult with, participate in, or be connected in any manner with the ownership, management, operation, control of, or otherwise become involved with, any Competing Business, nor shall the Executive undertake any planning to engage in any such activity.

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For purposes of this Agreement, a Competing Business shall mean any of the following: (1) any business that is in whole or in substantial part competitive with the business of the Company then being conducted or under consideration, (2) any off-price retailer or retailer of discount merchandise, including without limitation, Burlington Coat Factory Warehouse Corporation, Federated Department Stores, Inc., TJX Companies Inc., Retail Ventures Inc., Kohl's Corporation, Stein Mart, Inc., and (3) any affiliates, subsidiaries or successors of businesses identified above.

(ii) The foregoing restrictions in Section 9(b)(i) shall have no force or effect in the event that: (i) the Executive's employment with the Company is terminated either by the Company pursuant to Section 6(d)[Without Cause] or by the Executive pursuant to Section 6(e) [Termination by the Executive for Good Reason]; or (ii) the Company fails to approve or grant an extension of this Agreement in accordance with Section 1 hereof.

(iii) Section 9(b)(i) shall not prohibit the Executive from making any investment of 1% or less of the equity securities of any publicly-traded corporation which is considered to be a Competing Business.

(c) **Non-Solicitation of Employees.** During the Term of Employment and for a period of 24 months following the Executive's termination of that employment with the Company, the Executive shall not, without the written permission of the Company or an affected affiliate, directly or indirectly (i) solicit, employ or retain, or have or cause any other person or entity to solicit, employ or retain, any person who is employed by the Company or was employed by the Company during the 6-month period prior to such solicitation, employment, or retainer, (ii) encourage any such person not to devote his or her full business time to the Company, or (iii) agree to hire or employ any such person.

(d) **Non-Solicitation of Third Parties.** During the Term of Employment and for a period of 24 months following the Executive's termination of employment with the Company, the Executive shall not directly or indirectly solicit or otherwise influence any entity with a business arrangement with the Company, including, without limitation, customers, suppliers, sales representatives, lenders, lessors, and lessees, to discontinue, reduce, or otherwise materially or adversely affect such relationship.

(e) **Non-Disparagement.** The Executive acknowledges and agrees that the Executive will not defame or criticize the services, business, integrity, veracity, or personal or professional reputation of the Company or any of its directors, officers, employees, affiliates, or agents of any of the foregoing in either a professional or personal manner either during the term of the Executive's employment or thereafter.

#### 10. Company Remedies for Executive's Breach of Certain Obligations.

(a) The Executive acknowledges and agrees that in the event that the Executive breaches or threatens to breach Sections 5 or 9 of this Agreement, all compensation and benefits otherwise payable pursuant to this Agreement and the vesting and/or exercisability of all stock options, restricted stock, performance shares and other forms of equity compensation previously awarded to the Executive, notwithstanding the provisions of any agreement evidencing any such award to the contrary, shall immediately cease.

(b) The Company shall give prompt notice to the Executive of its discovery of a breach by the Executive of Section 9 of this Agreement. If it is determined by a vote of not less than two-thirds of the members of the Board that the Executive has breached Section 9 of this Agreement and has not cured such breach within ten (10) business days of such notice, then:

(i) the Executive shall forfeit to the Company (A) all stock options, stock appreciation rights, performance shares and other equity compensation awards (other than shares of restricted stock, restricted stock units or similar awards) granted to the Executive by the Company which remain outstanding and unexercised or unpaid as of the date of such determination by the Board (the "Breach Determination Date") and (B) all shares of restricted stock, restricted stock units and similar awards granted to the Executive by the Company which continue to be held by the Executive as of the Breach Determination Date to the extent that such awards vested during the Forfeiture Period (as defined below); and

(ii) the Executive shall pay to the Company all gains realized by the Executive upon (A) the exercise by or payment in settlement to the Executive on and after the commencement of the Forfeiture Period of stock options, stock appreciation rights, performance shares and other equity compensation awards (other than shares of restricted stock, restricted stock units or similar awards) granted to the Executive by the Company and (B) the sale on and after the commencement of the Forfeiture Period of shares or other property received by the Executive pursuant to awards of restricted stock, restricted stock units or similar awards granted to the Executive by the Company and which vested during the Forfeiture Period.

(c) For purposes of this Section, the gain realized by the Executive upon the exercise or payment in settlement of stock options, stock appreciation rights, performance shares and other equity compensation awards shall be equal to (A) the closing sale price on the date of exercise or settlement (as reported on the stock exchange or market system constituting the principal market for the shares subject to the applicable award) of the number of vested shares issued to the Executive upon such exercise or settlement, reduced by the purchase price, if any, paid by the Executive to acquire such shares, or (B) if any such award was settled by payment in cash to the Executive, the gain realized by the Executive shall be equal to the amount of cash paid to the Executive. Further, for purposes of this Section, the gain realized by the Executive upon the sale of shares or other property received by the Executive pursuant to awards of restricted stock, restricted stock units or similar awards shall be equal to the gross proceeds of such sale realized by the Executive. Gains determined for purposes of this Section shall be determined without regard to any subsequent increase or decrease in the market price of the Company's stock or taxes paid by or withheld from the Executive with respect to such transactions.

(d) For the purposes of this Section, the "Forfeiture Period" shall be the period ending on the Breach Determination Date and beginning on the earlier of (A) the date six months prior to the Breach Determination Date or (B) the business day immediately preceding the date of the Executive's termination of employment with the Company.

(e) The Company shall have the right (but not the obligation) to deduct from any amounts payable from time to time to the Executive by the Company pursuant to this Agreement or otherwise (including wages or other compensation, vacation pay or other benefits, and any other

amounts owed to the Executive by the Company) any and all amounts the Executive is required to pay to the Company pursuant to this Section. The Executive agrees to pay to the Company immediately upon the Breach Determination Date the amount payable by the Executive to the Company pursuant to this Section which the Company has not recovered by means of such deductions.

(f) The Executive acknowledges that money will not adequately compensate the Company for the substantial damages that will arise upon the breach or threatened breach of Sections 5 or 9 of this Agreement and that the Company will not have any adequate remedy at law. For this reason, such breach or threatened breach will not be subject to the arbitration clause in Section 19; rather, the Company will be entitled, in addition to other rights and remedies, to specific performance, injunctive relief, and other equitable relief to prevent or restrain such breach or threatened breach. The Company may obtain such relief from (1) any court of competent jurisdiction, (2) an arbitrator pursuant to Section 19 hereof, or (3) a combination of the two (e.g., by simultaneously seeking arbitration under Section 19 and a temporary injunction from a court pending the outcome of the arbitration). It shall be the Company's sole and exclusive right to elect which approach to use to vindicate its rights. The Executive further agrees that in the event of a breach or threatened breach, the Company shall be entitled to obtain an immediate injunction and restraining order to prevent such breach and/or threatened breach and/or continued breach, without posting a bond or having to prove irreparable harm or damages, and to obtain all costs and expenses, including reasonable attorneys' fees and costs. In addition, the existence of any claim or cause of action by the Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of the restrictive covenants in this Agreement.

**11. Exercise of Stock Options Following Termination.** If the Executive's employment terminates, Executive (or the Executive's estate) may exercise the Executive's right to purchase any vested stock under the stock options granted to Executive by the Company as provided in the applicable stock option agreement. All such purchases must be made by the Executive in accordance with the applicable stock option plans and agreements between the parties.

**12. Successors; Binding Agreement.** This Agreement and all rights of the Executive hereunder shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive should die while any amounts would still be payable to the Executive hereunder, all such amounts shall be paid in accordance with the terms of this Agreement and applicable law to the Executive's beneficiary pursuant to a written designation of beneficiary, or, if there is no effective written designation of beneficiary by the Executive, to the Executive's estate.

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**13. Insurance and Indemnity.** The Company shall, to the extent permitted by law, include the Executive during the Term of Employment under any directors and officers liability insurance policy maintained for its directors and officers, with coverage at least as favorable to the Executive in amount and each other material respect as the coverage of other officers covered thereby. The Company's obligation to provide insurance and indemnify the Executive shall survive expiration or termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions of the Executive occurring during the Executive's employment with the Company. Such obligations shall be binding upon the Company's successors and assigns and shall inure to the benefit of the Executive's heirs and personal representatives.

**14. Notice.** For the purposes of this Agreement, notices, demands and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or (unless otherwise specified) mailed by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive: Jim Fassio  
Ross Stores, Inc.  
4440 Rosewood Drive  
Pleasanton, CA 94588

If to the Company: Ross Stores, Inc.  
4440 Rosewood Drive  
Pleasanton, CA 94588  
Attention: General Counsel

or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

**15. Complete Agreement; Modification, Waiver; Entire Agreement.** This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, promises or representations of the parties, except those relating to repayment of signing and related bonuses, or relocation expense reimbursements. To the extent that the bonus payment provisions (i.e., post-termination bonus payments) provided in this Agreement differ from the provisions of the Company's incentive bonus plans (currently the Incentive Compensation Plan) or any replacement plans, such bonus payments shall be paid pursuant to the provisions of this Agreement except to the extent expressly prohibited by law. Except as provided by Section 22 [Compliance with Section 409A], no provision of this Agreement may be amended or modified except in a document signed by the Executive and the chairman of the Committee or such other person as may be designated by the Board. No waiver by the Executive or the Company of any breach of, or

lack of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or the same condition or provision at another time. This Agreement, along with any stock option, restricted stock, performance share or other equity compensation award agreements between the parties, constitute the entire agreement between the parties regarding their employment relationship. To the extent that this Agreement is in any way inconsistent with any prior or contemporaneous stock option, restricted stock, performance share or other equity compensation award agreements between the parties, this Agreement shall control. No agreements or representations, oral or otherwise, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement.

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**16. Governing Law - Severability.** The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the state in which the Executive's principal place of employment described in Section 3 is located without reference to that state's choice of law rules. If any provision of this Agreement shall be held or deemed to be invalid, illegal, or unenforceable in any jurisdiction, for any reason, the invalidity of that provision shall not have the effect of rendering the provision in question unenforceable in any other jurisdiction or in any other case or of rendering any other provisions herein unenforceable, but the invalid provision shall be substituted with a valid provision which most closely approximates the intent and the economic effect of the invalid provision and which would be enforceable to the maximum extent permitted in such jurisdiction or in such case.

**17. Mitigation Not Required.** In the event the Executive's employment with the Company terminates for any reason, the Executive shall not be obligated to seek other employment following such termination. However, any amounts due the Executive under Sections 8(a)(i); 8(a)(ii); 8(d)(i)(2)(a),(b),(c) or (d); and/or any additional salary provided under Section 8(d)(i)(1) of this Agreement shall be offset by any cash remuneration, health care coverage and/or estate planning reimbursements attributable to any subsequent employment that the Executive may obtain during the period of payment of compensation under this Agreement following the termination of the Executive's employment with the Company.

**18. Withholding.** All payments required to be made by the Company hereunder to the Executive or the Executive's estate or beneficiaries shall be subject to the withholding of such amounts as the Company may reasonably determine it should withhold pursuant to any applicable law. To the extent permitted, the Executive may provide all or any part of any necessary withholding by contributing Company stock with value, determined on the date such withholding is due, equal to the number of shares contributed multiplied by the closing price per share as reported on the securities exchange constituting the primary market for the Company's stock on the date preceding the date the withholding is determined.

**19. Arbitration.** In the event of any dispute or claim relating to or arising out of the parties' employment relationship or this Agreement (including, but not limited to, any claims of breach of contract, wrongful termination, or age, race, sex, disability or other discrimination), all such disputes shall be fully, finally and exclusively resolved by binding arbitration conducted by the American Arbitration Association in the city in which the Executive's principal place of employment is located by an arbitrator mutually agreed upon by the parties hereto or, in the absence of such agreement, by an arbitrator selected in accordance with the Employment Arbitration Rules of the American Arbitration Association, provided, however, that this arbitration provision shall not apply, unless the Company elects otherwise, to any disputes or claims relating to or arising out of the Executive's breach of Sections 5 or 9 of this Agreement. If either the Company or the Executive shall request, arbitration shall be conducted by a panel of three arbitrators, one selected by the Company, one selected by the Executive, and the third selected by agreement of the first two, or, in the absence of such agreement, in accordance with such Rules.

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If there is termination of the Executive's employment with the Company followed by a dispute as to whether the Executive is entitled to the benefits provided under this Agreement, then, during the period of that dispute the Company shall pay the Executive fifty percent (50%) of the amount specified in Section 8 hereof (except that the Company shall pay one hundred percent (100%) of any insurance premiums provided for in Section 8), if, and only if, the Executive agrees in writing that if the dispute is resolved against the Executive, the Executive shall promptly refund to the Company all such payments received by, or made by the Company on behalf of, the Executive. If the dispute is resolved in the Executive's favor, promptly after resolution of the dispute the Company shall pay the Executive the sum that was withheld during the period of the dispute plus interest at the rate provided in Section 1274(d) of the Code, compounded quarterly.

**20. Attorney's Fees.** Each party shall bear its own attorney's fees and costs incurred in any action or dispute arising out of this Agreement.

**21. Miscellaneous.** No right or interest to, or in, any payments shall be assignable by the Executive; provided, however, that the Executive shall not be precluded from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and the legal representative of the Executive's estate shall not be precluded from assigning any right hereunder to the person or persons entitled thereto. This Agreement shall be binding upon and shall inure to the benefit of the Executive, the Executive's heirs and legal representatives and, the Company and its successors.

**22. Compliance with Section 409A.** Notwithstanding any other provision of this Agreement to the contrary, the provision, time and manner of payment or distribution of all compensation and benefits provided by this Agreement that constitute nonqualified deferred compensation subject to and not exempted from the requirements of Code Section 409A ("Section 409A Deferred Compensation") shall be subject to, limited by and construed in accordance with the requirements of Code Section 409A and all regulations and other guidance promulgated by the Secretary of the Treasury pursuant to such Section (such Section, regulations and other guidance being referred to herein

as "Section 409A"), including the following:

(a) **Separation from Service.** Payments and benefits constituting Section 409A Deferred Compensation otherwise payable or provided pursuant to Section 8 upon the Executive's termination of employment shall be paid or provided only at the time of a termination of the Executive's employment which constitutes a Separation from Service. For the purposes of this Agreement, a "Separation from Service" is a separation from service within the meaning of Section 409A.

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(b) **Six-Month Delay Applicable to Specified Employees.** If, at the time of a Separation from Service of the Executive, the Executive is a "specified employee" within the meaning of Section 409A (a "Specified Employee"), then any payments and benefits constituting Section 409A Deferred Compensation to be paid or provided pursuant to Section 8 upon the Separation from Service of the Executive shall be paid or provided commencing on the later of (i) the date that is six (6) months after the date of such Separation from Service or, if earlier, the date of death of the Executive (in either case, the "Delayed Payment Date"), or (ii) the date or dates on which such Section 409A Deferred Compensation would otherwise be paid or provided in accordance with Section 8. All such amounts that would, but for this Section 22(b), become payable prior to the Delayed Payment Date shall be accumulated and paid on the Delayed Payment Date.

(c) **Health Care and Estate Planning Benefits.** In the event that all or any of the health care or estate planning benefits to be provided pursuant to Sections 8(d)(i)(2)(c) or 8(d)(i)(2)(d) as a result of a Participant's Separation from Service constitute Section 409A Deferred Compensation, the Company shall provide for such benefits constituting Section 409A Deferred Compensation in a manner that complies with Section 409A. To the extent necessary to comply with Section 409A, the Company shall determine the health care premium cost necessary to provide such benefits constituting Section 409A Deferred Compensation for the applicable coverage period and shall pay such premium cost which becomes due and payable during the applicable coverage period on the applicable due date for such premiums; provided, however, that if the Executive is a Specified Employee, the Company shall not pay any such premium cost until the Delayed Payment Date. If the Company's payment pursuant to the previous sentence is subject to a Delayed Payment Date, the Executive shall pay the premium cost otherwise payable by the Company prior to the Delayed Payment Date, and on the Delayed Payment Date the Company shall reimburse the Executive for such Company premium cost paid by the Executive and shall pay the balance of the Company's premium cost necessary to provide such benefit coverage for the remainder of the applicable coverage period as and when it becomes due and payable over the applicable period.

(d) **Stock-Based Awards.** The vesting of any stock-based compensation awards which constitute Section 409A Deferred Compensation and are held by the Executive, if the Executive is a Specified Employee, shall be accelerated in accordance with this Agreement to the extent applicable; provided, however, that the payment in settlement of any such awards shall occur on the Delayed Payment Date. Any stock-based compensation which vests and becomes payable upon a Change in Control in accordance with Section 8(d)(i)(1) shall not be subject to this Section 22(d).

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(e) **Rights of the Company; Release of Liability.** It is the mutual intention of the Executive and the Company that the provision of all payments and benefits pursuant to this Agreement be made in compliance with the requirements of Section 409A. To the extent that the provision of any such payment or benefit pursuant to the terms and conditions of this Agreement would fail to comply with the applicable requirements of Section 409A, the Company may, in its sole and absolute discretion and without the consent of the Executive, make such modifications to the timing or manner of providing such payment and/or benefit to the extent it determines necessary or advisable to comply with the requirements of Section 409A; provided, however, that the Company shall not be obligated to make any such modifications. Any such modifications made by the Company shall, to the maximum extent permitted in compliance with the requirements of Section 409A, preserve the aggregate monetary face value of such payments and/or benefits provided by this Agreement in the absence of such modification; provided, however, that the Company shall in no event be obligated to pay any interest or other compensation in respect of any delay in the provision of such payments or benefits in order to comply with the requirements of Section 409A. The Executive acknowledges that (i) the provisions of this Section 22 may result in a delay in the time at which payments would otherwise be made pursuant to this Agreement and (ii) the Company is authorized to amend this Agreement, to void or amend any election made by the Executive under this Agreement and/or to delay the payment of any monies and/or provision of any benefits in such manner as may be determined by the Company, in its discretion, to be necessary or appropriate to comply with Section 409A (including any transition or grandfather rules thereunder) without prior notice to or consent of the Executive. The Executive hereby releases and holds harmless the Company, its directors, officers and stockholders from any and all claims that may arise from or relate to any tax liability, penalties, interest, costs, fees or other liability incurred by the Executive as a result of the application of Code Section 409A.

**23. Future Equity Compensation.** The Executive understands and acknowledges that all awards, if any, of stock options, restricted stock, performance shares and other forms of equity compensation by the Company are made at the sole discretion of the Board of Directors of the Company or a committee thereof. The Executive further understands and acknowledges, however, that unless the Executive has executed this Agreement and each successive amendment extending the Initial Term or any subsequent Renewal Term of the Agreement as may be agreed to by the Company and the Executive, it is the intention of the Board of Directors and the Executive that, notwithstanding any continued employment with the Company, (a) the Company shall have no obligation to grant any award of stock options, restricted stock, performance shares or any other form of equity compensation which might otherwise have been granted to the Executive on or after the intended commencement of the Initial Term or such successive Renewal Term for which the Executive has failed to sign the Agreement or the applicable Term of Employment extension amendment and (b) any such award which is nevertheless granted to the Executive after the intended commencement of the Initial Term or Renewal Term for which the Executive has failed to sign such Agreement or applicable



extension amendment shall not vest unless and until the Executive has executed the Agreement or applicable extension amendment, notwithstanding the provisions of any agreement evidencing such award to the contrary.

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**IN WITNESS WHEREOF**, the parties have executed this Executive Employment Agreement effective as of the date and year first above written.

**ROSS STORES, INC.**

**EXECUTIVE**

/s/ Michael Balmuth

/s/ Jim Fassio

By: Michael Balmuth

Jim Fassio

Vice Chairman, President and Chief

Executive Officer

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**JIM FASSIO**

**EXECUTIVE VICE PRESIDENT, PROPERTY DEVELOPMENT, CONSTRUCTION &  
STORE DESIGN**

**EXECUTIVE EMPLOYMENT AGREEMENT TERM SHEET**

<b>EVENT</b>	<b>PROVISIONS</b>
<b><i>Proposed Term</i></b>	<ul style="list-style-type: none"><li>• March 22, 2007 – March 31, 2011</li></ul>
<b><i>Renewal Term</i></b>	<ul style="list-style-type: none"><li>• Two year extension of current term.</li></ul>
<b><i>Renewal Process</i></b>	<ul style="list-style-type: none"><li>• Executive submits written request to CEO no sooner than 12 months prior to end of current term.</li><li>• Within 30 days of receipt of request, CEO discusses request with Compensation Committee. Within 30 days of Committee's consideration, CEO advises Executive in writing whether extension is approved.</li></ul>
<b><i>Cash Compensation</i></b>	<ul style="list-style-type: none"><li>• Annual Salary: <b>\$595,000</b></li><li>• Lump sum Insurance Premium: <b>\$6,610</b></li></ul>
<b><i>Annual Bonus</i></b>	<ul style="list-style-type: none"><li>• Eligible under the Incentive Compensation Plan.</li><li>• Bonus target is <b>65%</b> of Annual Salary.</li></ul>
<b><i>Equity Plan Participation</i></b>	<ul style="list-style-type: none"><li>• Eligible for awards under 2004 Equity Incentive Plan</li><li>• Restricted Stock: Number of shares equal to <b>\$450,000</b> divided by closing market price on March 22, 2007. Vesting: 100% to vest on March 22, 2012.</li><li>• Performance Shares: Target number of performance shares equal to <b>\$250,000</b> divided by closing market price on March 22, 2007. Number of performance shares earned is determined by performance against pre-established adjusted pre-tax profit target. Vesting of common shares issued in settlement of earned performance shares: 30% on settlement date, 30% on 1st anniversary and 40% on 2nd anniversary of settlement date.</li></ul>
<b><i>Benefits</i></b>	<ul style="list-style-type: none"><li>• Eligible to participate in all plans for employees and senior executives.</li><li>• Eligible for reimbursement up to <b>\$15,000</b> per fiscal year for estate tax planning expenses.</li></ul>
<b><i>Life Insurance Coverage</i></b>	<ul style="list-style-type: none"><li>• face Value \$2 million</li></ul>
<b><i>Governing Law</i></b>	<ul style="list-style-type: none"><li>• California</li><li>• Mandatory arbitration of disputes, other than breach of confidentiality, IP protection and restrictive covenants.</li></ul>
<b><i>Restrictive Covenants</i></b>	<ul style="list-style-type: none"><li>• During term of employment and for 24 months thereafter, Executive is subject to non-competition, non-solicitation and non-disparagement</li></ul>

	<p>covenants. However, non-compete covenants will not apply if executive is (i) terminated without cause, (ii) termination for good reason, or (iii) the Company fails to renew the agreement.</p> <ul style="list-style-type: none"> <li>• Company remedies for breach: termination of compensation and equity award vesting; forfeiture of equity awards; Executive obligation to repay gains realized on equity awards after commencement of "forfeiture period" (earlier of 6 months prior to Board's determination of breach or termination of employment).</li> </ul>
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<b>Mitigation</b>	<ul style="list-style-type: none"> <li>• Executive has no duty to seek other employment following termination. However, certain salary, bonus and benefit amounts due Executive under this agreement are reduced by cash remuneration and benefits from another employer paid during same period.</li> </ul>
<b>Expiration of Agreement due to Nonrenewal</b>	<p>Provided Executive signs general release of claims:</p> <ul style="list-style-type: none"> <li>• <u>Salary</u>: paid through termination date.</li> <li>• <u>Bonus</u>: pro-rated bonus for year of termination, based on greater of prior year bonus earned or current year bonus that would be earned absent termination, capped at lesser of 100% of prior year or current year targets.</li> <li>• <u>Options</u>: vesting ceases upon termination.</li> <li>• <u>Restricted Stock</u>: pro-rata vesting based on applicable vesting schedule and number of days since grant date.</li> <li>• <u>Performance Shares</u>: number of performance shares earned is based on actual performance against target. Common shares issued in settlement vest pro rata based on period of employment.</li> </ul>
<b>Termination for Cause; Voluntary Termination (other than Good Reason); and Death</b>	<ul style="list-style-type: none"> <li>• <u>Salary</u>: paid through termination date</li> <li>• <u>Bonus</u>: no bonus unless fully earned by termination date</li> <li>• <u>Options</u>: vesting ceases upon termination</li> <li>• <u>Restricted Stock</u>: unvested restricted shares are forfeited</li> <li>• <u>Performance Shares</u>: unvested award is forfeited. In the event of Death, the number of performance shares earned is based on actual performance against target. Common shares issued in settlement are vested in full</li> </ul>
<b>Termination without Cause; Termination due to Disability; and Termination For Good Reason</b>	<p>Provided Executive signs general release of claims:</p> <ul style="list-style-type: none"> <li>• <u>Salary</u>: paid through end of current term</li> <li>• <u>Bonus</u>: annual bonuses for remainder of current term, based on greater of bonus earned for year prior to termination or bonus that would be earned for year of termination, absent termination, capped at lesser of 100% of target in either year. Bonus for fiscal year of contract termination is pro rated for the portion of remaining contract term occurring within fiscal year.</li> <li>• <u>Options</u>: 100% accelerated vesting</li> <li>• <u>Restricted Stock</u>: pro-rata vesting based on applicable vesting schedule and number of days since grant date.</li> <li>• <u>Performance Shares</u>: number of performance shares earned is based on actual performance against target. Common shares issued in settlement are vested in full.</li> </ul>
<b>Change in Control – Single Trigger (with no Voluntary Termination or Termination for Cause)</b>	<ul style="list-style-type: none"> <li>• <u>Additional Salary</u>: <b>\$62,500</b> per month for 2 years</li> <li>• <u>Options</u>: 100% accelerated vesting if not assumed</li> <li>• <u>Restricted Stock</u>: 100% accelerated vesting</li> <li>• <u>Performance Shares</u>: 100% accelerated vesting of target number of performance shares and 100% of vesting of common shares issued in settlement.</li> <li>• <u>Excise Tax</u>: Gross-up for any excise tax on parachute payments</li> </ul>

***Change in Control – Double Trigger (Termination without Cause or for Good Reason within one month before and 12 months after Change in Control)***

- Everything stated in change in control – single trigger, plus (provided Executive signs general release of claims):
- Salary: paid through end of current term or two years, whichever is greater
- Health Coverage and Estate Planning Benefits: paid through end of current term or two years, whichever is greater
- Bonus: annual bonuses for greater of 2 years or remainder of current term, based on greater of bonus earned for year prior to termination or bonus that would be earned for year of termination, absent termination, capped at lesser of 100% of target in either year. Bonus for fiscal year of payment termination is pro rated for the portion final payment term occurring within fiscal year.
- Options: 100% accelerated vesting
- Restricted Stock received after change in control: pro-rata vesting based on applicable vesting schedule and number of days since grant date.
- Performance Shares received after change in control: number of performance shares earned is based on actual performance against target. Common shares issued in settlement are vested in full.
- Excise Tax: Gross-up for excise tax on parachute payments

Note regarding Performance Share Awards: The impact of employment termination and change in control on Performance Share Awards is included in this term sheet for reference. The applicable provisions are included in the executive's performance share agreement rather than in the employment agreement.

## EXECUTIVE EMPLOYMENT AGREEMENT

**THIS EXECUTIVE EMPLOYMENT AGREEMENT** (this "Agreement") is made effective January 1, 2007, (the "Effective Date") by and between Ross Stores, Inc. (the "Company"), a Delaware corporation, and Lisa Panattoni (the "Executive").

### RECITALS

A. The Company wishes to employ the Executive, and the Executive is willing to accept such employment, as Executive Vice President, Merchandising.

B. It is now the mutual desire of the Company and the Executive to enter into a written employment agreement to govern the terms of the Executive's employment by the Company as of and following the Effective Date on the terms and conditions set forth below.

### TERMS AND CONDITIONS

In consideration for the promises of the parties set forth below, the Company and the Executive hereby agree as follows:

1. **Term.** Subject to the provisions of Section 6 of this Agreement, the term of employment of the Executive by the Company under this Agreement (the "Term of Employment") shall be as follows:

(a) **Initial Term.** The initial Term of Employment of the Executive by the Company under this Agreement shall begin on the Effective Date and end on March 31, 2011 (the "Initial Term"), unless extended or terminated earlier in accordance with this Agreement.

(b) **Renewal Term.** Upon the timely written request of the Executive to extend the Term of Employment, the Compensation Committee (the "Committee") of the Board of Directors (the "Board") of the Company shall consider extending the Executive's employment with the Company under this Agreement. To be timely, such request must be delivered to the Company's Chief Executive Officer not earlier than twelve (12) months prior to the end of the then effective Initial Term or Renewal Term and, in any case, while the Executive remains an employee of the Company. Such request must contain no proposed modification to the provisions of this Agreement other than an extension of the Term of Employment as then in effect for an additional two (2) years. Within thirty (30) days following the receipt of such notice, the Chief Executive Officer will discuss such request with the Committee and advise the Executive, in writing, within thirty (30) days following its consideration of the Executive's written request, of the approval or disapproval of such extension request. The failure to provide such written advice shall constitute a denial of the Executive's request for extension. If the Executive's request for an extension is approved, the Term of Employment shall be extended for two (2) additional years commencing on the date immediately following the date of expiration of the Term of Employment in effect at the time of the Executive's written request. Such additional two-year period is referred to herein as a "Renewal Term."

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2. **Position and Duties.** During the Term of Employment, the Executive shall serve as Executive Vice President, Merchandising. As used in this Agreement, the term "Company" includes Ross Stores, Inc. and each and any of its divisions, affiliates or subsidiaries (except that, where the term relates to stock, stockholders, stock options or other stock-based awards or the Board, it means Ross Stores, Inc.). The Executive's employment may be transferred, assigned, or re-assigned to Ross Stores, Inc. or a division, affiliate or subsidiary of Ross Stores, Inc., and such transfer, assignment, or re-assignment will not constitute a termination of employment or "Good Reason" for the Executive's termination of employment under this Agreement. During the Term of Employment, the Executive may engage in outside activities provided those activities (including but not limited to membership on boards of directors of not-for-profit and for-profit organizations) do not conflict with the Executive's duties and responsibilities hereunder, and provided further that the Executive gives written notice to the Board of any significant outside business activity in which the Executive plans to become involved, whether or not such activity is pursued for profit.

3. **Principal Place of Employment.** The Executive shall be employed at the Company's offices in New York, New York, except for required travel on the Company's business to an extent substantially consistent with present business travel obligations of the Executive's position.

#### 4. Compensation and Related Matters.

(a) **Salary.** During the Term of Employment, the Company shall pay to the Executive a salary at a rate of not less than Six Hundred Eighty Five Thousand Dollars (\$685,000) per annum. The Executive's salary shall be payable in substantially equal installments in accordance with the Company's normal payroll practices applicable to senior executives. Subject to the first sentence of this Section 4(a), the Executive's salary may be adjusted from time to time by the Committee in accordance with normal business practices of the Company.

(b) **Bonus.** During the Term of Employment, the Executive shall be eligible to receive an annual bonus paid under the Company's existing incentive bonus plan under which the Executive is eligible (which is currently the Incentive Compensation Plan) or any replacement plan that may subsequently be established and in effect during the Term of Employment. The current target annual bonus the Executive is eligible to earn upon achievement of 100% of all applicable performance targets under such incentive bonus plan is 65% of the Executive's then effective annual salary rate. The Executive's death, termination for Cause or Voluntary Termination (as described in Sections 6(a), 6(c) and 6(f), respectively) prior to the Company's payment of the bonus for a fiscal year of the Company will cause the Executive to be ineligible for any annual bonus for that fiscal year or any pro-rata portion of such bonus.

(c) **Expenses.** During the Term of Employment, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in performing services hereunder, including all reasonable expenses of travel and living while away from

home, provided that such expenses are incurred and accounted for in accordance with the policies and procedures established by the Company.

(d) **Benefits.** During the Term of Employment, the Executive shall be entitled to participate in all of the Company's employee benefit plans and arrangements in which senior executives of the Company are eligible to participate. The Company shall not make any changes in such plans or arrangements which would adversely affect the Executive's rights or benefits thereunder, unless such change occurs pursuant to a program applicable to all senior executives of the Company and does not result in a proportionately greater reduction in the rights or benefits of the Executive as compared with any other similarly situated senior executive of the Company. The Executive shall be entitled to participate in, or receive benefits under, any employee benefit plan or arrangement made available by the Company in the future to its senior executives, subject to, and on a basis consistent with, the terms, conditions and overall administration of such plans and arrangements. Except as otherwise specifically provided herein, nothing paid to the Executive under any plan or arrangement presently in effect or made available in the future shall be in lieu of the salary or bonus otherwise payable under this Agreement.

(e) **Vacations.** During the Term of Employment, the Executive shall be entitled to twenty (20) vacation days in each calendar year, and to compensation in respect of earned but unused vacation days, determined in accordance with the Company's vacation plan. The Executive shall also be entitled to all paid holidays given by the Company to its senior executives. Unused vacation days shall not be forfeited once they have been earned and, if still unused at the time of the Executive's termination of employment with the Company, shall be promptly paid to the Executive at their then-current value, based on the Executive's daily salary rate at the time of the Executive's termination of employment.

(f) **Services Furnished.** The Company shall furnish the Executive with office space and such services as are suitable to the Executive's position and adequate for the performance of the Executive's duties during the Term of Employment.

#### 5. Confidential Information and Intellectual Property.

(a) Other than in the performance of the Executive's duties hereunder, the Executive agrees not to use in any manner or disclose, distribute, publish, communicate or in any way cause to be used, disclosed, distributed, published, or communicated in any way or at any time, either while in the Company's employ or at any time thereafter, to any person not employed by the Company, or not engaged to render services to the Company, any Confidential Information (as defined below) obtained while in the employ of the Company.

(b) Confidential Information includes any written or unwritten information which relates to and/or is used by the Company or its subsidiaries, affiliates or divisions, including, without limitation (i) the names, addresses, buying habits and other special information regarding past, present and potential customers, employees and suppliers of the Company, (ii) customer and supplier contracts and transactions or price lists of the Company and suppliers, (iii) methods of distribution, (iv) all agreements, files, books, logs, charts, records, studies, reports, processes, schedules and statistical information, (v) data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, (vi) supplier information, tax records, personnel histories and records, sales information, and property information, (vii) information regarding the present or future phases of business, (viii) ideas, inventions, trademarks, business information, know-how, processes, techniques, improvements, designs, redesigns, creations, discoveries, trade secrets, and developments, (ix) all computer software licensed or developed by the Company or its subsidiaries, affiliates or divisions, computer programs, computer-based and web-based training programs, and systems, and (x) finances and financial information, but Confidential Information will not include information of the Company or its subsidiaries, affiliates or divisions that (1) became or becomes a matter of public knowledge through sources independent of the Executive, (2) has been or is disclosed by the Company or its subsidiaries, affiliates or divisions without restriction on its use, or (3) has been or is required or specifically permitted to be disclosed by law or governmental order or regulation. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's Chief Executive Officer confirms to the Executive that the information is public knowledge.

(c) The provisions of this Section 5 shall not preclude the Executive from disclosing such information to the Executive's professional tax advisor or legal counsel solely to the extent necessary to the rendering of their professional services to the Executive if such individuals agree to keep such information confidential.

(d) The Executive agrees that upon leaving the Company's employ the Executive will remain reasonably available to answer questions from Company officers regarding the Executive's former duties and responsibilities and the knowledge the Executive obtained in connection therewith.

(e) The Executive agrees that upon leaving the Company's employ the Executive will not communicate with, or give statements to, any member of the media (including print, television, or radio media) relating to any matter (including pending or threatening lawsuits or administrative investigations) about which the Executive has knowledge or information (other than knowledge or information that is not Confidential Information) as a result of employment with the Company. The Executive further agrees to notify the Chief Executive Officer or his or her designee immediately after being contacted by any member of the media with respect to any matter affected by this section.

(f) The Executive agrees that all information, inventions, and discoveries, whether or not patented or patentable, made or conceived by the Executive, either alone or with others, at any time while employed by the Company, which arises out of such employment or is pertinent to any field of business or research in which, during such employment, the Company, its subsidiaries, affiliates or divisions is engaged or (if such is known to or ascertainable by the Executive) is considering engaging ("Intellectual Property") shall (i) be and remain the sole property

of the Company and the Executive shall not seek a patent with respect to such Intellectual Property without the prior consent of an authorized representative of the Company and (ii) be disclosed promptly to an authorized representative of the Company along with all information the Executive possesses with regard to possible applications and uses. Further, at the request of the Company, and without expense or additional compensation to the Executive, the Executive agrees to execute such documents and perform such other acts as the Company deems necessary to obtain patents on such Intellectual Property in a jurisdiction or jurisdictions designated by the Company, and to assign to the Company or its designee such Intellectual Property and all patent applications and patents relating thereto.

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(g) The Executive and the Company agree that the Executive intends all original works of authorship within the purview of the copyright laws of the United States authored or created by the Executive in the course of the Executive's employment with the Company will be works for hire within the meaning of such copyright law.

(h) Upon termination of the Executive's employment, or at any time upon request of the Company, the Executive will return to the Company all Confidential Information and Intellectual Property, in any form, including but not limited to letters, memoranda, reports, notes, notebooks, books of account, drawings, prints, specifications, formulae, data printouts, microfilms, magnetic tapes, disks, recordings, documents, and all copies thereof.

**6. Termination.** The Executive's employment may be terminated during the Term of Employment only as follows:

(a) **Death.** The Executive's employment shall terminate upon the Executive's death.

(b) **Disability.** If, as a result of the Executive's Disability (as defined below), the Executive shall have been absent from the Executive's duties hereunder on a full-time basis for the entire period of six consecutive months, and, within thirty days after written notice of termination is given by the Company (which may occur before or after the end of such six-month period), the Executive shall not have returned to the performance of the Executive's duties hereunder on full-time basis, the Executive's employment shall terminate. For purposes of this Agreement, the term "Disability" shall mean a physical or mental illness, impairment or condition reasonably determined by the Board that prevents the Executive from performing the duties of the Executive's position under this Agreement.

(c) **For Cause.** The Company may terminate the Executive's employment for Cause. For this purpose, "Cause" means the occurrence of any of the following (i) the Executive's continuous failure to substantially perform the Executive's duties hereunder (unless such failure is a result of a Disability as defined in Section 6(b)), (ii) the Executive's theft, dishonesty, breach of fiduciary duty for personal profit or falsification of any documents of the Company, (iii) the Executive's material failure to abide by the applicable code(s) of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct) of the Company, (iv) misconduct by the Executive within the scope of Section 304 of the Sarbanes-Oxley Act of 2002 as a result of which the Company is required to prepare an accounting restatement, (v) the Executive's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company (including, without limitation, the Executive's improper use or disclosure of confidential or proprietary information of the Company), (vi) any intentional misconduct or illegal or grossly negligent conduct by the Executive which is materially injurious to the Company monetarily or otherwise, (vii) any material breach by the Executive of the provisions of Section 9 [Certain Employment Obligations] of this Agreement, or (viii) the Executive's conviction (including any plea of guilty or nolo contendere) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which materially impairs the Executive's ability to perform his or her duties with the Company. A termination for Cause shall not take effect unless: (1) the Executive is given written notice by the Company of its intention to terminate the Executive for Cause; (2) the notice specifically identifies the particular act or acts or failure or failures to act which are the basis for such termination; (3) the notice is given within sixty (60) days of the Company's learning of such act or acts or failure or failures to act; and (4) only in the case of clause (i), (iii), (v), (vi) or (vii) of the second sentence of this Section 6(c), the Executive fails to substantially cure such breach, to the extent such cure is possible, within sixty (60) days after the date that such written notice is given to the Executive.

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(d) **Without Cause.** The Company may terminate the Executive's employment at any time Without Cause. A termination "Without Cause" is a termination by the Company of the Executive's employment with the Company for any reasons other than the death or Disability of the Executive or the termination by the Company of the Executive for Cause as described in Section 6(c).

(e) **Termination by the Executive for Good Reason.** The Executive may terminate the Executive's employment with the Company for "Good Reason," which shall be deemed to occur if the Executive terminates the Executive's employment with the Company within sixty (60) days after written notice to the Company by the Executive of the occurrence of one or more of the following conditions, which condition(s) have not been cured within ten (10) business days after the Company's receipt of such written notice: (1) a failure by the Company to comply with any material provision of this Agreement (including but not limited to the reduction of the Executive's salary or the target annual bonus opportunity set forth in Section 4(b), (2) a significant diminishment in the nature or scope of the authority, power, function or duty attached to the position which the Executive currently maintains without the express written consent of the Executive, or (3) the relocation of the Executive's Principal Place of Employment as described in Section 3 to a location that increases the regular one-way commute distance between the Executive's residence and Principal Place of Employment by more than 25 miles without the Executive's prior written consent. The Executive's failure to give reasonably prompt written notice to the Company of the occurrence of a condition constituting Good Reason or to terminate employment for Good Reason within the 60-day period following the Executive's written notice of the occurrence of such condition shall waive the Executive's right to terminate employment for Good Reason based upon such occurrence of such condition.

(f) **Voluntary Termination.** The Executive may voluntarily resign from the Executive's employment with the Company at any time (a

"Voluntary Termination"). A voluntary resignation from employment by the Executive for Good Reason pursuant to Section 6(e) shall not be deemed a Voluntary Termination.

(g) **Non-Renewal Termination.** If the Executive fails to request an extension of the Term of Employment in accordance with Section 1(b) or if the Committee fails to approve such request, this Agreement shall automatically expire at the end of the then current Term of Employment (a "Non-Renewal Termination").

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## 7. Notice and Effective Date of Termination

(a) **Notice.** Any termination of the Executive's employment by the Company or by the Executive during the Term of Employment (other than as a result of the death of the Executive or a Non-Renewal Termination described in Section 6(g)) shall be communicated by written notice of termination to the other party hereto. Such notice shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under that provision.

(b) **Date of Termination.** The date of termination of the Executive's employment shall be:

(i) if the Executive's employment is terminated by the Executive's death, the date of the Executive's death;

(ii) if the Executive's employment is terminated due to Disability pursuant to Section 6(b), the date of termination shall be the last to occur of the 31st day following delivery of the notice of termination to the Executive by the Company or the end of the consecutive six-month period referred to in Section 6(b).

(iii) if the Executive's employment is terminated for any other reason by either party, the date on which a notice of termination is delivered to the other party; and

(iv) if the Agreement expires pursuant to a Non-Renewal Termination described in Section 6(g), the parties' employment relationship shall terminate on the last day of the then current Term of Employment without any notice.

## 8. Compensation and Benefits Upon Termination.

(a) **Termination Due To Disability, Without Cause or For Good Reason.** If the Executive's employment terminates pursuant to Section 6(b) [Disability], Section 6(d) [Without Cause], or Section 6(e) [Termination by Executive for Good Reason], then, subject to Section 22 [Compliance with Section 409A], in addition to all salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment, the Executive shall be entitled to the following, provided that within sixty (60) days following the Executive's termination of employment the Executive executes a general release of claims against the Company and its subsidiaries, affiliates, stockholders, directors, officers, employees, agents, successors and assigns in a form approved by the Company (the "Release") and the period for revocation, if any, of such Release has expired without the Release having been revoked:

(i) **Salary.** The Company shall continue to pay to the Executive the Executive's salary, at the rate in effect immediately prior to such termination of employment, through the remainder of the Term of Employment then in effect.

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(ii) **Bonus.** The Company shall continue to pay to the Executive an annual bonus through the remainder of the Term of Employment then in effect; provided, however, that the amount of the annual bonus determined in accordance with this Section 8(a)(ii) for the fiscal year of the Company in which such Term of Employment ends shall be prorated on the basis of the number of days of such Term of Employment occurring within such fiscal year. The amount of each annual bonus payable pursuant to this Section 8(a)(ii), prior to any proration, shall be equal to the greater of (A) the annual bonus earned by the Executive for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or (B) the annual bonus that the Executive would have earned under the Company's bonus plan for the fiscal year of the Company in which the Executive's termination of employment occurs had the Executive remained in its employment. However, in no case shall any such post-termination annual bonus exceed the lesser of 100% of the Executive's target bonus for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or 100% of the Executive's target bonus for the fiscal year of the Company in which the Executive's termination of employment occurs. Such bonuses shall not be paid until due under the applicable Company bonus plan.

(iii) **Stock Options.** Stock options granted to the Executive by the Company and which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested in full upon such termination of employment.

(iv) **Restricted Stock.** Shares of restricted stock granted to the Executive by the Company which have not become vested as of the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested on a pro rata basis. The number of such additional shares of restricted stock that shall become vested as of the date of the Executive's termination of employment shall be that number of additional shares that would have become vested through the date of such termination of employment at the rate(s) determined under the vesting schedule applicable to such shares had such vesting schedule provided for the accrual of vesting on a daily

basis (based on a 365 day year). For example, if the vesting schedule applicable to a restricted stock award provides for vesting of 20%, 30% and 50% of the award on the first, second and third anniversaries, respectively, of the date of grant of the award, then pro rata vesting under this Section 8(a)(iv) shall be accrued at daily rates of 0.05479%, 0.08219% and 0.13699%, respectively, from the date of grant through the date of termination of employment. Any shares of restricted stock remaining unvested after such pro rata acceleration of vesting shall automatically be reacquired by the Company in accordance with the provisions of the applicable restricted stock agreement, and the Executive shall have no further rights in such unvested portion of the restricted stock.

(v) **Other Equity Awards.** Except as set forth in Sections 8(a)(iii) and 8(a)(iv), performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall vest and be settled in accordance with their terms.

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The Company shall have no further obligations to the Executive as a result of termination of employment described in this Section 8(a) except as set forth in Section 12.

(b) **Death, Termination for Cause or Voluntary Termination.** If the Executive's employment terminates pursuant to Section 6(a) [Death], Section 6(c) [For Cause] or Section 6(f) [Voluntary Termination], the Executive (or the Executive's designee or the Executive's estate) shall be entitled to receive only the salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment. The Executive shall not be entitled to any bonus not paid prior to the date of the Executive's termination of employment, and the Executive shall not be entitled to any prorated bonus payment for the year in which the Executive's employment terminates. Any stock options granted to the Executive by the Company shall continue to vest only through the date on which the Executive's employment terminates, and unless otherwise provided by their terms, any restricted stock, performance share awards or other equity awards that were granted to the Executive by the Company that remain unvested as of the date on which the Executive's employment terminates shall automatically be forfeited and the Executive shall have no further rights with respect to such awards. The Company shall have no further obligations to the Executive as a result of termination of employment described in this Section 8(b) except as set forth in Section 12.

(c) **Non-Renewal Termination.** If the Agreement expires as set forth in Section 6(g) [Non-Renewal Termination], then, subject to Section 22 [Compliance with Section 409A], in addition to all salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment, the Executive shall be entitled to the following, provided that within sixty (60) days following the Executive's termination of employment the Executive executes the Release and the period for revocation, if any, of such Release has expired without the Release having been revoked:

(i) **Bonus.** The Company shall pay the Executive an annual bonus for the fiscal year of the Company in which the date of the Executive's termination of employment occurs, which shall be prorated for the portion of such fiscal year that the Executive is employed by the Company. The amount of such annual bonus, prior to proration, shall be equal to the greater of (A) the annual bonus earned by the Executive for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or (B) the annual bonus that the Executive would have earned under the Company's bonus plan for the fiscal year of the Company in which the Executive's termination of employment occurs had the Executive remained in its employment. However, in no case shall any such post-termination annual bonus exceed the lesser of 100% of the Executive's target bonus for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or 100% of the Executive's target bonus for the fiscal year of the Company in which the Executive's termination of employment occurs. Such bonus shall not be paid until due under the applicable Company bonus plan.

(ii) **Stock Options.** Stock options granted to the Executive by the Company and which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall be vested and exercisable in accordance with their terms.

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(iii) **Restricted Stock.** Shares of restricted stock granted to the Executive by the Company which have not become vested as of the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested on a pro rata basis. The number of such additional shares of restricted stock that shall become vested as of the date of the Executive's termination of employment shall be that number of additional shares that would have become vested through the date of such termination of employment at the rate(s) determined under the vesting schedule applicable to such shares had such vesting schedule provided for the accrual of vesting on a daily basis (based on a 365 day year). For example, if the vesting schedule applicable to a restricted stock award provides for vesting of 20%, 30% and 50% of the award on the first, second and third anniversaries, respectively, of the date of grant of the award, then pro rata vesting under this Section 8(c)(iii) shall be accrued at daily rates of 0.05479%, 0.08219% and 0.13699%, respectively, from the date of grant through the date of termination of employment. Any shares of restricted stock remaining unvested after such pro rata acceleration of vesting shall automatically be reacquired by the Company in accordance with the provisions of the applicable restricted stock agreement, and the Executive shall have no further rights in such unvested portion of the restricted stock.

(iv) **Other Equity Awards.** Except as set forth in Sections 8(c)(ii) and 8(c)(iii), performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall vest and be settled in accordance with their terms.

The Company shall have no further obligations to the Executive as a result of termination of employment described in this Section 8(c) except as set forth in Section 12.



**(d) Special Change in Control Provisions.**

**(i) Change in Control Benefits.**

**(1) Without Regard to Termination of Employment.** In the event of a Change in Control (as defined below), all shares of restricted stock granted to the Executive by the Company shall become vested in full immediately prior to the consummation of such Change in Control, and, subject to Section 22 [Compliance with Section 409A], the Executive shall be entitled to receive an additional salary equal to Sixty Two Thousand Five Hundred Dollars (\$62,500) per month for a period of two (2) years following the Change in Control unless and until the Voluntary Termination (as defined in Section 6(f)) of the Executive's employment or the termination for Cause (as defined in Section 6(c)) of the Executive's employment. Except as set forth in this Section 8(d)(i)(1) or Section 8(d)(i)(2) below, the treatment of stock options, performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of such Change in Control shall be determined in accordance with their terms.

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**(2) Upon Certain Termination of Employment.** In addition to the payments and benefits provided by Section 8(d)(i)(1) above, if the Executive's employment is terminated either by the Company Without Cause (as defined in Section 6(d)) or by the Executive for Good Reason (as defined in Section 6(e)), in either case within a period commencing one (1) month prior to and ending twelve (12) months following a Change in Control, then, subject to Section 22 [Compliance with Section 409A], the Executive shall be entitled to the following (in addition to any other payments or benefits provided under this Agreement), provided that within sixty (60) days following the Executive's termination of employment the Executive executes the Release and the period for revocation, if any, of such Release has expired without the Release having been revoked:

**a. Salary.** The salary that shall be payable to the Executive under Section 8(a)(i) shall be paid for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of the Executive's termination of employment.

**b. Bonus.** The annual bonus that shall be payable to the Executive under Section 8(a)(ii) shall be paid for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of the Executive's termination of employment; provided, however, that the amount of the annual bonus determined in accordance with Section 8(a)(ii) for the fiscal year of the Company in which such Term of Employment or two-year period, as the case may be, ends shall be prorated on the basis of the number of days of such Term of Employment or two-year period occurring within such fiscal year.

**c. Health Care Coverage.** The Executive shall be entitled to the continuation of the Executive's health care coverage under the Company's employee benefit plans (including medical, dental, vision and mental coverage) which the Executive had at the time of the termination of employment (including coverage for the Executive's dependents to the extent such dependents were covered immediately prior to such termination of employment) at the Company's expense for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of the Executive's termination of employment. Such health care continuation rights will be in addition to any rights the Executive may have under ERISA Sections 600 and thereafter and Section 4980B of the Internal Revenue Code ("COBRA coverage").

**d. Estate Planning.** The Executive shall be entitled to reimbursement of the Executive's estate planning expenses (including attorneys' fees) on the same basis, if any, as to which the Executive was entitled to such reimbursements immediately prior to such termination of employment for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of termination of employment.

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**(ii) Change in Control Defined.** A "Change in Control" shall be deemed to have occurred if: (1) any person or group (within the meaning of Rule 13d-3 of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended) shall acquire during the twelve-month period ending on the date of the most recent acquisition by such person or group, in one or a series of transactions, whether through sale of stock or merger, ownership of stock of the Company that constitutes 35% or more of the total voting power of the stock of the Company or any successor to the Company; (2) a merger in which the Company is a party pursuant to which any person or such group acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Company, or (3) the sale, exchange, or transfer of all or substantially all of the Company's assets (other than a sale, exchange, or transfer to one or more corporations where the stockholders of the Company before and after such sale, exchange, or transfer, directly or indirectly, are the beneficial owners of at least a majority of the voting stock of the corporation(s) to which the assets were transferred).

**(iii) Excise Tax Gross-Up.** If the Executive becomes entitled to one or more payments (with a "payment" for this purpose including the accelerated vesting of restricted stock, stock options or other equity awards, or other non-cash benefits or property), whether pursuant to the terms of this Agreement or any other plan or agreement with the Company or any affiliated company (collectively, "Change in Control Payments"), which are or become subject to the tax (the "Excise Tax") imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall pay to the Executive at the time specified below such amount (the "Gross-up Payment") as may be necessary to place the Executive in the same after-tax position as if no portion of the Change in Control Payments and any amounts paid to the Executive pursuant to Section 8 had been subject to the Excise Tax. The Gross-up Payment shall include, without limitation, reimbursement for any penalties and interest that may accrue in respect of such Excise Tax. For purposes of determining the amount of the

Gross-up Payment, the Executive shall be deemed: (A) to pay federal income taxes at the highest marginal rate of federal income taxation for the year in which the Gross-up Payment is to be made; and (B) to pay any applicable state and local income taxes at the highest marginal rate of taxation for the calendar year in which the Gross-up Payment is to be made, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes if paid in such year. If the Excise Tax is subsequently determined to be less than the amount taken into account hereunder at the time the Gross-up Payment is made, the Executive shall repay to the Company at the time that the amount such reduction in Excise Tax is finally determined (but, if previously paid to the taxing authorities, not prior to the time the amount of such reduction is refunded to the Executive or otherwise realized as a benefit by the Executive) the portion of the Gross-up Payment that would not have been paid if such Excise Tax had been used in initially calculating the Gross-up payment, plus interest on the amount of such repayment at the rate provided in Section 1274 (b)(2)(B) of the Code. In the event that the Excise Tax is determined to exceed the amount taken into account hereunder at the time the Gross-up Payment is made, the Company shall make an additional Gross-up Payment in respect of such excess (plus any interest and penalties payable with respect to such excess) at the time that the amount of such excess is finally determined.

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(iv) The Gross-up Payment provided for above shall be paid, subject to Section 22 [Compliance with Section 409A], on the 30th day (or such earlier date as the Excise Tax becomes due and payable to the taxing authorities) after it has been determined that the Change in Control Payments (or any portion thereof) are subject to the Excise Tax; provided, however, that if the amount of such Gross-up Payment or portion thereof cannot be finally determined on or before such day, the Company shall pay to the Executive on such day an estimate, as determined by counsel or auditors selected by the Company and reasonably acceptable to the Executive, of the minimum amount of such payments. The Company shall pay to the Executive the remainder of such payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount thereof can be determined. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the Executive shall repay such amount on the fifth day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code). The Company shall have the right to control all proceedings with the Internal Revenue Service that may arise in connection with the determination and assessment of any Excise Tax and, at its sole option, the Company may pursue or forego any and all administrative appeals, proceedings, hearings, and conferences with any taxing authority in respect of such Excise Tax (including any interest or penalties thereon); provided, however, that the Company's control over any such proceedings shall be limited to issues with respect to which a Gross-up Payment would be payable hereunder, and the Executive shall be entitled to settle or contest any other issue raised by the Internal Revenue Service or any other taxing authority. The Executive shall cooperate with the Company in any proceedings relating to the determination and assessment of any Excise Tax and shall not take any position or action that would materially increase the amount of any Gross-up Payment hereunder.

## **9. Certain Employment Obligations.**

(a) **Employee Acknowledgement.** The Company and the Executive acknowledge that (i) the Company has a special interest in and derives significant benefit from the unique skills and experience of the Executive; (ii) as a result of the Executive's service with the Company, the Executive will use and have access to some of the Company's proprietary and valuable Confidential Information during the course of the Executive's employment; (iii) the Confidential Information has been developed and created by the Company at substantial expense and constitutes valuable proprietary assets of the Company, and the Company will suffer substantial damage and irreparable harm which will be difficult to compute if, during the term of the Executive's employment or thereafter, the Executive should disclose or improperly use such Confidential Information in violation of the provisions of this Agreement; (iv) the Company will suffer substantial damage and irreparable harm which will be difficult to compute if the Executive competes with the company in violation of this Agreement; (v) the Company will suffer substantial damage which will be difficult to compute if, the Executive solicits or interferes with the Company's employees, clients, or customers; (vi) the provisions of this Agreement are reasonable and necessary for the protection of the business of the Company; and (vii) the provisions of this Agreement will not preclude the Executive from obtaining other gainful employment or service.

### **(b) Non-Compete.**

(i) During the Term of Employment and for a period of twenty-four (24) months following the Executive's termination of employment with the Company, the Executive shall not, directly or indirectly, own, manage, control, be employed by, consult with, participate in, or be connected in any manner with the ownership, management, operation, control of, or otherwise become involved with, any Competing Business, nor shall the Executive undertake any planning to engage in any such activity.

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For purposes of this Agreement, a Competing Business shall mean any of the following: (1) any business that is in whole or in substantial part competitive with the business of the Company then being conducted or under consideration, (2) any off-price retailer or retailer of discount merchandise, including without limitation, Burlington Coat Factory Warehouse Corporation, Federated Department Stores, Inc., TJX Companies Inc., Retail Ventures Inc., Kohl's Corporation, Bed, Bath & Beyond, Inc., Linens 'n Things, Inc., Tuesday Morning Corporation, Stein Mart, Inc., and (3) any affiliates, subsidiaries or successors of businesses identified above.

(ii) The foregoing restrictions in Section 9(b)(i) shall have no force or effect in the event that: (i) the Executive's employment with the Company is terminated either by the Company pursuant to Section 6(d)[Without Cause] or by the Executive pursuant to Section 6(e) [Termination by the Executive for Good Reason]; or (ii) the Company fails to approve or grant an extension of this Agreement in accordance with Section 1 hereof.

(iii) Section 9(b)(i) shall not prohibit the Executive from making any investment of 1% or less of the equity securities of any publicly-traded corporation which is considered to be a Competing Business.

(c) **Non-Solicitation of Employees.** During the Term of Employment and for a period of 24 months following the Executive's termination of that employment with the Company, the Executive shall not, without the written permission of the Company or an affected affiliate, directly or indirectly (i) solicit, employ or retain, or have or cause any other person or entity to solicit, employ or retain, any person who is employed by the Company or was employed by the Company during the 6-month period prior to such solicitation, employment, or retainer, (ii) encourage any such person not to devote his or her full business time to the Company, or (iii) agree to hire or employ any such person.

(d) **Non-Solicitation of Third Parties.** During the Term of Employment and for a period of 24 months following the Executive's termination of employment with the Company, the Executive shall not directly or indirectly solicit or otherwise influence any entity with a business arrangement with the Company, including, without limitation, customers, suppliers, sales representatives, lenders, lessors, and lessees, to discontinue, reduce, or otherwise materially or adversely affect such relationship.

(e) **Non-Disparagement.** The Executive acknowledges and agrees that the Executive will not defame or criticize the services, business, integrity, veracity, or personal or professional reputation of the Company or any of its directors, officers, employees, affiliates, or agents of any of the foregoing in either a professional or personal manner either during the term of the Executive's employment or thereafter.

#### 10. Company Remedies for Executive's Breach of Certain Obligations.

(a) The Executive acknowledges and agrees that in the event that the Executive breaches or threatens to breach Sections 5 or 9 of this Agreement, all compensation and benefits otherwise payable pursuant to this Agreement and the vesting and/or exercisability of all stock options, restricted stock, performance shares and other forms of equity compensation previously awarded to the Executive, notwithstanding the provisions of any agreement evidencing any such award to the contrary, shall immediately cease.

(b) The Company shall give prompt notice to the Executive of its discovery of a breach by the Executive of Section 9 of this Agreement. If it is determined by a vote of not less than two-thirds of the members of the Board that the Executive has breached Section 9 of this Agreement and has not cured such breach within ten (10) business days of such notice, then:

(i) the Executive shall forfeit to the Company (A) all stock options, stock appreciation rights, performance shares and other equity compensation awards (other than shares of restricted stock, restricted stock units or similar awards) granted to the Executive by the Company which remain outstanding and unexercised or unpaid as of the date of such determination by the Board (the "Breach Determination Date") and (B) all shares of restricted stock, restricted stock units and similar awards granted to the Executive by the Company which continue to be held by the Executive as of the Breach Determination Date to the extent that such awards vested during the Forfeiture Period (as defined below); and

(ii) the Executive shall pay to the Company all gains realized by the Executive upon (A) the exercise by or payment in settlement to the Executive on and after the commencement of the Forfeiture Period of stock options, stock appreciation rights, performance shares and other equity compensation awards (other than shares of restricted stock, restricted stock units or similar awards) granted to the Executive by the Company and (B) the sale on and after the commencement of the Forfeiture Period of shares or other property received by the Executive pursuant to awards of restricted stock, restricted stock units or similar awards granted to the Executive by the Company and which vested during the Forfeiture Period.

(c) For purposes of this Section, the gain realized by the Executive upon the exercise or payment in settlement of stock options, stock appreciation rights, performance shares and other equity compensation awards shall be equal to (A) the closing sale price on the date of exercise or settlement (as reported on the stock exchange or market system constituting the principal market for the shares subject to the applicable award) of the number of vested shares issued to the Executive upon such exercise or settlement, reduced by the purchase price, if any, paid by the Executive to acquire such shares, or (B) if any such award was settled by payment in cash to the Executive, the gain realized by the Executive shall be equal to the amount of cash paid to the Executive. Further, for purposes of this Section, the gain realized by the Executive upon the sale of shares or other property received by the Executive pursuant to awards of restricted stock, restricted stock units or similar awards shall be equal to the gross proceeds of such sale realized by the Executive. Gains determined for purposes of this Section shall be determined without regard to any subsequent increase or decrease in the market price of the Company's stock or taxes paid by or withheld from the Executive with respect to such transactions.

(d) For the purposes of this Section, the "Forfeiture Period" shall be the period ending on the Breach Determination Date and beginning on the earlier of (A) the date six months prior to the Breach Determination Date or (B) the business day immediately preceding the date of the Executive's termination of employment with the Company.

(e) The Company shall have the right (but not the obligation) to deduct from any amounts payable from time to time to the Executive by the Company pursuant to this Agreement or otherwise (including wages or other compensation, vacation pay or other benefits, and any other amounts owed to the Executive by the Company) any and all amounts the Executive is required to pay to the Company pursuant to this Section. The Executive agrees to pay to the Company immediately upon the Breach Determination Date the amount payable by the Executive to the Company pursuant to this Section which the Company has not recovered by means of such deductions.

(f) The Executive acknowledges that money will not adequately compensate the Company for the substantial damages that will arise

upon the breach or threatened breach of Sections 5 or 9 of this Agreement and that the Company will not have any adequate remedy at law. For this reason, such breach or threatened breach will not be subject to the arbitration clause in Section 19; rather, the Company will be entitled, in addition to other rights and remedies, to specific performance, injunctive relief, and other equitable relief to prevent or restrain such breach or threatened breach. The Company may obtain such relief from (1) any court of competent jurisdiction, (2) an arbitrator pursuant to Section 19 hereof, or (3) a combination of the two (e.g., by simultaneously seeking arbitration under Section 19 and a temporary injunction from a court pending the outcome of the arbitration). It shall be the Company's sole and exclusive right to elect which approach to use to vindicate its rights. The Executive further agrees that in the event of a breach or threatened breach, the Company shall be entitled to obtain an immediate injunction and restraining order to prevent such breach and/or threatened breach and/or continued breach, without posting a bond or having to prove irreparable harm or damages, and to obtain all costs and expenses, including reasonable attorneys' fees and costs. In addition, the existence of any claim or cause of action by the Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of the restrictive covenants in this Agreement.

**11. Exercise of Stock Options Following Termination.** If the Executive's employment terminates, Executive (or the Executive's estate) may exercise the Executive's right to purchase any vested stock under the stock options granted to Executive by the Company as provided in the applicable stock option agreement. All such purchases must be made by the Executive in accordance with the applicable stock option plans and agreements between the parties.

**12. Successors; Binding Agreement.** This Agreement and all rights of the Executive hereunder shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive should die while any amounts would still be payable to the Executive hereunder, all such amounts shall be paid in accordance with the terms of this Agreement and applicable law to the Executive's beneficiary pursuant to a written designation of beneficiary, or, if there is no effective written designation of beneficiary by the Executive, to the Executive's estate.

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**13. Insurance and Indemnity.** The Company shall, to the extent permitted by law, include the Executive during the Term of Employment under any directors and officers liability insurance policy maintained for its directors and officers, with coverage at least as favorable to the Executive in amount and each other material respect as the coverage of other officers covered thereby. The Company's obligation to provide insurance and indemnify the Executive shall survive expiration or termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions of the Executive occurring during the Executive's employment with the Company. Such obligations shall be binding upon the Company's successors and assigns and shall inure to the benefit of the Executive's heirs and personal representatives.

**14. Notice.** For the purposes of this Agreement, notices, demands and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or (unless otherwise specified) mailed by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:     Lisa Panattoni  
Executive Vice President, Merchandising  
Ross Stores, Inc.  
1372 Broadway, 8<sup>th</sup> Floor  
New York, NY 10018

If to the Company:     Ross Stores, Inc.  
4440 Rosewood Drive  
Pleasanton, CA 94588  
Attention: General Counsel

or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

**15. Complete Agreement; Modification, Waiver; Entire Agreement.** This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, promises or representations of the parties, except those relating to repayment of signing and related bonuses, or relocation expense reimbursements. To the extent that the bonus payment provisions (i.e., post-termination bonus payments) provided in this Agreement differ from the provisions of the Company's incentive bonus plans (currently the Incentive Compensation Plan) or any replacement plans, such bonus payments shall be paid pursuant to the provisions of this Agreement except to the extent expressly prohibited by law. Except as provided by Section 22 [Compliance with Section 409A], no provision of this Agreement may be amended or modified except in a document signed by the Executive and the chairman of the Committee or such other person as may be designated by the Board.

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No waiver by the Executive or the Company of any breach of, or lack of compliance with, any condition or provision of this Agreement by the

other party shall be considered a waiver of any other condition or provision or the same condition or provision at another time. This Agreement, along with any stock option, restricted stock, performance share or other equity compensation award agreements between the parties, constitute the entire agreement between the parties regarding their employment relationship. To the extent that this Agreement is in any way inconsistent with any prior or contemporaneous stock option, restricted stock, performance share or other equity compensation award agreements between the parties, this Agreement shall control. No agreements or representations, oral or otherwise, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement.

**16. Governing Law - Severability.** The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the state in which the Executive's principal place of employment described in Section 3 is located without reference to that state's choice of law rules. If any provision of this Agreement shall be held or deemed to be invalid, illegal, or unenforceable in any jurisdiction, for any reason, the invalidity of that provision shall not have the effect of rendering the provision in question unenforceable in any other jurisdiction or in any other case or of rendering any other provisions herein unenforceable, but the invalid provision shall be substituted with a valid provision which most closely approximates the intent and the economic effect of the invalid provision and which would be enforceable to the maximum extent permitted in such jurisdiction or in such case.

**17. Mitigation Not Required.** In the event the Executive's employment with the Company terminates for any reason, the Executive shall not be obligated to seek other employment following such termination. However, any amounts due the Executive under Sections 8(a)(i); 8(a)(ii); 8(d)(i)(2)(a),(b), (c) or (d); and/or any additional salary provided under Section 8(d)(i)(1) of this Agreement shall be offset by any cash remuneration, health care coverage and/or estate planning reimbursements attributable to any subsequent employment that the Executive may obtain during the period of payment of compensation under this Agreement following the termination of the Executive's employment with the Company.

**18. Withholding.** All payments required to be made by the Company hereunder to the Executive or the Executive's estate or beneficiaries shall be subject to the withholding of such amounts as the Company may reasonably determine it should withhold pursuant to any applicable law. To the extent permitted, the Executive may provide all or any part of any necessary withholding by contributing Company stock with value, determined on the date such withholding is due, equal to the number of shares contributed multiplied by the closing price per share as reported on the securities exchange constituting the primary market for the Company's stock on the date preceding the date the withholding is determined.

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**19. Arbitration.** In the event of any dispute or claim relating to or arising out of the parties' employment relationship or this Agreement (including, but not limited to, any claims of breach of contract, wrongful termination, or age, race, sex, disability or other discrimination), all such disputes shall be fully, finally and exclusively resolved by binding arbitration conducted by the American Arbitration Association in the city in which the Executive's principal place of employment is located by an arbitrator mutually agreed upon by the parties hereto or, in the absence of such agreement, by an arbitrator selected in accordance with the Employment Arbitration Rules of the American Arbitration Association, provided, however, that this arbitration provision shall not apply, unless the Company elects otherwise, to any disputes or claims relating to or arising out of the Executive's breach of Sections 5 or 9 of this Agreement. If either the Company or the Executive shall request, arbitration shall be conducted by a panel of three arbitrators, one selected by the Company, one selected by the Executive, and the third selected by agreement of the first two, or, in the absence of such agreement, in accordance with such Rules.

If there is termination of the Executive's employment with the Company followed by a dispute as to whether the Executive is entitled to the benefits provided under this Agreement, then, during the period of that dispute the Company shall pay the Executive fifty percent (50%) of the amount specified in Section 8 hereof (except that the Company shall pay one hundred percent (100%) of any insurance premiums provided for in Section 8), if, and only if, the Executive agrees in writing that if the dispute is resolved against the Executive, the Executive shall promptly refund to the Company all such payments received by, or made by the Company on behalf of, the Executive. If the dispute is resolved in the Executive's favor, promptly after resolution of the dispute the Company shall pay the Executive the sum that was withheld during the period of the dispute plus interest at the rate provided in Section 1274(d) of the Code, compounded quarterly.

**20. Attorney's Fees.** Each party shall bear its own attorney's fees and costs incurred in any action or dispute arising out of this Agreement.

**21. Miscellaneous.** No right or interest to, or in, any payments shall be assignable by the Executive; provided, however, that the Executive shall not be precluded from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and the legal representative of the Executive's estate shall not be precluded from assigning any right hereunder to the person or persons entitled thereto. This Agreement shall be binding upon and shall inure to the benefit of the Executive, the Executive's heirs and legal representatives and, the Company and its successors.

**22. Compliance with Section 409A.** Notwithstanding any other provision of this Agreement to the contrary, the provision, time and manner of payment or distribution of all compensation and benefits provided by this Agreement that constitute nonqualified deferred compensation subject to and not exempted from the requirements of Code Section 409A ("Section 409A Deferred Compensation") shall be subject to, limited by and construed in accordance with the requirements of Code Section 409A and all regulations and other guidance promulgated by the Secretary of the Treasury pursuant to such Section (such Section, regulations and other guidance being referred to herein as "Section 409A"), including the following:

(a) **Separation from Service.** Payments and benefits constituting Section 409A Deferred Compensation otherwise payable or provided pursuant to Section 8 upon the Executive's termination of employment shall be paid or provided only at the time of a termination of the Executive's employment which constitutes a Separation from Service. For the purposes of this Agreement, a "Separation from Service"

is a separation from service within the meaning of Section 409A.

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(b) **Six-Month Delay Applicable to Specified Employees.** If, at the time of a Separation from Service of the Executive, the Executive is a "specified employee" within the meaning of Section 409A (a "Specified Employee"), then any payments and benefits constituting Section 409A Deferred Compensation to be paid or provided pursuant to Section 8 upon the Separation from Service of the Executive shall be paid or provided commencing on the later of (i) the date that is six (6) months after the date of such Separation from Service or, if earlier, the date of death of the Executive (in either case, the "Delayed Payment Date"), or (ii) the date or dates on which such Section 409A Deferred Compensation would otherwise be paid or provided in accordance with Section 8. All such amounts that would, but for this Section 22(b), become payable prior to the Delayed Payment Date shall be accumulated and paid on the Delayed Payment Date.

(c) **Health Care and Estate Planning Benefits.** In the event that all or any of the health care or estate planning benefits to be provided pursuant to Sections 8(d)(i)(2)(c) or 8(d)(i)(2)(d) as a result of a Participant's Separation from Service constitute Section 409A Deferred Compensation, the Company shall provide for such benefits constituting Section 409A Deferred Compensation in a manner that complies with Section 409A. To the extent necessary to comply with Section 409A, the Company shall determine the health care premium cost necessary to provide such benefits constituting Section 409A Deferred Compensation for the applicable coverage period and shall pay such premium cost which becomes due and payable during the applicable coverage period on the applicable due date for such premiums; provided, however, that if the Executive is a Specified Employee, the Company shall not pay any such premium cost until the Delayed Payment Date. If the Company's payment pursuant to the previous sentence is subject to a Delayed Payment Date, the Executive shall pay the premium cost otherwise payable by the Company prior to the Delayed Payment Date, and on the Delayed Payment Date the Company shall reimburse the Executive for such Company premium cost paid by the Executive and shall pay the balance of the Company's premium cost necessary to provide such benefit coverage for the remainder of the applicable coverage period as and when it becomes due and payable over the applicable period.

(d) **Stock-Based Awards.** The vesting of any stock-based compensation awards which constitute Section 409A Deferred Compensation and are held by the Executive, if the Executive is a Specified Employee, shall be accelerated in accordance with this Agreement to the extent applicable; provided, however, that the payment in settlement of any such awards shall occur on the Delayed Payment Date. Any stock-based compensation which vests and becomes payable upon a Change in Control in accordance with Section 8(d)(i)(1) shall not be subject to this Section 22(d).

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(e) **Rights of the Company; Release of Liability.** It is the mutual intention of the Executive and the Company that the provision of all payments and benefits pursuant to this Agreement be made in compliance with the requirements of Section 409A. To the extent that the provision of any such payment or benefit pursuant to the terms and conditions of this Agreement would fail to comply with the applicable requirements of Section 409A, the Company may, in its sole and absolute discretion and without the consent of the Executive, make such modifications to the timing or manner of providing such payment and/or benefit to the extent it determines necessary or advisable to comply with the requirements of Section 409A; provided, however, that the Company shall not be obligated to make any such modifications. Any such modifications made by the Company shall, to the maximum extent permitted in compliance with the requirements of Section 409A, preserve the aggregate monetary face value of such payments and/or benefits provided by this Agreement in the absence of such modification; provided, however, that the Company shall in no event be obligated to pay any interest or other compensation in respect of any delay in the provision of such payments or benefits in order to comply with the requirements of Section 409A. The Executive acknowledges that (i) the provisions of this Section 22 may result in a delay in the time at which payments would otherwise be made pursuant to this Agreement and (ii) the Company is authorized to amend this Agreement, to void or amend any election made by the Executive under this Agreement and/or to delay the payment of any monies and/or provision of any benefits in such manner as may be determined by the Company, in its discretion, to be necessary or appropriate to comply with Section 409A (including any transition or grandfather rules thereunder) without prior notice to or consent of the Executive. The Executive hereby releases and holds harmless the Company, its directors, officers and stockholders from any and all claims that may arise from or relate to any tax liability, penalties, interest, costs, fees or other liability incurred by the Executive as a result of the application of Code Section 409A.

**23. Future Equity Compensation.** The Executive understands and acknowledges that all awards, if any, of stock options, restricted stock, performance shares and other forms of equity compensation by the Company are made at the sole discretion of the Board of Directors of the Company or a committee thereof. The Executive further understands and acknowledges, however, that unless the Executive has executed this Agreement and each successive amendment extending the Initial Term or any subsequent Renewal Term of the Agreement as may be agreed to by the Company and the Executive, it is the intention of the Board of Directors and the Executive that, notwithstanding any continued employment with the Company, (a) the Company shall have no obligation to grant any award of stock options, restricted stock, performance shares or any other form of equity compensation which might otherwise have been granted to the Executive on or after the intended commencement of the Initial Term or such successive Renewal Term for which the Executive has failed to sign the Agreement or the applicable Term of Employment extension amendment and (b) any such award which is nevertheless granted to the Executive after the intended commencement of the Initial Term or Renewal Term for which the Executive has failed to sign such Agreement or applicable extension amendment shall not vest unless and until the Executive has executed the Agreement or applicable extension amendment, notwithstanding the provisions of any agreement evidencing such award to the contrary.

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**IN WITNESS WHEREOF**, the parties have executed this Executive Employment Agreement effective as of the date and year first above written.

**ROSS STORES, INC.**

**EXECUTIVE**

/s/ Michael Balmuth  
By: Michael Balmuth  
Vice Chairman, President and Chief  
Executive Officer

/s/ Lisa Panattoni

## EXECUTIVE EMPLOYMENT AGREEMENT

**THIS EXECUTIVE EMPLOYMENT AGREEMENT** (this "Agreement") is made effective January 1, 2007, (the "Effective Date") by and between Ross Stores, Inc. (the "Company"), a Delaware corporation, and Barbara Rentler (the "Executive").

### RECITALS

A. The Company wishes to employ the Executive, and the Executive is willing to accept such employment, as Executive Vice President, Merchandising.

B. It is now the mutual desire of the Company and the Executive to enter into a written employment agreement to govern the terms of the Executive's employment by the Company as of and following the Effective Date on the terms and conditions set forth below.

### TERMS AND CONDITIONS

In consideration for the promises of the parties set forth below, the Company and the Executive hereby agree as follows:

1. **Term.** Subject to the provisions of Section 6 of this Agreement, the term of employment of the Executive by the Company under this Agreement ("Term of Employment") shall be as follows:

(a) **Initial Term.** The initial Term of Employment of the Executive by the Company under this Agreement shall begin on the Effective Date and end on March 31, 2011 (the "Initial Term"), unless extended or terminated earlier in accordance with this Agreement.

(b) **Renewal Terms.** Upon the timely written request of the Executive to extend the Term of Employment, the Compensation Committee of the Board of Directors of the Company ("Committee") shall consider extending the Executive's employment with the Company under this Agreement. To be timely, such request must be delivered to the Company's Chief Executive Officer not earlier than twelve (12) months prior to the end of the then effective Initial Term or Renewal Term and, in any case, while the Executive remains an employee of the Company. Such request must contain no proposed modification to the provisions of this Agreement other than an extension of the Term of Employment for an additional two (2) years. Within thirty (30) days following the receipt of such notice, the Chief Executive Officer will discuss such request with the Committee and advise the Executive, in writing, within thirty (30) days following its consideration of the Executive's written request, of the approval or disapproval of such extension request. The failure to provide such written advice shall constitute a denial of the Executive's request for extension. If the Executive's request for an extension is approved, the Term of Employment shall be extended for two (2) additional years commencing on the date immediately following the date of expiration of the then effective term. Such additional two-year period is referred to herein as a "Renewal Term."

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2. **Position and Duties.** During the Term of Employment, the Executive shall serve as Executive Vice President, Merchandising. As used in this Agreement, the term "Company" includes Ross Stores, Inc. and each and any of its divisions, affiliates or subsidiaries (except that, where the term relates to stock, stockholders, stock options or other stock-based awards or the Board, it means Ross Stores, Inc.). The Executive's employment may be transferred, assigned, or re-assigned to Ross Stores, Inc. or a division, affiliate or subsidiary of Ross Stores, Inc., and such transfer, assignment, or re-assignment will not constitute a termination of employment or "Good Reason" for the Executive's termination of employment under this Agreement. During the Term of Employment, the Executive may engage in outside activities provided those activities (including but not limited to membership on boards of directors of not-for-profit and for-profit organizations) do not conflict with the Executive's duties and responsibilities hereunder, and provided further that the Executive gives written notice to the Board of any significant outside business activity in which the Executive plans to become involved, whether or not such activity is pursued for profit.

3. **Principal Place of Employment.** The Executive shall be employed at the Company's offices in New York, New York, except for required travel on the Company's business to an extent substantially consistent with present business travel obligations of the Executive's position.

#### 4. Compensation and Related Matters.

(a) **Salary.** During the Term of Employment, the Company shall pay to the Executive a salary at a rate of not less than Seven Hundred Fifty Thousand Dollars (\$750,000) per annum. The Executive's salary shall be payable in substantially equal installments in accordance with the Company's normal payroll practices applicable to senior officers. Subject to the first sentence of this Section 4(a), the Executive's salary may be adjusted from time to time by the Board in accordance with normal business practices of the Company.

(b) **Bonus.** During the Term of Employment, the Executive shall be eligible to receive an annual bonus paid under the Company's existing bonus incentive plan that covers the Executive (which is currently the Incentive Compensation Plan) or any replacement plan that may subsequently be established and in effect during the term of the Term of Employment. The current target annual bonus the Executive is eligible to earn upon achievement of 100% of all applicable performance targets under such bonus incentive plan is 65% of the Executive's then current salary. The Executive's death, termination for Cause or Voluntary Termination (as described in Sections 6(a), 6(c) and 6(f), respectively) prior to the Company's payment of the bonus for a fiscal year of the Company will cause the Executive to be ineligible for any annual bonus for that fiscal year or any pro-rata portion of such bonus.

(c) **Expenses.** During the Term of Employment, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in performing services hereunder, including all reasonable expenses of travel and living while away from home, provided that such expenses are incurred and accounted for in accordance with the policies and procedures established by the Company.



(d) **Benefits.** During the Term of Employment, the Executive shall be entitled to participate in all of the Company's employee benefit plans and arrangements in which senior executives of the Company are eligible to participate. The Company shall not make any changes in such plans or arrangements which would adversely affect the Executive's rights or benefits thereunder, unless such change occurs pursuant to a program applicable to all senior executives of the Company and does not result in a proportionately greater reduction in the rights or benefits of the Executive as compared with any other similarly situated senior executive of the Company. The Executive shall be entitled to participate in, or receive benefits under, any employee benefit plan or arrangement made available by the Company in the future to its senior executives, subject to, and on a basis consistent with, the terms, conditions and overall administration of such plans and arrangements. Except as otherwise specifically provided herein, nothing paid to the Executive under any plan or arrangement presently in effect or made available in the future shall be in lieu of the salary or bonus otherwise payable under this Agreement.

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(e) **Vacations.** During the Term of Employment, the Executive shall be entitled to twenty-five (25) vacation days in each calendar year, and to compensation in respect of earned but unused vacation days, determined in accordance with the Company's vacation plan. The Executive shall also be entitled to all paid holidays given by the Company to its senior executives. Unused vacation days shall not be forfeited once they have been earned and, if still unused at the time of the Executive's termination of employment with the Company, shall be promptly paid to the Executive at their then-current value, based on the Executive's rate of pay at the time of the Executive's termination of employment.

(f) **Services Furnished.** The Company shall furnish the Executive with office space and such services as are suitable to the Executive's position and adequate for the performance of the Executive's duties during the Term of Employment.

## **5. Confidential Information and Intellectual Property.**

(a) The Executive agrees not to use in any manner or disclose, distribute, publish, communicate or in any way cause to be used, disclosed, distributed, published, or communicated in any way or at any time, either while in the Company's employ or at any time thereafter, to any person not employed by the Company, or not engaged to render services to the Company, any Confidential Information obtained while in the employ of the Company other than in the performance of the Executive's duties hereunder.

(b) Confidential Information includes any written or unwritten information which relates to and/or is used by the Company or its subsidiaries, affiliates or divisions, including, without limitation (i) the names, addresses, buying habits and other special information regarding past, present and potential customers, employees and suppliers of the Company, (ii) customer and supplier contracts and transactions or price lists of the Company and suppliers, (iii) methods of distribution, (iv) all agreements, files, books, logs, charts, records, studies, reports, processes, schedules and statistical information, (v) data, figures, projections, estimates, pricing data, customer lists, buying manuals or procedures, distribution manuals or procedures, other policy and procedure manuals or handbooks, (vi) supplier information, tax records, personnel histories and records, sales information, and property information, (vii) information regarding the present or future phases of business, (viii) ideas, inventions, trademarks, business information, know-how, processes, techniques, improvements, designs, redesigns, creations, discoveries, trade secrets, and developments, (ix) all computer software licensed or developed by the Company or its subsidiaries, affiliates or divisions, computer programs, computer-based and web-based training programs, and systems, and (x) finances and financial information, but Confidential Information will not include information of the Company or its subsidiaries, affiliates or divisions that (1) became or becomes a matter of public knowledge through sources independent of the Executive, (2) has been or is disclosed by the Company or its subsidiaries, affiliates or divisions without restriction on its use, or (3) has been or is required or specifically permitted to be disclosed by law or governmental order or regulation. The Executive also agrees that, if there is any reasonable doubt whether an item is public knowledge, to not regard the item as public knowledge until and unless the Company's Chief Executive Officer confirms to the Executive that the information is public knowledge.

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(c) The provisions of this Section 5 shall not preclude the Executive from disclosing such information to the Executive's professional tax advisor or legal counsel solely to the extent necessary to the rendering of their professional services to the Executive if such individuals agree to keep such information confidential.

(d) The Executive agrees that upon leaving the Company's employ the Executive will remain reasonably available to answer questions from Company officers regarding the Executive's former duties and responsibilities and the knowledge the Executive obtained in connection therewith.

(e) The Executive agrees that upon leaving the Company's employ the Executive will not communicate with, or give statements to, any member of the media (including print, television, or radio media) relating to any matter (including pending or threatening lawsuits or administrative investigations) about which the Executive has knowledge or information (other than knowledge or information that is not Confidential Information) as a result of employment with the Company. The Executive further agrees to notify the Chief Executive Officer or his or her designee immediately after being contacted by any member of the media with respect to any matter affected by this section.

(f) The Executive agrees that all information, inventions, and discoveries, made or conceived by the Executive, either alone or with others, at any time while employed by the Company, which arises out of such employment or is pertinent to any field of business or research in which, during such employment, the Company, its subsidiaries, affiliates or divisions is engaged or (if such is known to or ascertainable by the Executive) is considering engaging ("Intellectual Property") (i) whether or not patented or patentable, shall be and remain the sole property of the Company and the Executive shall not seek a patent without the prior consent of an authorized representative of the Company and (ii) shall be disclosed promptly to an authorized representative of the Company along with all information the Executive

possesses with regard to possible applications and uses. Further, at the request of the Company, and without expense or additional compensation to the Executive, the Executive agrees to execute such documents and perform such other acts as the Company deems necessary, to obtain patents on such Intellectual Property in a jurisdiction or jurisdictions designated by the Company, and to assign to the Company or its designee such Intellectual Property and all patent applications and patents relating thereto.

(g) The Executive and the Company agree that the Executive intends all original works of authorship within the purview of the copyright laws of the United States authored or created by the Executive in the course of the Executive's employment with the Company will be works for hire within the meaning of such copyright law.

(h) Upon termination of the Executive's employment, or at any time upon request of the Company, the Executive will return all Confidential Information and Intellectual Property to the Company, in any form, including but not limited to letters, memoranda, reports, notes, notebooks, books of account, drawings, prints, specifications, formulae, data printouts, microfilms, magnetic tapes, disks, recordings, documents, and all copies thereof.

**6. Termination.** The Executive's employment may be terminated during the Term of Employment only as follows:

(a) **Death.** The Executive's employment shall terminate upon the Executive's death.

(b) **Disability.** If, as a result of the Executive's Disability (as defined below), the Executive shall have been absent from the Executive's duties hereunder on a full-time basis for the entire period of six consecutive months, and, within thirty days after written notice of termination is given by the Company (which may occur before or after the end of such six-month period), the Executive shall not have returned to the performance of the Executive's duties hereunder on full-time basis, the Executive's employment shall terminate. A termination of employment pursuant to this Section 6(b) shall be deemed an involuntary termination for purposes of this Agreement. For purposes of this Agreement, the term "Disability" shall mean a physical or mental illness, impairment or condition reasonably determined by the Board that prevents the Executive from performing the duties of the Executive's position under this Agreement.

(c) **Cause.** The Company may terminate the Executive's employment for Cause. For this purpose, "Cause" means the occurrence of any of the following (i) the Executive's continuous failure to substantially perform the Executive's duties hereunder (unless such failure is a result of a Disability as defined in Section 6(b)), (ii) the Executive's theft, dishonesty, breach of fiduciary duty for personal profit or falsification of any documents of the Company, (iii) the Executive's material failure to abide by the applicable code(s) of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct) of the Company, (iv) misconduct by the Executive within the scope of Section 304 of the Sarbanes-Oxley Act of 2002 as a result of which the Company is required to prepare an accounting restatement, (v) the Executive's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company (including, without limitation, the Executive's improper use or disclosure of confidential or proprietary information of the Company), (vi) any intentional misconduct or illegal or grossly negligent conduct by the Executive which is materially injurious to the Company monetarily or otherwise, (vii) any material breach by the Executive of the provisions of Section 9 [Employment Restriction] of this Agreement, or (viii) the Executive's conviction (including any plea of guilty or nolo contendere) of any criminal act involving fraud, dishonesty, misappropriate or moral turpitude, or which impairs the Executive's ability to perform his or her duties with the Company. A termination for Cause shall not take effect unless: (1) the Executive is given written notice by the Company of its intention to terminate the Executive for Cause; (2) the notice specifically identifies the particular act or acts or failure or failures to act which are the basis for such termination; (3) the notice is given within 90 days of the Company's learning of such act or acts or failure or failures to act; and (4) only in the case of clause (i) of the second sentence of this Section 6(c), the Executive fails to substantially cure such failure to perform, to the extent such cure is possible, within 60 days after the date that such written notice is given to the Executive.

(d) **Without Cause.** The Company may terminate the Executive's employment at any time Without Cause. A termination "Without Cause" is a termination of the Executive's employment by the Company for any reasons other than the death or Disability of the Executive or the involuntary termination of the Executive for Cause as described above in Section 6(c).

(e) **Termination by the Executive for Good Reason.** The Executive may terminate the Executive's employment with the Company for "Good Reason," which shall be deemed to occur if the Executive terminates the Executive's employment with the Company within sixty (60) days after written notice to the Company by the Executive of the occurrence of one or more of the following conditions, which condition(s) have not been cured within ten (10) business days after the Company's receipt of such written notice: (1) a failure by the Company to comply with any material provision of this Agreement (including but not limited to the reduction of the Executive's salary or the target annual bonus opportunity set forth in Section 4(b)), (2) a significant diminishment in the nature or scope of the authority, power, function or duty attached to the position which the Executive currently maintains without the express written consent of the Executive, or (3) the relocation of the Executive's Principal Place of Employment as described in Section 3 to a location that increases the regular one-way commute distance between the Executive's residence and Principal Place of Employment by more than 25 miles without the Executive's prior written consent. The Executive's failure to terminate employment for Good Reason within such 60-day period shall waive the Executive's right to terminate employment for Good Reason based on the specified failure by Company indicated in such written notice.

(f) **Voluntary Termination.** The Executive may voluntarily resign from the Executive's employment with the Company at any time (a "Voluntary Termination"). A voluntary resignation from employment by the Executive pursuant to Section 6(e) above for Good Reason shall not be deemed a Voluntary Termination by the Executive for purposes of this Agreement but shall be deemed an involuntary termination.

(g) **Non-Renewal.** If the Executive fails to request an extension of the Term of Employment in accordance with Section 1 or if the Board fails to approve such request, this Agreement shall automatically expire at the end of the then current Term of Employment.

## 7. Notice and Effective Date of Termination

(a) **Notice.** Any termination of the Executive's employment by the Company or by the Executive during the Term of Employment (other than as a result of death or non-renewal described in Section 6(g)) shall be communicated by written notice of termination to the other party hereto. Such notice shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under that provision.

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(b) **Date of Termination.** The date of termination of the Executive's employment shall be:

(i) if the Executive's employment is terminated by the Executive's death, the date of the Executive's death;

(ii) if the Executive's employment is terminated due to Disability pursuant to Section 6(b), the date of termination shall be the last to occur of the 31st day following delivery of the notice of termination to the Executive by the Company or the end of the consecutive six-month period referred to in Section 6(b).

(iii) if the Executive's employment is terminated for any other reason by either party, the date on which a notice of termination is delivered to the other party; and

(iv) if the Agreement expires pursuant to Section 6(g) [Non-Renewal], the parties' employment relationship shall terminate on the last day of the then current Term of Employment without any notice.

## 8. Compensation and Benefits Upon Termination.

(a) **Termination Due To Disability, Without Cause or For Good Reason.** If the Executive's employment terminates pursuant to Sections 6(b) [Disability], 6(d) [Without Cause], or 6(e) [For Good Reason], then, subject to Section 21 [Compliance with Section 409A], in addition to all salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment, the Executive shall be entitled to the following, provided that within sixty (60) days following the Executive's termination of employment the Executive executes a general release of claims against the Company and its subsidiaries, affiliates, stockholders, directors, officers, employees, agents, successors and assigns (the "Release") and the period for revocation, if any, of such Release has expired without the Release having been revoked: .

(i) **Salary.** The Company shall continue to pay to the Executive the Executive's salary, at the rate in effect immediately prior to such termination of employment, through the remainder of the Initial Term or Renewal Term then in effect.

(ii) **Bonus.** The Company shall continue to pay to the Executive an annual bonus(es) for each fiscal year of the Company ending on or before the last day of the Initial Term or Renewal Term then in effect. Each such annual bonus shall be equal to the greater of (A) the annual bonus earned by the Executive for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or (B) the annual bonus that the Executive would have earned under the Company's bonus plan for the fiscal year of the Company in which the Executive's termination of employment occurs had the Executive remained in its employment. However, in no case shall any such post-termination annual bonus exceed the lesser of 100% of the Executive's target bonus for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or 100% of the Executive's target bonus for the fiscal year of the Company in which the Executive's termination of employment occurs. Such bonuses shall not be paid until due under the applicable Company bonus plan.

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(iii) **Stock Options.** Stock options granted to the Executive by the Company and which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested in full upon such termination of employment.

(iv) **Restricted Stock.** Shares of restricted stock granted to the Executive by the Company which have not become vested as of the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested on a pro rata basis. The number of such additional shares of restricted stock that shall become vested as of the date of the Executive's termination of employment shall be that number of additional shares that would have become vested through the date of such termination of employment at the rate(s) determined under the vesting schedule applicable to such shares had such vesting schedule provided for the accrual of vesting on a daily basis (based on a 365 day year). For example, if the vesting schedule applicable to a restricted stock award provides for vesting of 20%, 30% and 50% of the award on the first, second and third anniversaries, respectively, of the date of grant of the award, then pro rata vesting under this Section 8(a)(iv) shall be accrued at daily rates of 0.05479%, 0.08219% and 0.13699%, respectively, through the date of termination of employment. Any shares of restricted stock remaining unvested after such pro rata acceleration of vesting shall automatically be reacquired by the Company in accordance with the provisions of the applicable restricted stock agreement, and the Executive shall have no further rights in such unvested portion of the restricted stock.

The Company shall have no further obligations to the Executive as a result of such termination of employment except as set forth in

(b) **Death, Termination for Cause or Voluntary Termination.** If the Executive's employment terminates pursuant to Section 6(a) [Death], 6(c) [Cause] or 6(f) [Voluntary Termination], the Executive (or the Executive's designee or the Executive's estate) shall be entitled to receive only the salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment. The Executive shall not be entitled to any bonus not paid prior to the date of the Executive's termination of employment, and the Executive shall not be entitled to any prorated bonus payment for the year in which the Executive's employment terminates. Any stock options granted to the Executive by the Company shall continue to vest only through the date on which the Executive's employment terminates, and any restricted stock that was granted to the Executive by the Company that is unvested as of the date on which the Executive's employment terminates shall automatically be reacquired by the Company and the Executive shall have no further rights with respect to such restricted stock. The Company shall have no further obligations to the Executive as a result of such termination of employment except as set forth in Section 12.

(c) **Non-Renewal.** If the Agreement expires as set forth in Section 6(g) [Non-Renewal], then, subject to Section 21 [Compliance with Section 409A], in addition to all salary, annual bonuses, expense reimbursements, benefits and accrued vacation days earned by the Executive pursuant to Section 4 through the date of the Executive's termination of employment, the Executive shall be entitled to the following, provided that within sixty (60) days following the Executive's termination of employment the Executive executes the Release and the period for revocation, if any, of such Release has expired without the Release having been revoked:

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(i) **Bonus.** The Company shall pay the Executive an annual bonus for the fiscal year of the Company in which the date of the Executive's termination of employment occurs, which shall be prorated for the portion of such fiscal year that the Executive is employed by the Company. The amount of such annual bonus, prior to proration, shall be equal to the greater of (A) the annual bonus earned by the Executive for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or (B) the annual bonus that the Executive would have earned under the Company's bonus plan for the fiscal year of the Company in which the Executive's termination of employment occurs had the Executive remained in its employment. However, in no case shall any such post-termination annual bonus exceed the lesser of 100% of the Executive's target bonus for the most recent fiscal year of the Company ending prior to the date of the Executive's termination of employment or 100% of the Executive's target bonus for the fiscal year of the Company in which the Executive's termination of employment occurs. Such bonuses shall not be paid until due under the applicable Company bonus plan.

(ii) **Stock Options.** Stock options granted to the Executive by the Company and which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall be vested and exercisable in accordance with their terms.

(iii) **Restricted Stock.** Shares of restricted stock granted to the Executive by the Company which have not become vested as of the date of termination of the Executive's employment, as provided in Section 7(b), shall immediately become vested on a pro rata basis. The number of such additional shares of restricted stock that shall become vested as of the date of the Executive's termination of employment shall be that number of additional shares that would have become vested through the date of such termination of employment at the rate(s) determined under the vesting schedule applicable to such shares had such vesting schedule provided for the accrual of vesting on a daily basis (based on a 365 day year). For example, if the vesting schedule applicable to a restricted stock award provides for vesting of 20%, 30% and 50% of the award on the first, second and third anniversaries, respectively, of the date of grant of the award, then pro rata vesting under this Section 8(a)(iv) shall be accrued at daily rates of 0.05479%, 0.08219% and 0.13699%, respectively, through the date of termination of employment. Any shares of restricted stock remaining unvested after such pro rata acceleration of vesting shall automatically be reacquired by the Company in accordance with the provisions of the applicable restricted stock agreement, and the Executive shall have no further rights in such unvested portion of the restricted stock.

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The Company shall have no further obligations to the Executive as a result of such termination except as set forth in Section 12.

(d) **Special Change in Control Provisions.**

(i) **Change in Control Benefits.**

(1) In the event of a Change in Control (as defined below), all shares of restricted stock granted to the Executive by the Company shall become vested in full immediately prior to the consummation of such Change in Control, and, subject to Section 21 [Compliance with Section 409A], the Executive shall be entitled to receive an additional salary equal to Sixty Two Thousand Five Hundred Dollars (\$62,500) per month for a period of two (2) years following the Change in Control unless and until the Voluntary Termination (as defined in Section 6(f)) of the Executive's employment or the termination for Cause (as defined in Section 6(c)) of the Executive's employment.

(2) In addition to the payments and benefits provided by Section 8(d)(i)(1) above, if the Executive's employment is terminated either by the Company Without Cause (as defined in Section 6(d)) or by the Executive for Good Reason (as defined in Section 6(e)), in either case within one month prior to and twelve (12) months following a Change in Control, then, subject to Section 21 [Compliance with Section 409A], the Executive shall be entitled to the following (in addition to any other payments or benefits provided under this Agreement), provided that within sixty (60) days following the Executive's termination of employment the Executive executes the Release and the period for revocation, if any, of such Release has expired without the Release having been revoked:

a. **Salary.** The salary that shall be payable to the Executive under Section 8(a) shall be paid for a period of not less than two (2) years commencing on the date of the Executive's termination of employment.

b. **Bonus.** The bonus that shall be payable to the Executive under Section 8(a) shall be paid for each fiscal year of the Company ending within a period of not less than two (2) years commencing on the date of the Executive's termination of employment.

c. **Health Care Coverage.** The Executive shall be entitled to the continuation of the Executive's health care coverage under the Company's employee benefit plans (including medical, dental, vision and mental coverage) which the Executive had at the time of the termination of employment (including coverage for the Executive's dependents to the extent such dependents were covered immediately prior to such termination of employment) at the Company's expense for a period of two (2) years following the date of the Executive's termination of employment. Such health care continuation rights will be in addition to any rights the Executive may have under ERISA Sections 600 and thereafter and Section 4980B of the Internal Revenue Code ("COBRA coverage").

d. **Estate Planning.** The Executive shall also be entitled to the reimbursement of the Executive's estate planning expenses (including attorneys' fees) as to which and on the terms of which the Executive was entitled prior to the termination for a period of two (2) years following the date of termination of employment.

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(ii) **Change in Control Defined.** A "Change in Control" shall be deemed to have occurred if: (1) any person or group (within the meaning of Rule 13d-3 of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended) shall acquire during the twelve-month period ending on the date of the most recent acquisition by such person or group, in one or a series of transactions, whether through sale of stock or merger, ownership of stock of the Company that constitutes 35% or more of the total voting power of the stock of the Company or any successor to the Company; (2) a merger in which the Company is a party pursuant to which any person or such group acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Company, or (3) the sale, exchange, or transfer of all or substantially all of the Company's assets (other than a sale, exchange, or transfer to one or more corporations where the stockholders of the Company before and after such sale, exchange, or transfer, directly or indirectly, are the beneficial owners of at least a majority of the voting stock of the corporation(s) to which the assets were transferred).

(iii) **Excise Tax Gross-Up.** If the Executive becomes entitled to one or more payments (with a "payment" including the vesting of restricted stock, a stock option, or other non-cash benefit or property), whether pursuant to the terms of this Agreement or any other plan or agreement with the Company or any affiliated company (collectively, "Change in Control Payments"), which are or become subject to the tax ("Excise Tax") imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall pay to the Executive at the time specified below such amount (the "Gross-up Payment") as may be necessary to place the Executive in the same after-tax position as if no portion of the Change in Control Payments and any amounts paid to the Executive pursuant to Section 8 had been subject to the Excise Tax. The Gross-up Payment shall include, without limitation, reimbursement for any penalties and interest that may accrue in respect of such Excise Tax. For purposes of determining the amount of the Gross-up Payment, the Executive shall be deemed: (A) to pay federal income taxes at the highest marginal rate of federal income taxation for the year in which the Gross-up Payment is to be made; and (B) to pay any applicable state and local income taxes at the highest marginal rate of taxation for the calendar year in which the Gross-up Payment is to be made, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes if paid in such year. If the Excise Tax is subsequently determined to be less than the amount taken into account hereunder at the time the Gross-up Payment is made, the Executive shall repay to the Company at the time that the amount such reduction in Excise Tax is finally determined (but, if previously paid to the taxing authorities, not prior to the time the amount of such reduction is refunded to the Executive or otherwise realized as a benefit by the Executive) the portion of the Gross-up Payment that would not have been paid if such Excise Tax had been used in initially calculating the Gross-up payment, plus interest on the amount of such repayment at the rate provided in Section 1274 (b)(2)(B) of the Code. In the event that the Excise Tax is determined to exceed the amount taken into account hereunder at the time the Gross-up Payment is made, the Company shall make an additional Gross-up Payment in respect of such excess (plus any interest and penalties payable with respect to such excess) at the time that the amount of such excess is finally determined.

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(iv) The Gross-up Payment provided for above shall be paid, subject to Section 21 [Compliance with Section 409A], on the 30th day (or such earlier date as the Excise Tax becomes due and payable to the taxing authorities) after it has been determined that the Change in Control Payments (or any portion thereof) are subject to the Excise Tax; provided, however, that if the amount of such Gross-up Payment or portion thereof cannot be finally determined on or before such day, the Company shall pay to the Executive on such day an estimate, as determined by counsel or auditors selected by the Company and reasonably acceptable to the Executive, of the minimum amount of such payments. The Company shall pay to the Executive the remainder of such payments (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) as soon as the amount thereof can be determined. In the event that the amount of the estimated payments exceeds the amount subsequently determined to have been due, the Executive shall repay such amount on the fifth day after demand by the Company (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code). The Company shall have the right to control all proceedings with the Internal Revenue Service that may arise in connection with the determination and assessment of any Excise Tax and, at its sole option, the Company may pursue or forego any and all administrative appeals, proceedings, hearings, and conferences with any taxing authority in respect of such Excise Tax (including any interest or penalties thereon); provided, however, that the Company's control over any such proceedings shall be limited to issues with respect to which a Gross-up Payment would be payable hereunder, and the Executive shall be entitled to settle or contest any other issue raised by the Internal Revenue Service or any other taxing authority. The

Executive shall cooperate with the Company in any proceedings relating to the determination and assessment of any Excise Tax and shall not take any position or action that would materially increase the amount of any Gross-up Payment hereunder.

**(e) Breach of Certain Obligations.**

(i) The Executive acknowledges and agrees that in the event that the Executive breaches or threatens to breach Sections 5 or 9 of this Agreement, all compensation and benefits otherwise payable pursuant to this Agreement and the vesting and/or exercisability of all stock options, restricted stock and other forms of equity compensation previously awarded to the Executive, notwithstanding the provisions of any agreement evidencing any such award to the contrary, shall immediately cease.

(ii) The Company shall give prompt notice to the Executive of its discovery of a breach by the Executive of Section 9 of this Agreement. If it is determined by a vote of not less than two-thirds of the members of the Board that the Executive has breached Section 9 of this Agreement and has not cured such breach within ten (10) business days of such notice, then:

(1) the Executive shall forfeit to the Company (A) all stock options, stock appreciation rights and other equity compensation awards (other than shares of restricted stock, restricted stock units or similar awards) granted to the Executive by the Company which remain outstanding and unexercised or unpaid as of the date of such determination by the Board (the "Breach Determination Date") and (B) all shares of restricted stock, restricted stock units and similar awards granted to the Executive by the Company which continue to be held by the Executive as of the Breach Determination Date to the extent that such awards vested during the Forfeiture Period (as defined below); and

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(2) the Executive shall pay to the Company all gains realized by the Executive upon (A) the exercise by or payment in settlement to the Executive on and after the commencement of the Forfeiture Period of stock options, stock appreciation rights and other equity compensation awards (other than shares of restricted stock, restricted stock units or similar awards) granted to the Executive by the Company and (B) the sale on and after the commencement of the Forfeiture Period of shares or other property received by the Executive pursuant to awards of restricted stock, restricted stock units or similar awards granted to the Executive by the Company and which vested during the Forfeiture Period.

For purposes of this Section, the gain realized by the Executive upon the exercise or payment in settlement of stock options, stock appreciation rights and other equity compensation awards shall be equal to (A) the closing sale price on the date of exercise (as reported on the stock exchange or market system constituting the principal market for the shares subject to the applicable award) of the number of shares issued to the Executive upon such exercise or settlement, reduced by the purchase price, if any, paid by the Executive to acquire such shares, or (B) if any such award was settled by payment in cash to the Executive, the gain realized by the Executive shall be equal to the amount of cash paid to the Executive. Further, for purposes of this Section, the gain realized by the Executive upon the sale of shares or other property received by the Executive pursuant to awards of restricted stock, restricted stock units or similar awards shall be equal to the gross proceeds of such sale realized by the Executive. Gains determined for purposes of this Section shall be determined without regard to any subsequent increase or decrease in the market price of the Company's stock or taxes paid by or withheld from the Executive with respect to such transactions.

For the purposes of this Section, the "Forfeiture Period" shall be the period ending on the Breach Determination Date and beginning on the earlier of (A) the date six months prior to the Breach Determination Date or (B) the business day immediately preceding the date of the Executive's termination of employment with the Company.

The Company shall have the right (but not the obligation) to deduct from any amounts payable from time to time to the Executive by the Company pursuant to this Agreement or otherwise (including wages or other compensation, vacation pay or other benefits, and any other amounts owed to the Executive by the Company) any and all amounts the Executive is required to pay to the Company pursuant to this Section. The Executive agrees to pay to the Company immediately upon the Breach Determination Date the amount payable by the Executive to the Company pursuant to this Section which the Company has not recovered by means of such deductions.

(iii) The Executive acknowledges that money will not adequately compensate the Company for the substantial damages that will arise upon the breach or threatened breach of Sections 5 or 9 of this Agreement and that the Company will not have any adequate remedy at law. For this reason, such breach or threatened breach will not be subject to the arbitration clause in Section 18; rather, the Company will be entitled, in addition to other rights and remedies, to specific performance, injunctive relief, and other equitable relief to prevent or restrain such breach or threatened breach. The Company may obtain such relief from (1) any court of competent jurisdiction, (2) an arbitrator pursuant to Section 18 hereof, or (3) a combination of the two (e.g., by simultaneously seeking arbitration under Section 18 and a temporary injunction from a court pending the outcome of the arbitration). It shall be the Company's sole and exclusive right to elect which approach to use to vindicate its rights. The Executive further agrees that in the event of a breach or threatened breach, the Company shall be entitled to obtain an immediate injunction and restraining order to prevent such breach and/or threatened breach and/or continued breach, without posting a bond or having to prove irreparable harm or damages, and to obtain all costs and expenses, including reasonable attorneys' fees and costs. In addition, the existence of any claim or cause of action by the Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of the restrictive covenants in this Agreement.

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**9. Certain Employment Obligations.**

(a) **Employee Acknowledgement.** The Company and the Executive acknowledge that (i) the Company has a special interest in and

derives significant benefit from the unique skills and experience of the Executive; (ii) as a result of the Executive's service with the Company, the Executive will use and have access to some of the Company's proprietary and valuable Confidential Information during the course of the Executive's employment; (iii) the Confidential Information has been developed and created by the Company at substantial expense and constitutes valuable proprietary assets of the Company, and the Company will suffer substantial damage and irreparable harm which will be difficult to compute if, during the term of the Executive's employment or thereafter, the Executive should disclose or improperly use such Confidential Information in violation of the provisions of this Agreement; (iv) the Company will suffer substantial damage and irreparable harm which will be difficult to compute if the Executive competes with the company in violation of this Agreement; (v) the Company will suffer substantial damage which will be difficult to compute if, the Executive solicits or interferes with the Company's employees, clients, or customers; (vi) the provisions of this Agreement are reasonable and necessary for the protection of the business of the Company; and (vii) the provisions of this Agreement will not preclude the Executive from obtaining other gainful employment or service.

**(b) Non-Compete.**

(i) During the Term of Employment and for a period of twenty-four (24) months following the Executive's termination of employment with the Company, Executive shall not, directly or indirectly, own, manage, control, be employed by, consult with, participate in, or be connected in any manner with the ownership, management, operation, control of, or otherwise become involved with, any Competing Business, nor shall the Executive undertake any planning to engage in any such activity.

For purposes of this Agreement, a Competing Business shall mean any of the following: (1) any business that is in whole or in substantial part competitive with the business of the Company then being conducted or under consideration, (2) any off-price retailer or retailer of discount merchandise, including without limitation, Burlington Coat Factory Warehouse Corporation, Federated Department Stores, Inc., TJX Companies Inc., Retail Ventures Inc., Kohl's Corporation, Stein Mart, Inc., and (3) any affiliates, subsidiaries or successors of businesses identified above.

(ii) Section 9(b)(i) shall not prohibit the Executive from making any investment of 1% or less of the equity securities of any publicly-traded corporation which is considered to be a Competing Business.

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**(c) Non-Solicitation of Employees.** During the Term of Employment and for a period of 24 months following the Executive's termination of that employment with the Company, the Executive shall not, without the written permission of the Company or an affected affiliate, directly or indirectly (i) solicit, employ or retain, or have or cause any other person or entity to solicit, employ or retain, any person who is employed by the Company or was employed by the Company during the 6-month period prior to such solicitation, employment, or retainer, (ii) encourage any such person not to devote his or her full business time to the Company, or (iii) agree to hire or employ any such person.

**(d) Non-Solicitation of Third Parties.** During the Term of Employment and for a period of 24 months following the Executive's termination of employment with the Company, the Executive shall not directly or indirectly solicit or otherwise influence any entity with a business arrangement with the Company, including, without limitation, customers, suppliers, sales representatives, lenders, lessors, and lessees, to discontinue, reduce, or otherwise materially or adversely affect such relationship.

**(e) Non-Disparagement.** The Executive acknowledges and agrees that the Executive will not defame or criticize the services, business, integrity, veracity, or personal or professional reputation of the Company or any of its directors, officers, employees, affiliates, or agents of any of the foregoing in either a professional or personal manner either during the term of the Executive's employment or thereafter.

**10. Exercise of Stock Options Following Termination.** If the Executive's employment terminates, Executive (or the Executive's estate) may exercise the Executive's right to purchase any vested stock under the stock options granted to Executive by the Company as provided in the applicable stock option agreement. All such purchases must be made by the Executive in accordance with the applicable stock option plans and agreements between the parties.

**11. Successors; Binding Agreement.** This Agreement and all rights of the Executive hereunder shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive should die while any amounts would still be payable to the Executive hereunder, all such amounts shall be paid in accordance with the terms of this Agreement and applicable law to the Executive's beneficiary pursuant to a written designation of beneficiary, or, if there is no effective written designation of beneficiary by the Executive, to the Executive's estate.

**12. Insurance and Indemnity.** The Company shall, to the extent permitted by law, include the Executive during the Term of Employment under any directors and officers liability insurance policy maintained for its directors and officers, with coverage at least as favorable to the Executive in amount and each other material respect as the coverage of other officers covered thereby. The Company's obligation to provide insurance and indemnify the Executive shall survive expiration or termination of this Agreement with respect to proceedings or threatened proceedings based on acts or omissions of the Executive occurring during the Executive's employment with the Company. Such obligations shall be binding upon the Company's successors and assigns and shall inure to the benefit of the Executive's heirs and personal representatives.

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**13. Notice.** For the purposes of this Agreement, notices, demands and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or (unless otherwise specified) mailed by United States registered mail,

return receipt requested, postage prepaid, addressed as follows:

If to the Executive: Barbara Rentler  
Executive Vice President, Merchandising  
Ross Stores, Inc.  
1372 Broadway, 8th Floor  
New York, NY 10018

If to the Company: Ross Stores, Inc.  
4440 Rosewood Drive  
Pleasanton, CA 94588  
Attention: General Counsel

or to such other address as any party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

**14. Complete Agreement; Modification, Waiver; Entire Agreement.** This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, promises or representations of the parties, except those relating to repayment of signing and related bonuses, or relocation expense reimbursements. To the extent that the bonus payment provisions (i.e., post-termination bonus payments) provided in this Agreement differ from the provisions of the Company's incentive bonus plans (currently the Incentive Compensation Plan) or any replacement plans, such bonus payments shall be paid pursuant to the provisions of this Agreement except to the extent expressly prohibited by law. Except as provided by Section 21 [Compliance with Section 409A], no provision of this Agreement may be amended or modified except in a document signed by the Executive and the chairman of the Compensation Committee of the Board or such other person as may be designated by the Board. No waiver by the Executive or the Company of any breach of, or lack of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or the same condition or provision at another time. This Agreement, along with any stock option, restricted stock or other equity compensation award agreements between the parties, constitute the entire agreement between the parties regarding their employment relationship. To the extent that this Agreement is in any way inconsistent with any prior or contemporaneous stock option, restricted stock or other equity compensation award agreements between the parties, this Agreement shall control. No agreements or representations, oral or otherwise, with respect to the subject matter hereof have been made by either party which are not set forth expressly in this Agreement.

**15. Governing Law - Severability.** The validity, interpretation, construction, performance, and enforcement of this Agreement shall be governed by the laws of the state in which the Executive's principal place of employment described in Section 3 is located without reference to that state's choice of law rules. If any provision of this Agreement shall be held or deemed to be invalid, illegal, or unenforceable in any jurisdiction, for any reason, the invalidity of that provision shall not have the effect of rendering the provision in question unenforceable in any other jurisdiction or in any other case or of rendering any other provisions herein unenforceable, but the invalid provision shall be substituted with a valid provision which most closely approximates the intent and the economic effect of the invalid provision and which would be enforceable to the maximum extent permitted in such jurisdiction or in such case.

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**16. Mitigation Not Required.** In the event the Executive's employment with the Company terminates for any reason, the Executive shall not be obligated to seek other employment following such termination. However, any amounts due the Executive under this Agreement shall be offset by any remuneration attributable to any subsequent employment that the Executive may obtain during the period of payment of compensation under this Agreement following the termination of the Executive's employment with the Company.

**17. Withholding.** All payments required to be made by the Company hereunder to the Executive or the Executive's estate or beneficiaries shall be subject to the withholding of such amounts as the Company may reasonably determine it should withhold pursuant to any applicable law. To the extent permitted, the Executive may provide all or any part of any necessary withholding by contributing Company stock with value, determined on the date such withholding is due, equal to the number of shares contributed multiplied by the closing price per share as reported on the securities exchange constituting the primary market for the Company's stock on the date preceding the date the withholding is determined.

**18. Arbitration.** In the event of any dispute or claim relating to or arising out of the parties' employment relationship or this Agreement (including, but not limited to, any claims of breach of contract, wrongful termination, or age, race, sex, disability or other discrimination), all such disputes shall be fully, finally and exclusively resolved by binding arbitration conducted by the American Arbitration Association in the city in which the Executive's principal place of employment is located by an arbitrator mutually agreed upon by the parties hereto or, in the absence of such agreement, by an arbitrator selected in accordance with the Employment Arbitration Rules of the American Arbitration Association, provided, however, that the Executive's arbitration provision shall not apply, unless the Company elects otherwise, to any disputes or claims relating to or arising out of the Executive's breach of Sections 5 or 9 of this Agreement. Notwithstanding the foregoing, if either the Company or the Executive shall request, such arbitration shall be conducted by a panel of three arbitrators, one selected by the Company, one selected by the Executive, and the third selected by agreement of the first two, or, in the absence of such agreement, in accordance with such Rules.

If there is termination of the Executive's employment with the Company followed by a dispute as to whether the Executive is entitled to



the benefits provided under this Agreement, then, during the period of that dispute the Company shall pay the Executive fifty percent (50%) of the amount specified in Section 8 hereof (except that the Company shall pay one hundred percent (100%) of any insurance premiums provided for in Section 8), if, and only if, the Executive agrees in writing that if the dispute is resolved against the Executive, the Executive shall promptly refund to the Company all such payments received by, or made by the Company on behalf of, the Executive. If the dispute is resolved in the Executive's favor, promptly after resolution of the dispute the Company shall pay the Executive the sum that was withheld during the period of the dispute plus interest at the rate provided in Section 1274(d) of the Code, compounded quarterly.

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19. **Attorney's Fees.** Each party shall bear its own attorney's fees and costs incurred in any action or dispute arising out of this Agreement.

20. **Miscellaneous.** No right or interest to, or in, any payments shall be assignable by the Executive; provided, however, that the Executive shall not be precluded from designating in writing one or more beneficiaries to receive any amount that may be payable after the Executive's death and the legal representative of the Executive's estate shall not be precluded from assigning any right hereunder to the person or persons entitled thereto. This Agreement shall be binding upon and shall inure to the benefit of the Executive, the Executive's heirs and legal representatives and, the Company and its successors.

21. **Compliance with Section 409A.** Notwithstanding any other provision of this Agreement to the contrary, the provision, time and manner of payment or distribution of all compensation and benefits provided by this Agreement that constitute nonqualified deferred compensation subject to and not exempted from the requirements of Code Section 409A ("Section 409A Deferred Compensation") shall be subject to, limited by and construed in accordance with the requirements of Code Section 409A and all regulations and other guidance promulgated by the Secretary of the Treasury pursuant to such Section (such Section, regulations and other guidance being referred to herein as "Section 409A"), including the following:

(a) **Separation from Service.** Payments and benefits constituting Section 409A Deferred Compensation otherwise payable or provided pursuant to Section 8 upon the Executive's termination of employment shall be paid or provided only at the time of a termination of the Executive's employment which constitutes a Separation from Service. For the purposes of this Agreement, a "Separation from Service" is a separation from service within the meaning of Section 409A.

(b) **Six-Month Delay Applicable to Specified Employees.** If, at the time of a Separation from Service of the Executive, the Executive is a "specified employee" within the meaning of Section 409A (a "Specified Employee"), then any payments and benefits constituting Section 409A Deferred Compensation to be paid or provided pursuant to Section 8 upon the Separation from Service of the Executive shall be paid or provided commencing on the later of (i) the date that is six (6) months after the date of such Separation from Service or, if earlier, the date of death of the Executive (in either case, the "Delayed Payment Date"), or (ii) the date or dates on which such Section 409A Deferred Compensation would otherwise be paid or provided in accordance with Section 8. All such amounts that would, but for this Section 21(b), become payable prior to the Delayed Payment Date shall be accumulated and paid on the Delayed Payment Date.

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(c) **Health Care and Estate Planning Benefits.** In the event that all or any of the health care or estate planning benefits to be provided pursuant to Sections 8(d)(i)(3) or 8(d)(i)(4) as a result of a Participant's Separation from Service constitute Section 409A Deferred Compensation, the Company shall provide for such benefits constituting Section 409A Deferred Compensation in a manner that complies with Section 409A. To the extent necessary to comply with Section 409A, the Company shall determine the health care premium cost necessary to provide such benefits constituting Section 409A Deferred Compensation for the applicable coverage period and shall pay such premium cost which becomes due and payable during the applicable coverage period on the applicable due date for such premiums; provided, however, that if the Executive is a Specified Employee, the Company shall not pay any such premium cost until the Delayed Payment Date. If the Company's payment pursuant to the previous sentence is subject to a Delayed Payment Date, the Executive shall pay the premium cost otherwise payable by the Company prior to the Delayed Payment Date, and on the Delayed Payment Date the Company shall reimburse the Executive for such Company premium cost paid by the Executive and shall pay the balance of the Company's premium cost necessary to provide such benefit coverage for the remainder of the applicable coverage period as and when it becomes due and payable over the applicable period.

(d) **Stock-Based Awards.** The vesting of any stock-based compensation awards which constitute Section 409A Deferred Compensation and are held by the Executive, if the Executive is a Specified Employee, shall be accelerated in accordance with this Agreement to the extent applicable; provided, however, that the payment in settlement of any such awards shall occur on the Delayed Payment Date. Any stock-based compensation which vests and becomes payable upon a Change in Control in accordance with Section 8(d)(i)(1) shall not be subject to this Section 21(d).

(e) **Rights of the Company; Release of Liability.** It is the mutual intention of the Executive and the Company that the provision of all payments and benefits pursuant to this Agreement be made in compliance with the requirements of Section 409A. To the extent that the provision of any such payment or benefit pursuant to the terms and conditions of this Agreement would fail to comply with the applicable requirements of Section 409A, the Company may, in its sole and absolute discretion and without the consent of the Executive, make such modifications to the timing or manner of providing such payment and/or benefit to the extent it determines necessary or advisable to comply with the requirements of Section 409A; provided, however, that the Company shall not be obligated to make any such modifications. Any such modifications made by the Company shall, to the maximum extent permitted in compliance with the requirements of Section 409A, preserve the aggregate monetary face value of such payments and/or benefits provided by this Agreement in the absence of such modification; provided, however, that the Company shall in no event be obligated to pay any interest or other compensation in respect of any

delay in the provision of such payments or benefits in order to comply with the requirements of Section 409A. The Executive acknowledges that (i) the provisions of this Section 21 may result in a delay in the time at which payments would otherwise be made pursuant to this Agreement and (ii) the Company is authorized to amend the this Agreement, to void or amend any election made by the Executive under this Agreement and/or to delay the payment of any monies and/or provision of any benefits in such manner as may be determined by the Company, in its discretion, to be necessary or appropriate to comply with Section 409A (including any transition or grandfather rules thereunder) without prior notice to or consent of the Executive. The Executive hereby agrees that in no event shall the Company, or any of its directors, officers or stockholders be liable for any tax, cost or penalty incurred by the Executive pursuant to Code Section 409A.

**22. Future Equity Compensation.** The Executive understands and acknowledges that all awards, if any, of stock options, restricted stock and other forms of equity compensation by the Company are made at the sole discretion of the Board of Directors of the Company or a committee thereof. The Executive further understands and acknowledges, however, that unless the Executive has executed this Agreement and each successive amendment extending the Initial Term or any subsequent Renewal Term of the Agreement as may be agreed to by the Company and the Executive, it is the intention of the Board of Directors and the Executive that, notwithstanding any continued employment with the Company, (a) the Company shall have no obligation to grant any award of stock options, restricted stock or any other form of equity compensation which might otherwise have been granted to the Executive on or after the intended commencement of the Initial Term or such successive Renewal Term for which the Executive has failed to sign the Agreement or the applicable Term of Employment extension amendment and (b) any such award which is nevertheless granted to the Executive after the intended commencement of the Initial Term or Renewal Term for which the Executive has failed to sign such Agreement or applicable extension amendment shall not vest unless and until the Executive has executed the Agreement or applicable extension amendment, notwithstanding the provisions of any agreement evidencing such award to the contrary.

**IN WITNESS WHEREOF**, the parties have executed this Executive Employment Agreement effective as of the date and year first above written.

**ROSS STORES, INC.**

**EXECUTIVE**

/s/ Michael Balmuth

/s/ Barbara Rentler

By: Michael Balmuth  
Vice Chairman, President and Chief  
Executive Officer

Barbara Rentler

**BARBARA RENTLER**  
**EXECUTIVE VICE PRESIDENT, MERCHANDISING**  
**EXECUTIVE EMPLOYMENT AGREEMENT**  
**CONTRACT TERM SHEET**

<b>EVENT</b>	<b>PROVISIONS</b>
<b><i>Contract Term</i></b>	<ul style="list-style-type: none"> <li>January 1, 2007 – March 31, 2011</li> </ul>
<b><i>Renewal Term</i></b>	<ul style="list-style-type: none"> <li>Two years following contract term.</li> </ul>
<b><i>Renewal Process</i></b>	<ul style="list-style-type: none"> <li>EVP submits written request to CEO no sooner than twelve (12) months prior to the end of the contract term</li> <li>Within 30 days of receipt of request, CEO will discuss with Compensation Committee. Within 30 days of Committee's consideration, CEO advises EVP in writing whether extension is approved.</li> </ul>
<b><i>Cash Compensation</i></b>	<ul style="list-style-type: none"> <li>Annual Salary - <b>\$750,000</b></li> <li>Lump sum Insurance Premium: \$1,820</li> </ul>
<b><i>Bonus</i></b>	<ul style="list-style-type: none"> <li>Eligible for annual bonuses under the Incentive Compensation Plan</li> <li>Current EVP bonus target is 65% of salary.</li> </ul>
<b><i>Equity Plan Participation</i></b>	<ul style="list-style-type: none"> <li>Eligible for equity grants under 2004 Equity Incentive Plan.</li> <li>Restricted Stock Grant awarded at a dollar value of <b>\$1,500,000</b>. The number of shares is dependent upon the stock price at the close of the market on January 2, 2007. The shares will "cliff" vest as follows: 100% to vest on March 31, 2011.</li> </ul>

<b>Benefits</b>	<ul style="list-style-type: none"> <li>• Eligible to participate in all of the company's plans for employees and senior executives.</li> <li>• Eligible for reimbursement up to <b>\$15,000</b> per fiscal year for estate tax planning purposes.</li> </ul>
<b>Life Insurance Coverage</b>	<ul style="list-style-type: none"> <li>• face Value \$3 million</li> </ul>
<b>Governing Law</b>	<ul style="list-style-type: none"> <li>• New York</li> <li>• Mandatory arbitration of disputes</li> </ul>
<b>Restrictive Covenants</b>	<ul style="list-style-type: none"> <li>• During term of agreement and for 24 months after termination, EVP is not to work for any parent, subsidiary or related company of a competitor, solicit employees of such entities, or solicit Company's suppliers or customers, or disparage Company.</li> </ul>
<b>Mitigation</b>	<ul style="list-style-type: none"> <li>• In the event of termination, the executive shall have no duty to seek other employment. However, if the executive does find another job, then any amounts paid by Ross shall be reduced by the salary/fee &amp; bonus earned in new job.</li> </ul>
<b>Term for Nonrenewal of Contract</b>	<p>Provided Executive signs general release:</p> <ul style="list-style-type: none"> <li>• <u>Salary</u>: paid through end of contract</li> <li>• <u>Bonus</u>: pro-rated bonus for year of termination, based on greater of prior year bonus earned or current year bonus that would be earned absent termination, capped at lesser of 100% of prior year or current year targets</li> <li>• <u>Options</u>: vesting ceases upon termination.</li> <li>• <u>Restricted Stock</u>: pro-rata vesting based on applicable vesting schedule and number of days since grant date.</li> </ul>
<b>Term for Cause</b> <b>Including Voluntary Termination (other than Good Reason) and Death</b>	<ul style="list-style-type: none"> <li>• <u>Salary</u>: paid through termination date</li> <li>• <u>Bonus</u>: no bonus unless fully earned by termination date</li> <li>• <u>Options</u>: vesting ceases upon termination</li> <li>• <u>Restricted Stock</u>: forego unvested restricted shares</li> </ul>

**BARBARA RENTLER**  
**EXECUTIVE VICE PRESIDENT, MERCHANDISING**  
**EXECUTIVE EMPLOYMENT AGREEMENT**  
**CONTRACT TERM SHEET**

<b>Term without Cause</b> <b>Including Disability,</b> <b>and Termination</b> <b>For Good Reason</b>	<p>Provided Executive signs general release:</p> <ul style="list-style-type: none"> <li>• <u>Salary</u>: paid through end of contract</li> <li>• <u>Bonus</u>: annual bonuses for remainder of contract term, based on greater of bonus earned for year prior to termination or bonus that would be earned for year of termination, absent termination, capped at lesser of 100% of target in either year</li> <li>• <u>Options</u>: accelerated vesting</li> <li>• <u>Restricted Stock</u>: pro-rata vesting based on applicable vesting schedule and number of months since grant date.</li> </ul>
<b>Change in Control - With no</b>  <b>Voluntary term and no</b> <b>Term for Cause</b>	<ul style="list-style-type: none"> <li>• <u>Additional Salary</u>: \$62,500 per month for two years</li> <li>• <u>Options</u>: Accelerated vesting if not assumed or substituted</li> <li>• <u>Restricted Stock</u>: accelerated vesting upon change in control</li> <li>• <u>Excise Tax</u>: Gross-up for any excise taxes on the parachute payments</li> </ul>
<b>Change in Control and Term</b>  <b>Without Cause (as</b> <b>defined earlier) Term</b> <b>must occur one month prior</b> <b>to or <u>within 12 months of</u></b>	<ul style="list-style-type: none"> <li>• Everything stated in change in control – no term, plus (provided Executive signs general release):</li> <li>• <u>Salary</u>: paid through end of contract or two years, whichever is greater</li> <li>• <u>Bonus</u>: annual bonuses for greater of 2 years or remainder of contract term, based on greater of bonus earned for year prior to termination or bonus that would be earned for year of termination, absent termination,</li> </ul>

<p><b><i>Change in Control</i></b></p>	<p>capped at lesser of 100% of target in either year</p> <ul style="list-style-type: none"> <li>• <u>Options</u>: accelerated vesting</li> <li>• <u>Restricted Stock received after change in control</u>: pro-rata vesting based on applicable vesting schedule and number of days elapsed since grant date.</li> <li>• <u>Excise Tax</u>: Gross-up for excise tax on all remaining parachute payments</li> </ul>
<p><b><i>Change in Control and Term</i></b></p> <p><b><i>Without Cause (as defined earlier)</i></b>  <b><i>Term occurs <u>following 12 months</u> after Change in Control</i></b></p>	<ul style="list-style-type: none"> <li>• Everything stated in change in control – no term, plus (provided Executive signs general release):</li> <li>• <u>Salary</u>: paid through end of contract</li> <li>• <u>Bonus</u>: annual bonuses for remainder of contract term, based on greater of bonus earned for year prior to termination or bonus that would be earned for year of termination, absent termination, capped at lesser of 100% of target in either year.</li> <li>• <u>Options</u>: accelerated vesting</li> <li>• <u>Restricted Stock received after change in control</u>: pro-rata vesting based on applicable vesting schedule and number of days elapsed since grant date.</li> </ul>
<p><b><i>Change in Control and Term</i></b>  <b><i>For Cause (as defined earlier)</i></b></p>	<ul style="list-style-type: none"> <li>• <u>Salary</u>: paid through term date</li> <li>• <u>Bonus</u>: no bonus unless fully earned</li> <li>• <u>Options</u>: vesting ceases upon termination</li> <li>• <u>Any Remaining Restricted Stock</u>: forego unvested shares</li> </ul>

# FIRST AMENDMENT TO THE EMPLOYMENT AGREEMENT

**THE FIRST AMENDMENT TO THE EMPLOYMENT AGREEMENT** (the "Amendment") is made and effective the 1st day of April 2007, by Ross Stores, Inc. (the "Company") and Barbara Rentler (the "Executive"). The Executive and the Company previously entered into an Employment Agreement (the "Agreement") effective January 1, 2007 (attached hereto) and it is now the intention of the Executive and the Company to amend the Agreement as set forth below. Accordingly, the Executive and the Company now enter into this First Amendment.

- I. The Executive and the Company hereby amend the Agreement by adding the following new Paragraph 8(a)(v):

**8(a)(v). Other Equity Awards.** Except as set forth in Sections 8(a)(iii) and 8(a)(iv), performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall vest and be settled in accordance with their terms.

- II. The Executive and the Company further amend the Agreement by deleting the third sentence in Paragraph 8(b) in its entirety and replacing it with the following sentence:

**8(b).** Any stock options granted to the Executive by the Company shall continue to vest only through the date on which the Executive's employment terminates, and unless otherwise provided by their terms, any restricted stock, performance share awards or other equity awards that were granted to the Executive by the Company that remain unvested as of the date on which the Executive's employment terminates shall automatically be forfeited and the Executive shall have no further rights with respect to such awards.

- III. The Executive and the Company further amend the Agreement by adding the following new Paragraph 8(c)(iv):

**8(c)(iv). Other Equity Awards.** Except as set forth in Sections 8(c)(ii) and 8(c)(iii), performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of termination of the Executive's employment, as provided in Section 7(b), shall vest and be settled in accordance with their terms.

- IV. The Executive and the Company further amend the Agreement by adding the following sentence as the final sentence in Paragraph 8(d)(i)(1):

**8(d)(i)(1).** Except as set forth in this Section 8(d)(i)(1) or Section 8(d)(i)(2) below, the treatment of stock options, performance share awards and all other equity awards granted to the Executive by the Company which remain outstanding immediately prior to the date of such Change in Control shall be determined in accordance with their terms.

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- V. The Executive and the Company further amend the Agreement by deleting Paragraph 8(d)(i)(2)(c) and replacing it with the following new Paragraph 8(d)(i)(2)(c):

**8(d)(i)(2)(c). Health Care Coverage.** The Executive shall be entitled to the continuation of the Executive's health care coverage under the Company's employee benefit plans (including medical, dental, vision and mental coverage) which the Executive had at the time of the termination of employment (including coverage for the Executive's dependents to the extent such dependents were covered immediately prior to such termination of employment) at the Company's expense for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of the Executive's termination of employment. Such health care continuation rights will be in addition to any rights the Executive may have under ERISA Sections 600 and thereafter and Section 4980B of the Internal Revenue Code ("COBRA coverage").

- VI. The Executive and the Company further amend the Agreement by deleting Paragraph 8(d)(i)(2)(d) and replacing it with the following new Paragraph 8(d)(i)(2)(d):

**8(d)(i)(2)(d). Estate Planning.** The Executive shall be entitled to reimbursement of the Executive's estate planning expenses (including attorneys' fees) on the same basis, if any, as to which the Executive was entitled to such reimbursements immediately prior to such termination of employment for the greater of (i) the remainder of the Term of Employment then in effect or (ii) a period of two (2) years commencing on the date of termination of employment.

- VII. The Executive and the Company further amend the Agreement by moving the current Paragraph 9(b)(ii) to a new Paragraph 9(b)(iii) and adding the following new Paragraph 9(b)(ii):

**9(b)(ii).** The foregoing restrictions in Section 9(b)(i) shall have no force or effect in the event that: (i) the Executive's employment with the Company is terminated either by the Company pursuant to Section 6(d)[Without Cause] or by the Executive pursuant to Section 6(e) [Termination by the Executive for Good Reason]; or (ii) the Company fails to approve or grant an extension of this Agreement in accordance with Section 1 hereof.

- VIII. The Executive and the Company further amend the Agreement by deleting the second sentence in Paragraph 16 in its entirety and replacing it with the following sentence:

16. However, any amounts due the Executive under Sections 8(a)(i); 8(a)(ii); 8(d)(i)(2)(a),(b),(c) or (d); and/or any additional salary provided under Section 8(d)(i)(1) of this Agreement shall be offset by any cash remuneration, health care coverage and/or estate planning reimbursements attributable to any subsequent employment that the Executive may obtain during the period of payment of compensation under this Agreement following the termination of the Executive's employment with the Company.

Except for the amendments, as set forth above, the Agreement and all of its terms remain in force and in effect.

**ROSS STORES, INC.**

**EXECUTIVE**

/s/ Michael Balmuth

/s/ Barbara Rentler

Name

Name

Michael Balmuth

Vice Chairman, President

and Chief Operating Officer

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**ROSS STORES, INC.**  
**NOTICE OF GRANT OF PERFORMANCE SHARES**

The Participant has been granted an award of Performance Shares (the "**Award**") pursuant to the Ross Stores, Inc. 2004 Equity Incentive Plan (the "**Plan**") and the Performance Share Agreement attached hereto (the "**Agreement**"), as follows:

**Participant:** «FIRST» «LAST\_NAME» **Employee ID:** «ID»

**Grant Date:** **March 22, 2007** **Grant No.:** «GRANT\_NUMBER»

**Target Number of Performance Shares:** **«Target\_Shares»** , subject to adjustment as provided by the Agreement.

**Maximum Number of Performance Shares:** **«Max\_Shares»** , subject to adjustment as provided by the Agreement. *[Not to exceed 500,000 shares for one-year Performance Period]*

**Adjusted Pre-Tax Profit Target:** **\$470,250,542**

**Performance Period:** Company fiscal year beginning February 4, 2007 and ending February 2, 2008.

**Performance Share Vesting Date:** March 31, 2008, except as provided by the Agreement.

**Vested Performance Shares:** Provided that the Participant's Service has not terminated prior to the Performance Share Vesting Date, except as provided by the Agreement, on the Performance Share Vesting Date the number of Vested Performance Shares (not to exceed the Maximum Number of Performance Shares) shall be determined by multiplying the Target Number of Performance Shares by the Adjusted Pre-Tax Profit Multiplier (as defined by the Agreement).

**Settlement Date:** The Performance Share Vesting Date, except as otherwise provided by the Agreement.

**Vested Common Shares:** Except as provided by the Agreement and provided that the Participant's Service has not terminated prior to the relevant date, the number of Vested Common Shares shall cumulatively increase on each respective date set forth below by the Vested Percentage set forth opposite such date, as follows:

<b>Common Share Vesting Date</b>	<b>Vested Percentage</b>
Settlement Date	30%
1st Anniversary of Settlement Date	30%
2nd Anniversary of Settlement Date	40%

**Employment Agreement:** Executive Employment Agreement between the Company and the Participant, as in effect at any applicable time.

By their signatures below, the Company and the Participant agree that the Award is governed by this Notice and by the provisions of the Plan and the Agreement, both of which are made a part of this document. The Participant acknowledges receipt of a copy of the Plan, the Agreement and the prospectus for the Plan, represents that the Participant has read and is familiar with the provisions of the Plan and the Agreement, and hereby accepts the Award subject to all of their terms and conditions.

ROSS STORES, INC.

PARTICIPANT

By: \_\_\_\_\_

\_\_\_\_\_  
Signature

Its: Senior Vice President, Human Resources

\_\_\_\_\_  
Date

Address: 4440 Rosewood Drive  
Pleasanton, CA 94588

\_\_\_\_\_  
Address

ATTACHMENTS: Performance Share Agreement and Assignment Separate from Certificate

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**ROSS STORES, INC.**  
**PERFORMANCE SHARE AGREEMENT**

Ross Stores, Inc. has granted to the Participant named in the *Notice of Grant of Performance Shares* (the “**Grant Notice**”) to which this Performance Share Agreement (the “**Agreement**”) is attached an Award consisting of Performance Shares subject to the terms and conditions set forth in the Grant Notice and this Agreement. The Award has been granted pursuant to the Ross Stores, Inc. 2004 Equity Incentive Plan (the “**Plan**”), as amended to the Grant Date, the provisions of which are incorporated herein by reference. By signing the Grant Notice, the Participant: (a) acknowledges receipt of and represents that the Participant has read and is familiar with the Grant Notice, this Agreement, the Plan and a prospectus for the Plan (the “**Plan Prospectus**”) in the form most recently prepared in connection with the registration with the Securities and Exchange Commission of shares issuable pursuant to the Plan, (b) accepts the Award subject to all of the terms and conditions of the Grant Notice, this Agreement and the Plan and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Plan Administrator upon any questions arising under the Grant Notice, this Agreement or the Plan.

# **1. DEFINITIONS AND CONSTRUCTION.**

**1.1 Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Grant Notice or the Plan.

(a) “**Adjusted Pre-Tax Profit**” means the earnings before taxes as reported in the Consolidated Statements of Earnings of the Company for the fiscal year of the Company coinciding with the Performance Period, adjusted to exclude from the determination of such amount the reduction in earnings resulting from the accrual of compensation expense for Performance Awards under the Plan and incentive awards under the Second Amended and Restated Ross Stores, Inc. Incentive Compensation Plan, granted in each case, with respect to the Performance Period.

(b) “**Adjusted Pre-Tax Profit Multiplier**” means a number determined as follows:

Percentage of Adjusted Pre-Tax Profit Target Achieved	Adjusted Pre-Tax Profit Multiplier
Less than 90%	0.00%
90%	66.70%
95%	83.33%
100%	100.00%
105%	140.00%
110%	165.00%
115%	185.00%
Equal to or greater than 120%	200.00%

The Adjusted Pre-Tax Profit Multiplier for percentages of Adjusted Pre-Tax Profit Target achieved falling between the percentages set forth in the table above shall be determined by linear interpolation.

(c) “**Change in Control**” means a “Change in Control” as defined by the Employment Agreement.

(d) “**Common Shares**” mean shares of Stock issued in settlement of the Award.

(e) “**Covered Employee**” means any Employee who is or may become a “covered employee” as defined in Section 162(m), or any successor statute, and who is designated, either as an individual Employee or a member of a class of Employees, by the Committee no later than the earlier of (i) the date ninety (90) days after the beginning of the applicable Performance Period, or (ii) the date on which twenty-five percent (25%) of the Performance Period has elapsed, as a “Covered Employee” under the Plan for such applicable Performance Period.

(f) “**Expiration of Participant’s Employment Agreement Due to Non-Renewal**” means the expiration of the Employment Agreement due to its “Non-Renewal,” as provided by the Employment Agreement.

(g) “**Insider Trading Policy**” means the written policy of the Company pertaining to the sale, transfer or other disposition of the Company’s equity securities by members of the Board, Officers or other employees who may possess material, non-public information regarding the Company, as in effect at the time of a disposition of any Common Shares.

(h) “**Performance Share**” means a right to receive on the Settlement Date one (1) Common Share, subject to further restrictions as provided by this Agreement, if such Performance Share is then a Vested Performance Share.

(i) “**Section 409A**” means Section 409A of the Code and any applicable regulations or administrative guidelines promulgated thereunder.

(j) “**Section 409A Deferred Compensation**” means compensation payable pursuant to the Award granted to a Participant subject to United States income taxation that constitutes nonqualified deferred compensation for purposes of Section 409A.

(k) “**Termination Due to Disability**” means the termination of the Participant’s employment due to “Disability” as defined by and upon terms set forth in the Employment Agreement.

(l) “**Termination for Cause**” means the termination of the Participant’s employment for “Cause” as defined by the Employment Agreement.

(m) “**Termination for Good Reason**” means the Participant’s termination of employment for “Good Reason” as defined by the Employment Agreement.



(n) "**Termination Without Cause**" means the termination of the Participant's employment "Without Cause" as defined by the Employment Agreement.

(o) "**Voluntary Termination**" means the "Voluntary Termination" of the Participant's employment as defined by the Employment Agreement.

**1.2 Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

## **2. ADMINISTRATION.**

All questions of interpretation concerning the Grant Notice, this Agreement and the Plan shall be determined by the Committee. All determinations by the Committee shall be final and binding upon all persons having an interest in the Award. Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Company herein, provided the Officer has apparent authority with respect to such matter, right, obligation, or election. If the Participant is a Covered Employee, compensation realized by the Participant pursuant to the Award is intended to constitute qualified performance-based compensation within the meaning of Section 162(m) of the Code and the regulations thereunder, and the provisions of this Agreement shall be construed and administered in a manner consistent with this intent. The Company intends that the Award comply with Section 409A (including any amendments or replacements of such section), and the provisions of this Agreement shall be construed and administered in a manner consistent with this intent.

## **3. THE AWARD.**

**3.1 Grant of Performance Shares.** On the Grant Date, the Participant shall acquire, subject to the provisions of this Agreement, a right to receive a number of Performance Shares which shall not exceed the Maximum Number of Performance Shares set forth in the Grant Notice, subject to adjustment as provided in Section 12. The number of Performance Shares, if any, ultimately earned by the Participant, shall be that number of Performance Shares which become Vested Performance Shares.

**3.2 No Monetary Payment Required.** The Participant is not required to make any monetary payment (other than applicable tax withholding, if any) as a condition to receiving the Performance Shares or the Common Shares issued upon settlement of the Performance Shares, the consideration for which shall be past services actually rendered and/or future services to be rendered to the Company (or any Parent or Subsidiary) or for its benefit. Notwithstanding the foregoing, if required by applicable state corporate law, the Participant shall furnish consideration in the form of cash or past services rendered to the Company (or any Parent or Subsidiary) or for its benefit having a value not less than the par value of the Common Shares issued upon settlement of the Performance Shares.

## **4. CERTIFICATION OF THE COMMITTEE.**

**4.1 Level of Adjusted Pre-Tax Profit Attained.** As soon as practicable following completion of the Performance Period, and in any event prior to the Performance Share Vesting Date, the Committee shall certify in writing the level of attainment of Adjusted Pre-Tax Profit during the Performance Period and the resulting number of Performance Shares which shall become Vested Performance Shares on the Performance Share Vesting Date, subject to the Participant's continued Service until the Performance Share Vesting Date, except as otherwise provided by Section 5. The Company shall promptly notify the Participant of the determination by the Plan Administrator.

**4.2 Adjustment to Adjusted Pre-Tax Profit for Extraordinary Items.** The Committee shall adjust Adjusted Pre-Tax Profit, as it deems appropriate, to exclude the effect (whether positive or negative) of any of the following occurring after the grant of the Award: (a) a change in accounting standards required by generally accepted accounting principles or (b) any extraordinary, unusual or nonrecurring item. Each such adjustment, if any, shall be made solely for the purpose of providing a consistent basis from period to period for the calculation of Adjusted Pre-Tax Profit in order to prevent the dilution or enlargement of the Participant's rights with respect to the Award.

## **5. VESTING OF PERFORMANCE SHARES.**

**5.1 In General.** Except as provided by this Section 5 and Section 11, the Performance Shares shall vest and become Vested Performance Shares as provided in the Grant Notice and certified by the Committee.

**5.2 Effect of Termination for Cause or Voluntary Termination.** In the event of the Termination for Cause or Voluntary Termination of the Participant prior to the Performance Share Vesting Date, the Participant shall forfeit and the Company shall automatically reacquire all of the Performance Shares subject to the Award. The Participant shall not be entitled to any payment for such forfeited Performance Shares.

**5.3 Effect of Death, Termination Due to Disability, Termination Without Cause or Termination for Good Reason.** In the event of the death, Termination Due to Disability, Termination Without Cause or Termination for Good Reason of the Participant prior to the Performance Share Vesting Date, then on the Performance Share Vesting Date a number of Performance Shares shall become Vested Performance Shares equal to that number of Performance Shares that would have become Vested Performance Shares had no such death or termination occurred.

**5.4 Effect of Expiration of Participant's Employment Agreement Due to Non-Renewal.** In the event of the Expiration of Participant's Employment Agreement Due to Non-Renewal prior to the Performance Share Vesting Date, then on the Performance Share Vesting Date the number of Performance Shares that shall become Vested Performance Shares shall be determined by multiplying (a) that number of Performance Shares that would have become Vested Performance Shares had no such expiration of the Employment Agreement occurred by (b) a percentage equal to either (i) if such expiration of the Employment Agreement occurs prior to the last day of the Performance Period, thirty percent (30%) multiplied by the ratio of the number of full months of the Participant's employment with the Company during the Performance Period to the number of full months contained in the Performance Period or (ii) if such expiration of the Employment Agreement occurs on or after the last of the Performance Period but prior to the Performance Share Vesting Date, thirty (30%).

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**5.5 Forfeiture of Unvested Performance Shares.** Except as otherwise provided by this Section 5 or Section 11, on the Performance Share Vesting Date, the Participant shall forfeit and the Company shall automatically reacquire all Performance Shares subject to the Award which have not become Vested Performance Shares. The Participant shall not be entitled to any payment for such forfeited Performance Shares.

## **6. SETTLEMENT OF THE AWARD.**

**6.1 Issuance of Common Shares.** Subject to the provisions of Section 6.3 below, the Company shall issue to the Participant on the Settlement Date with respect to each Vested Performance Share one (1) Common Share. Common Shares issued in settlement of Performance Shares shall be subject to the restriction on transfer set forth in Section 7 and any such other restrictions as may be required pursuant to Section 6.3, Section 10 or the Insider Trading Policy.

**6.2 Beneficial Ownership of Common Shares; Certificate Registration .** The Participant hereby authorizes the Company, in its sole discretion, to deposit for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice any or all vested Common Shares acquired by the Participant pursuant to the settlement of the Award. Further, the Participant hereby authorizes the Company, in its sole discretion, to deposit unvested Common Shares with the Company's transfer agent, including any successor transfer agent, to be held in book entry form during the term of the Escrow pursuant to Section 9. Except as otherwise provided by this Section 6.2, a certificate for the Common Shares as to which the Award is settled shall be registered in the name of the Participant, or, if applicable, in the names of the heirs of the Participant.

**6.3 Restrictions on Grant of the Award and Issuance of Common Shares .** The grant of the Award and issuance of Common Shares upon settlement of the Award shall be subject to compliance with all applicable requirements of federal, state law or foreign law with respect to such securities. No Common Shares may be issued hereunder if the issuance of such shares would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Stock may then be listed. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance of any Common Shares subject to the Award shall relieve the Company of any liability in respect of the failure to issue such shares as to which such requisite authority shall not have been obtained. As a condition to the settlement of the Award, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

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**6.4 Fractional Shares.** The Company shall not be required to issue fractional Common Shares upon the settlement of the Award. Any fractional share resulting from the determination of the number of Vested Performance Shares shall be rounded up to the nearest whole number.

## **7. VESTING OF COMMON SHARES.**

**7.1 In General.** Except as provided by this Section 7 and Section 11, the Common Shares issued in settlement of the Award shall vest and become Vested Common Shares as provided in the Grant Notice; provided however, that Common Shares that would otherwise become Vested Common Shares on a date on which a sale of such shares by the Participant would violate the Insider Trading Policy shall, notwithstanding the vesting schedule set forth in the Grant Notice, become Vested Common Shares on the next day on which such sale would not violate the Insider Trading Policy.

**7.2 Effect of Termination for Cause or Voluntary Termination.** In the event of the Termination for Cause or Voluntary Termination of the Participant on or after the Settlement Date, no additional Common Shares shall become Vested Common Shares.

**7.3 Effect of Death, Termination Due to Disability, Termination Without Cause or Termination for Good Reason.** In the event of the death, Termination Due to Disability, Termination Without Cause or Termination for Good Reason of the Participant prior to the Performance Share Vesting Date, then on the Settlement Date the Company shall issue to the Participant one (1) Vested Common Share for each Vested Performance Share determined in accordance with Section 5.3. In the event of the death, Termination Due to Disability, Termination Without Cause or Termination for Good Reason of the Participant on or after the Settlement Date, then the vesting of all Unvested Common Shares issued in settlement of the Award shall be accelerated in full effective as of the date of such death or termination.

**7.4 Effect of Expiration of Participant's Employment Agreement Due to Non-Renewal.** In the event of the Expiration of Participant's Employment Agreement Due to Non-Renewal prior to the Performance Share Vesting Date, then on the Settlement Date the Company shall issue to the Participant one (1) Vested Common Share for each Vested Performance Share determined in accordance with Section 5.4. In the event of the Expiration of Participant's Employment Agreement Due to Non-Renewal on or after the Settlement Date, then

the vesting of the then Unvested Common Shares issued in settlement of the Award shall be accelerated effective as of the date of such termination or a pro rata basis. The number of such additional Common Shares that shall become vested as of the date of such expiration of the Employment Agreement shall be that number of additional Common Shares that would have become vested through the date of such expiration in accordance with the vesting schedule set forth in the Grant Notice had such vesting schedule provided for the accrual of vesting on a daily basis (based on a 365 day year). Pro rata vesting for the Common Shares that would vest on the first anniversary of the Settlement Date shall be accrued at a daily rate from grant of 0.1370%, and pro rata vesting for the Common Shares that would vest on the second anniversary of the Settlement Date shall be accrued at a daily rate of 0.0913%.

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## 8. COMPANY REACQUISITION RIGHT.

**8.1 Grant of Company Reacquisition Right.** Except to the extent otherwise provided by this Agreement, in the event that (a) the Participant's Service terminates or (b) the Participant, the Participant's legal representative, or other holder of the shares, attempts to sell, exchange, transfer, pledge, or otherwise dispose of (other than pursuant to an Ownership Change Event), including, without limitation, any transfer to a nominee or agent of the Participant, any Common Shares which are not Vested Common Shares ( "**Unvested Common Shares**"), the Company shall automatically reacquire the Unvested Common Shares, and the Participant shall not be entitled to any payment therefor (the "**Company Reacquisition Right**").

**8.2 Ownership Change Event.** Upon the occurrence of an Ownership Change Event, any and all new, substituted or additional securities or other property to which the Participant is entitled by reason of the Participant's ownership of Unvested Common Shares shall be immediately subject to the Company Reacquisition Right and included in the terms "Common Shares," "Stock" and "Unvested Common Shares" for all purposes of the Company Reacquisition Right with the same force and effect as the Unvested Common Shares immediately prior to the Ownership Change Event. For purposes of determining the number of Vested Common Shares following an Ownership Change Event, credited Service shall include all Service with any corporation which is a Participating Company at the time the Service is rendered, whether or not such corporation is a Participating Company both before and after the Ownership Change Event.

## 9. ESCROW.

**9.1 Appointment of Agent.** To ensure that Common Shares subject to the Company Reacquisition Right will be available for reacquisition, the Participant and the Company hereby appoint the Secretary of the Company, or any other person designated by the Company, as their agent and as attorney-in-fact for the Participant (the "**Agent**") to hold any and all Unvested Common Shares and to sell, assign and transfer to the Company any such Unvested Common Shares reacquired by the Company pursuant to the Company Reacquisition Right. The Participant understands that appointment of the Agent is a material inducement to make this Agreement and that such appointment is coupled with an interest and is irrevocable. The Agent shall not be personally liable for any act the Agent may do or omit to do hereunder as escrow agent, agent for the Company, or attorney in fact for the Participant while acting in good faith and in the exercise of the Agent's own good judgment, and any act done or omitted by the Agent pursuant to the advice of the Agent's own attorneys shall be conclusive evidence of such good faith. The Agent may rely upon any letter, notice or other document executed by any signature purporting to be genuine and may resign at any time.

**9.2 Establishment of Escrow.** The Participant authorizes the Company to deposit the Unvested Common Shares with the Company's transfer agent to be held in book entry form, as provided in Section 6.2, and the Participant agrees to deliver to and deposit with the Agent each certificate, if any, evidencing the Unvested Common Shares and an Assignment Separate from Certificate with respect to such book entry shares and each such certificate duly endorsed (with date and number of Common Shares blank) in the form attached to the Notice, to be held by the Agent under the terms and conditions of this Section 9 (the "**Escrow**"). Upon the occurrence of a Change in Control or a change, as described in Section 12, in the character or amount of any outstanding stock of the corporation the stock of which is subject to the provisions of this Agreement, any and all new, substituted or additional securities or other property to which the Participant is entitled by reason of his or her ownership of the Unvested Common Shares that remain, following such Change in Control or change described in Section 12, subject to the Company Reacquisition Right shall be immediately subject to the Escrow to the same extent as the Unvested Common Shares immediately before such event. The Company shall bear the expenses of the Escrow.

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**9.3 Delivery of Common Shares to Participant.** The Escrow shall continue with respect to any Common Shares for so long as such Common Shares remain subject to the Company Reacquisition Right. Upon termination of the Reacquisition Right with respect to Common Shares, the Company shall so notify the Agent and direct the Agent to deliver such number of Common Shares to the Participant. As soon as practicable after receipt of such notice, the Agent shall cause to be delivered to the Participant the Common Shares specified by such notice, and the Escrow shall terminate with respect to such Common Shares.

## 10. TAX MATTERS.

### 10.1 **Tax Withholding.**

(a) **In General.** At the time the Grant Notice is executed, or at any time thereafter as requested by the Company, the Participant hereby authorizes withholding from payroll and any other amounts payable to the Participant, and otherwise agrees to make adequate provision for, any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company, if any, which arise in connection with the Award or the issuance of Common shares in settlement thereof. The Company shall have no obligation to process the settlement of the Award or to deliver Common Shares until the tax withholding obligations as described in this Section have been satisfied by the Participant.

(b) **Withholding in Common Shares.** Subject to applicable law, the Company shall require the Participant to satisfy its tax withholding obligations by deducting from the Common Shares otherwise deliverable to the Participant in settlement of the Award or from the Common Shares otherwise to be released from the Company Reacquisition Right a number of whole Common Shares having a fair market value, as determined by the Company as of the date on which the tax withholding obligations arise, not in excess of the amount of such tax withholding obligations determined by the applicable minimum statutory withholding rates.

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## 10.2 Election Under Section 83(b) of the Code.

(a) The Participant understands that Section 83 of the Code taxes as ordinary income the difference between the amount paid for the Common Shares, if anything, and the fair market value of the Common Shares as of the date on which the Common Shares are "substantially vested," within the meaning of Section 83. In this context, "substantially vested" means that the right of the Company to reacquire the Common Shares pursuant to the Company Reacquisition Right has lapsed. The Participant understands that he or she may elect to have his or her taxable income determined at the time he or she acquires the Common Shares rather than when and as the Company Reacquisition Right lapses by filing an election under Section 83(b) of the Code with the Internal Revenue Service no later than thirty (30) days after the date of acquisition of the Common Shares. The Participant understands that failure to make a timely filing under Section 83(b) will result in his or her recognition of ordinary income, as the Company Reacquisition Right lapses, on the difference between the purchase price, if anything, and the fair market value of the Common Shares at the time such restrictions lapse. The Participant further understands, however, that if Common Shares with respect to which an election under Section 83(b) has been made are forfeited to the Company pursuant to its Company Reacquisition Right, such forfeiture will be treated as a sale on which there is realized a loss equal to the excess (if any) of the amount paid (if any) by the Participant for the forfeited Common Shares over the amount realized (if any) upon their forfeiture. If the Participant has paid nothing for the forfeited Common Shares and has received no payment upon their forfeiture, the Participant understands that he or she will be unable to recognize any loss on the forfeiture of the Common Shares even though the Participant incurred a tax liability by making an election under Section 83(b).

(b) The Participant understands that he or she should consult with his or her tax advisor regarding the advisability of filing with the Internal Revenue Service an election under Section 83(b) of the Code, which must be filed no later than thirty (30) days after the date of the acquisition of the Common Shares pursuant to this Agreement. Failure to file an election under Section 83(b), if appropriate, may result in adverse tax consequences to the Participant. The Participant acknowledges that he or she has been advised to consult with a tax advisor regarding the tax consequences to the Participant of the acquisition of Common Shares hereunder. ANY ELECTION UNDER SECTION 83(b) THE PARTICIPANT WISHES TO MAKE MUST BE FILED NO LATER THAN 30 DAYS AFTER THE DATE ON WHICH THE PARTICIPANT ACQUIRES THE COMMON SHARES. THIS TIME PERIOD CANNOT BE EXTENDED. THE PARTICIPANT ACKNOWLEDGES THAT TIMELY FILING OF A SECTION 83(b) ELECTION IS THE PARTICIPANT'S SOLE RESPONSIBILITY, EVEN IF THE PARTICIPANT REQUESTS THE COMPANY OR ITS REPRESENTATIVE TO FILE SUCH ELECTION ON HIS OR HER BEHALF.

(c) The Participant will notify the Company in writing if the Participant files an election pursuant to Section 83(b) of the Code. The Company intends, in the event it does not receive from the Participant evidence of such filing, to claim a tax deduction for any amount which would otherwise be taxable to the Participant in the absence of such an election.

## 11. CHANGE IN CONTROL.

11.1 **Effect of Change in Control on Performance Shares.** In the event of the consummation of a Change in Control prior to the Performance Share Vesting Date, the vesting of 100% of the Target Number of Performance Shares shall be accelerated and such Performance Shares shall be deemed Vested Performance Shares effective as of the date of the Change in Control. The Award shall be settled in full in accordance with Section 6 immediately prior to the Change in Control, provided that the Participant's Service has not terminated prior to the Change in Control. In settlement of the Award, the Company shall issue to the Participant one (1) Vested Common Share for each Vested Performance Share determined in accordance with this Section. The vesting of Performance Shares and settlement of the Award that was permissible solely by reason of this Section shall be conditioned upon the consummation of the Change in Control.

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11.2 **Effect of Change in Control on Common Shares.** In the event of the consummation of a Change in Control on or after the Settlement Date, the vesting of all Unvested Common Shares issued in settlement of the Award shall be accelerated in full effective as of the date of the Change in Control.

## 11.3 Federal Excise Tax Under Section 4999 of the Code.

(a) **Excess Parachute Payment.** In the event that any acceleration of vesting the Performance Shares or the Common Shares and any other payment or benefit received or to be received by the Participant would subject the Participant to any excise tax pursuant to Section 4999 of the Code due to the characterization of such acceleration of vesting, payment or benefit as an "excess parachute payment" under Section 280G of the Code, the Participant may elect, in his or her sole discretion, to reduce the amount of any acceleration of vesting called for by this Agreement in order to avoid such characterization.

(b) **Determination by Independent Accountants.** To aid the Participant in making any election called for under Section 11.3(a), no later than the date of the occurrence of any event that might reasonably be anticipated to result in an "excess parachute payment" to the Participant as described in Section 11.3(a) (an "**Event**"), the Company shall request a determination in writing by independent public accountants selected by the Company (the "**Accountants**"). Unless the Company and the Participant otherwise agree in writing, the

Accountants shall determine and report to the Company and the Participant within twenty (20) days of the date of the Event the amount of such acceleration of vesting, payments and benefits which would produce the greatest after-tax benefit to the Participant. For the purposes of such determination, the Accountants may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Participant shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make their required determination. The Company shall bear all fees and expenses the Accountants may reasonably charge in connection with their services contemplated by this Section 11.3(b).

#### **12. ADJUSTMENTS FOR CHANGES IN CAPITAL STRUCTURE.**

Subject to any required action by the stockholders of the Company, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting normal cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate adjustments shall be made in the number of Performance Shares and/or the number and kind of shares to be issued in settlement of the Award, in order to prevent dilution or enlargement of the Participant's rights under the Award. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number. Such adjustments shall be determined by the Plan Administrator, and its determination shall be final, binding and conclusive.

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#### **13. RIGHTS AS A STOCKHOLDER OR EMPLOYEE.**

The Participant shall have no rights as a stockholder with respect to any Common Shares which may be issued in settlement of this Award until the date of the issuance of a certificate for such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such certificate is issued, except as provided in Section 12. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between the Company or a Parent or Subsidiary and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Agreement shall confer upon the Participant any right to continue in Service interfere in any way with any right of the Company or any Parent or Subsidiary to terminate the Participant's Service at any time.

#### **14. LEGENDS.**

The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates representing Common Shares issued pursuant to this Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to this Award in the possession of the Participant in order to carry out the provisions of this Section. Unless otherwise specified by the Company, legends placed on such certificates may include, but shall not be limited to, the following:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS SET FORTH IN AN AGREEMENT BETWEEN THIS CORPORATION AND THE REGISTERED HOLDER, OR HIS PREDECESSOR IN INTEREST, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THIS CORPORATION."

#### **15. TRANSFERS IN VIOLATION OF AGREEMENT.**

No Common Shares may be sold, exchanged, transferred (including, without limitation, any transfer to a nominee or agent of the Participant), assigned, pledged, hypothecated or otherwise disposed of, including by operation of law, in any manner which violates any of the provisions of this Agreement and, except pursuant to an Ownership Change Event, until the date on which such shares become Vested Common Shares, and any such attempted disposition shall be void. The Company shall not be required (a) to transfer on its books any Common Shares which will have been transferred in violation of any of the provisions set forth in this Agreement or (b) to treat as owner of such Common Shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such Common Shares will have been so transferred. In order to enforce its rights under this Section, the Company shall be authorized to give a stop transfer instruction with respect to the Common Shares to the Company's transfer agent.

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#### **16. COMPLIANCE WITH SECTION 409A.**

It is intended that any election, payment or benefit which is made or provided pursuant to or in connection with this Award that may result in Section 409A Deferred Compensation shall comply in all respects with the applicable requirements of Section 409A (including applicable proposed regulations, transition rules or other administrative guidance thereunder, as determined by the Committee in good faith) to avoid the unfavorable tax consequences provided therein for non-compliance. In connection with effecting such compliance with Section 409A, the following shall apply:

**16.1 Required Delay in Payment to Specified Employee.** If the Participant is a "specified employee" of a publicly traded corporation as defined under Section 409A(a)(2)(B)(i) of the Code, unless subject to an applicable exception under Section 409A, any payment of Section 409A Deferred Compensation in connection with a "separation from service" (as determined for purposes of Section 409A) shall not be made until six (6) months after the Participant's separation from service (the "**Section 409A Deferral Period**"). In the event such payments are

otherwise due to be made in installments or periodically during the Section 409A Deferral Period, to the extent permitted under Section 409A, the payments of Section 409A Deferred Compensation which would otherwise have been made in the Section 409A Deferral Period shall be accumulated and paid in a lump sum as soon as the Section 409A Deferral Period ends, and the balance of the payments shall be made as otherwise scheduled.

**16.2 Other Delays in Payment.** Neither the Participant nor the Company shall take any action to accelerate or delay the payment of any benefits under this Agreement in any manner which would not be in compliance with Code Section 409A (including any transition or grandfather rules thereunder). Notwithstanding the foregoing:

(a) Payment may be delayed for a reasonable period in the event the payment is not administratively practical due to events beyond the recipient's control such as where the recipient is not competent to receive the benefit payment, there is a dispute as to amount due or the proper recipient of such benefit payment, additional time is needed to calculate the amount payable, or the payment would jeopardize the solvency of the Company.

(b) Payments shall be delayed in the following circumstances: (i) where the Company reasonably anticipates that the payment will violate the terms of a loan agreement to which the Company is a party and that the violation would cause material harm to the Company; or (ii) where the Company reasonably anticipates that the payment will violate Federal securities laws or other applicable law; provided that any payment delayed by operation of this Section 16.2(b) will be made at the earliest date at which the Company reasonably anticipates that the payment will not be limited or cause the violations described.

(c) If any payment is due to the Participant upon a Change in Control but such Change in Control does not constitute a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company as defined in Section 409A(a)(2)(A)(v), then such payment which constitutes Section 409A Deferred Compensation shall be deferred until another permissible payment event contained in Section 409A occurs (e.g., death, disability, separation from service from the Company and its affiliated companies as defined for purposes of Section 409A).

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(d) If any payment is due to the Participant upon the Participant's termination of employment but such termination of employment does not constitute a "separation from service" as defined in Section 409A(a)(2)(A)(i), then such payment which constitutes Section 409A Deferred Compensation shall be deferred until another permissible payment event contained in Section 409A occurs.

(e) If any payment is due to the Participant upon the Participant's becoming disabled but such disability does not meet the requirements of a disability under Section 409A(a)(2)(C), then such payment which constitutes Section 409A Deferred Compensation shall be deferred until another permissible payment event contained in Section 409A occurs.

**16.3 Amendments to Comply with Section 409A; Indemnification.** Notwithstanding any other provision of this Agreement to the contrary, the Company is authorized to amend this Agreement, to void or amend any election made by the Participant under this Agreement and/or to delay the payment of any monies and/or provision of any benefits in such manner as may be determined by the Company, in its discretion, to be necessary or appropriate to comply with Section 409A (including any transition or grandfather rules thereunder) without prior notice to or consent of the Participant. The Participant hereby releases and holds harmless the Company, its directors, officers and stockholders from any and all claims that may arise from or relate to any tax liability, penalties, interest, costs, fees or other liability incurred by the Participant in connection with the Award, including as a result of the application of Section 409A.

**16.4 Advice of Independent Tax Advisor.** In the absence of final regulations under Section 409A, the application of Section 409A to the Award is uncertain. The Company has not obtained a tax ruling or other confirmation from the Internal Revenue Service with regard to the application of Section 409A to the Award, and the Company does not represent or warrant that this Agreement will avoid adverse tax consequences to the Participant, including as a result of the application of Section 409A to the Award. The Participant hereby acknowledges that he or she has been advised to seek the advice of his or her own independent tax advisor prior to entering into this Agreement and is not relying upon any representations of the Company or any of its agents as to the effect of or the advisability of entering into this Agreement.

## **17. MISCELLANEOUS PROVISIONS.**

**17.1 Termination or Amendment.** The Committee may terminate or amend the Plan or this Agreement at any time; provided, however, that except as provided in Section 11 in connection with a Change in Control, no such termination or amendment may adversely affect the Participant's rights under this Agreement without the consent of the Participant unless such termination or amendment is necessary to comply with applicable law or government regulation, including, but not limited to, Section 409A. No amendment or addition to this Agreement shall be effective unless in writing.

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**17.2 Nontransferability of the Award.** Prior the issuance of Common Shares on the Settlement Date, neither this Award nor any Performance Shares subject to this Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to the Award shall be exercisable during the Participant's lifetime only by the Participant or the Participant's guardian or legal representative.

**17.3 Unfunded Obligation.** The Participant shall have the status of a general unsecured creditor of the Company. Any amounts payable to the Participant pursuant to the Award shall be an unfunded and unsecured obligation for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974. The Company shall not be required to segregate any monies

from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Participant account shall not create or constitute a trust or fiduciary relationship between the Committee or the Company and the Participant, or otherwise create any vested or beneficial interest in the Participant or the Participant's creditors in any assets of the Company. The Participant shall have no claim against the Company for any changes in the value of any assets which may be invested or reinvested by the Company with respect to the Award.

**17.4 Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

**17.5 Binding Effect.** This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon the Participant and the Participant's heirs, executors, administrators, successors and assigns.

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**17.6 Delivery of Documents and Notices.** Any document relating to participation in the Plan or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Participant by the Company or a Parent or Subsidiary, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address shown below that party's signature to the Grant Notice or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery.** The Plan documents, which may include but do not necessarily include: the Plan, the Grant Notice, this Agreement, the Plan Prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to the Participant electronically. In addition, the Participant may deliver electronically the Grant Notice to the Company or to such third party involved in administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(b) **Consent to Electronic Delivery.** The Participant acknowledges that the Participant has read Section 17.6(a) of this Agreement and consents to the electronic delivery of the Plan documents and Grant Notice, as described in Section 17.6(a). The Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents described in Section 17.6(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents described in Section 17.6(a).

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**17.7 Integrated Agreement.** The Grant Notice, this Agreement and the Plan shall constitute the entire understanding and agreement of the Participant and the Company with respect to the subject matter contained herein or therein and supersedes any prior agreements, understandings, restrictions, representations, or warranties between the Participant and the Company with respect to such subject matter other than those as set forth or provided for herein or therein. To the extent contemplated herein or therein, the provisions of the Grant Notice and the Agreement shall survive any settlement of the Award and shall remain in full force and effect.

**17.8 Applicable Law.** This Agreement shall be governed by the laws of the State of California as such laws are applied to agreements between California residents entered into and to be performed entirely within the State of California.

**17.9 Counterparts.** The Grant Notice may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED the undersigned does hereby sell, assign and transfer unto

\_\_\_\_\_ ( \_\_\_\_\_ )  
shares of the Capital Stock of ROSS STORES, INC. standing in the undersigned's name on the books of said corporation represented  
by Certificate No. \_\_\_\_\_ herewith and does hereby irrevocably constitute and appoint

\_\_\_\_\_ Attorney to transfer the said stock on the books of said corporation with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature «FIRST» «LAST\_NAME»

Instructions: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise its Company Reacquisition Right and/or to reacquire shares to satisfy the Participant's tax obligations as set forth in the Performance Share Agreement without requiring additional signatures on the part of the Participant.

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# Ross Stores, Inc.

## 2004 Equity Incentive Plan

As Amended Through March 22, 2007

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### Ross Stores, Inc.

#### 2004 Equity Incentive Plan

As Amended Through March 22, 2007

##### **1. ESTABLISHMENT, PURPOSE AND TERM OF PLAN.**

1.1 **Establishment.** The Ross Stores, Inc. 2004 Equity Incentive Plan (the “**Plan**”) is hereby established effective as of May 20, 2004, the date of its approval by the stockholders of the Company (the “**Effective Date**”).

1.2 **Purpose.** The purpose of the Plan is to advance the interests of the Participating Company Group and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Participating Company Group and by motivating such persons to contribute to the growth and profitability of the Participating Company Group. The Plan seeks to achieve this purpose by providing for Awards in the form of Options, Stock Appreciation Rights, Restricted Stock Purchase Rights, Restricted Stock Bonuses, Performance Shares, Performance Units, Restricted Stock Units and Deferred Compensation Awards.

1.3 **Term of Plan.** The Plan shall continue in effect until the earlier of its termination by the Board or the date on which all of the shares of Stock available for issuance under the Plan have been issued and all restrictions on such shares under the terms of the Plan and the agreements evidencing Awards granted under the Plan have lapsed. However, all Awards shall be granted, if at all, within ten (10) years from the Effective Date.

##### **2. DEFINITIONS AND CONSTRUCTION.**

2.1 **Definitions.** Whenever used herein, the following terms shall have their respective meanings set forth below:

(a) “**Affiliate**” means (i) an entity, other than a Parent Corporation, that directly, or indirectly through one or more intermediary entities, controls the Company or (ii) an entity, other than a Subsidiary Corporation, that is controlled by the Company directly, or indirectly through one or more intermediary entities. For this purpose, the term “control” (including the term “controlled by”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the relevant entity, whether through the ownership of voting securities, by contract or otherwise; or shall have such other meaning assigned such term for the purposes of registration on Form S-8 under the Securities Act.

(b) “**Award**” means any Option, SAR, Restricted Stock Purchase Right, Restricted Stock Bonus, Performance Share, Performance Unit, Restricted Stock Unit or Deferred Compensation Award granted under the Plan.

(c) “**Award Agreement**” means a written agreement between the Company and a Participant setting forth the terms, conditions and restrictions of the Award granted to the Participant. An Award Agreement may be an “Option Agreement,” an “SAR Agreement,” a “Restricted Stock Purchase Agreement,” a “Restricted Stock Bonus Agreement,” a “Performance Share Agreement,” a “Performance Unit

(d) "**Board**" means the Board of Directors of the Company.

(e) "**Change in Control**" means, unless otherwise defined by the Participant's Award Agreement or contract of employment or service, the occurrence of any of the following:

(i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), other than (1) a trustee or other fiduciary holding stock of the Company under an employee benefit plan of a Participating Company or (2) a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the stock of the Company, becomes the "beneficial owner" (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of stock of the Company representing more than fifty percent (50%) of the total combined voting power of the Company's then-outstanding voting stock; or

(ii) an Ownership Change Event or series of related Ownership Change Events (collectively, a "**Transaction**") in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the Company or, in the case of an Ownership Change Event described in Section 2.1(x)(iii), the entity to which the assets of the Company were transferred (the "**Transferee**"), as the case may be; or

(iii) a liquidation or dissolution of the Company.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Committee shall have the right to determine whether multiple sales or exchanges of the voting securities of the Company or multiple Ownership Change Events are related, and its determination shall be final, binding and conclusive.

(f) "**Code**" means the Internal Revenue Code of 1986, as amended, and any applicable regulations promulgated thereunder.

(g) "**Committee**" means the Compensation Committee or other committee of the Board duly appointed to administer the Plan and having such powers as shall be specified by the Board. If no committee of the Board has been appointed to administer the Plan, the Board shall exercise all of the powers of the Committee granted herein, and, in any event, the Board may in its discretion exercise any or all of such powers.

(h) "**Company**" means Ross Stores, Inc., a Delaware corporation, or any successor corporation thereto.

(i) "**Consultant**" means a person engaged to provide consulting or advisory services (other than as an Employee or a member of the Board) to a Participating Company, provided that the identity of such person, the nature of such services or the entity to which such services are provided would not preclude the Company from offering or selling securities to such person pursuant to the Plan in reliance on registration on a Form S-8 Registration Statement under the Securities Act.

(j) "**Deferred Compensation Award**" means an award of Stock Units granted to a Participant pursuant to Section 12 of the Plan.

(k) "**Director**" means a member of the Board.

(l) "**Disability**" means the permanent and total disability of the Participant, within the meaning of Section 22(e)(3) of the Code.

(m) "**Dividend Equivalent**" means a credit, made at the discretion of the Committee or as otherwise provided by the Plan, to the account of a Participant in an amount equal to the cash dividends paid on one share of Stock for each share of Stock represented by an Award held by such Participant.

(n) "**Employee**" means any person treated as an employee (including an Officer or a member of the Board who is also treated as an employee) in the records of a Participating Company and, with respect to any Incentive Stock Option granted to such person, who is an employee for purposes of Section 422 of the Code; provided, however, that neither service as a member of the Board nor payment of a director's fee shall be sufficient to constitute employment for purposes of the Plan. The Company shall determine in good faith and in the exercise of its discretion whether an individual has become or has ceased to be an Employee and the effective date of such individual's employment or termination of employment, as the case may be. For purposes of an individual's rights, if any, under the Plan as of the time of the Company's determination, all such determinations by the Company shall be final, binding and conclusive, notwithstanding that the Company or any court of law or governmental agency subsequently makes a contrary determination.

(o) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

(p) "**Fair Market Value**" means, as of any date, the value of a share of Stock or other property as determined by the Committee, in its discretion, or by the Company, in its discretion, if such determination is expressly allocated to the Company herein, subject to the

following:

(i) Except as otherwise determined by the Committee, if, on such date, the Stock is listed on a national or regional securities exchange or market system, the Fair Market Value of a share of Stock shall be the closing price of a share of Stock (or the mean of the closing bid and asked prices of a share of Stock if the Stock is so quoted instead) as quoted on the Nasdaq National Market, The Nasdaq SmallCap Market or such other national or regional securities exchange or market system constituting the primary market for the Stock, as reported in *The Wall Street Journal* or such other source as the Company deems reliable. If the relevant date does not fall on a day on which the Stock has traded on such securities exchange or market system, the date on which the Fair Market Value shall be established shall be the last day on which the Stock was so traded prior to the relevant date, or such other appropriate day as shall be determined by the Committee, in its discretion.

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(ii) Notwithstanding the foregoing, the Committee may, in its discretion, determine the Fair Market Value on the basis of the opening, closing, high, low or average sale price of a share of Stock or the actual sale price of a share of Stock received by a Participant, on such date, the preceding trading day, the next succeeding trading day or an average determined over a period of trading days. The Committee may vary its method of determination of the Fair Market Value as provided in this Section for different purposes under the Plan.

(iii) If, on such date, the Stock is not listed on a national or regional securities exchange or market system, the Fair Market Value of a share of Stock shall be as determined by the Committee in good faith without regard to any restriction other than a restriction which, by its terms, will never lapse.

(q) **"Incentive Stock Option"** means an Option intended to be (as set forth in the Award Agreement) and which qualifies as an incentive stock option within the meaning of Section 422(b) of the Code.

(r) **"Insider"** means an Officer, a Director or any other person whose transactions in Stock are subject to Section 16 of the Exchange Act.

(s) **"Nonemployee Director"** means a Director who is not an Employee.

(t) **"Nonemployee Director Option"** means an Option granted to a Nonemployee Director pursuant to Section 7 of the Plan. Nonemployee Director Options shall be Nonstatutory Stock Options.

(u) **"Nonstatutory Stock Option"** means an Option not intended to be (as set forth in the Award Agreement) an incentive stock option within the meaning of Section 422(b) of the Code.

(v) **"Officer"** means any person designated by the Board as an officer of the Company.

(w) **"Option"** means the right to purchase Stock at a stated price for a specified period of time granted to a Participant pursuant to Section 6 or Section 7 of the Plan. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.

(x) **"Ownership Change Event"** means the occurrence of any of the following with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company (other than a sale, exchange or transfer to one or more subsidiaries of the Company).

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(y) **"Parent Corporation"** means any present or future "parent corporation" of the Company, as defined in Section 424(e) of the Code.

(z) **"Participant"** means any eligible person who has been granted one or more Awards.

(aa) **"Participating Company"** means the Company or any Parent Corporation, Subsidiary Corporation or Affiliate.

(bb) **"Participating Company Group"** means, at any point in time, all entities collectively which are then Participating Companies.

(cc) **"Performance Award"** means an Award of Performance Shares or Performance Units.

(dd) **"Performance Award Formula"** means, for any Performance Award, a formula or table established by the Committee pursuant to Section 10.3 of the Plan which provides the basis for computing the value of a Performance Award at one or more threshold levels of attainment of the applicable Performance Goal(s) measured as of the end of the applicable Performance Period.

(ee) **"Performance Goal"** means a performance goal established by the Committee pursuant to Section 10.3 of the Plan.

(ff) **"Performance Period"** means a period established by the Committee pursuant to Section 10.3 of the Plan at the end of which one or more Performance Goals are to be measured.

(gg) **"Performance Share"** means a bookkeeping entry representing a right granted to a Participant pursuant to Section 10 of the

Plan to receive a payment equal to the value of a Performance Share, as determined by the Committee, based on performance.

(hh) "**Performance Unit**" means a bookkeeping entry representing a right granted to a Participant pursuant to Section 10 of the Plan to receive a payment equal to the value of a Performance Unit, as determined by the Committee, based upon performance.

(ii) "**Predecessor Plan**" means each of the Company's 1992 Stock Option Plan, 2000 Equity Incentive Plan, 1991 Outside Directors Stock Option Plan and 1988 Restricted Stock Plan.

(jj) "**Restricted Stock Award**" means an Award of a Restricted Stock Bonus or a Restricted Stock Purchase Right.

(kk) "**Restricted Stock Bonus**" means Stock granted to a Participant pursuant to Section 9 of the Plan.

(ll) "**Restricted Stock Purchase Right**" means a right to purchase Stock granted to a Participant pursuant to Section 9 of the Plan.

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(mm) "**Restricted Stock Unit**" or "**Stock Unit**" means a bookkeeping entry representing a right granted to a Participant pursuant to Section 11 or Section 12 of the Plan, respectively, to receive a share of Stock on a date determined in accordance with the provisions of Section 11 or Section 12, as applicable, and the Participant's Award Agreement.

(nn) "**Restriction Period**" means the period established in accordance with Section 9.5 of the Plan during which shares subject to a Restricted Stock Award are subject to Vesting Conditions.

(oo) "**Rule 16b-3**" means Rule 16b-3 under the Exchange Act, as amended from time to time, or any successor rule or regulation.

(pp) "**SAR**" or "**Stock Appreciation Right**" means a bookkeeping entry representing, for each share of Stock subject to such SAR, a right granted to a Participant pursuant to Section 8 of the Plan to receive payment of an amount equal to the excess, if any, of the Fair Market Value of a share of Stock on the date of exercise of the SAR over the exercise price.

(qq) "**Section 162(m)**" means Section 162(m) of the Code.

(rr) "**Securities Act**" means the Securities Act of 1933, as amended.

(ss) "**Service**" means a Participant's employment or service with the Participating Company Group, whether in the capacity of an Employee, a Director or a Consultant. A Participant's Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders such Service or a change in the Participating Company for which the Participant renders such Service, provided that there is no interruption or termination of the Participant's Service. Furthermore, a Participant's Service shall not be deemed to have terminated if the Participant takes any military leave, sick leave, or other bona fide leave of absence approved by the Company. However, if any such leave taken by a Participant exceeds ninety (90) days, then on the one hundred eighty-first (181st) day following the commencement of such leave any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and instead shall be treated thereafter as a Nonstatutory Stock Option, unless the Participant's right to return to Service with the Participating Company Group is guaranteed by statute or contract. Notwithstanding the foregoing, unless otherwise designated by the Company or required by law, a leave of absence shall not be treated as Service for purposes of determining vesting under the Participant's Award Agreement. A Participant's Service shall be deemed to have terminated either upon an actual termination of Service or upon the entity for which the Participant performs Service ceasing to be a Participating Company. Subject to the foregoing, the Company, in its discretion, shall determine whether the Participant's Service has terminated and the effective date of such termination.

(tt) "**Stock**" means the common stock of the Company, as adjusted from time to time in accordance with Section 4.3 of the Plan.

(uu) "**Subsidiary Corporation**" means any present or future "subsidiary corporation" of the Company, as defined in Section 424(f) of the Code.

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(vv) "**Ten Percent Owner**" means a Participant who, at the time an Option is granted to the Participant, owns stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of a Participating Company (other than an Affiliate) within the meaning of Section 422(b)(6) of the Code.

(ww) "**Vesting Conditions**" mean those conditions established in accordance with Section 9.5 or Section 11.3 of the Plan prior to the satisfaction of which shares subject to a Restricted Stock Award or Restricted Stock Unit Award, respectively, remain subject to forfeiture or a repurchase option in favor of the Company upon the Participant's termination of Service.

**2.2 Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

### **3. ADMINISTRATION.**

**3.1 Administration by the Committee.** The Plan shall be administered by the Committee. All questions of interpretation of the Plan

or of any Award shall be determined by the Committee, and such determinations shall be final and binding upon all persons having an interest in the Plan or such Award.

**3.2 Authority of Officers.** Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, determination or election which is the responsibility of or which is allocated to the Company herein, provided the Officer has apparent authority with respect to such matter, right, obligation, determination or election. The Board may, in its discretion, delegate to a committee comprised of one or more Officers the authority to grant one or more Awards, without further approval of the Board or the Committee, to any Employee, other than a person who, at the time of such grant, is an Insider; provided, however, that (a) such Awards shall not be granted for shares in excess of the maximum aggregate number of shares of Stock authorized for issuance pursuant to Section 4.1, (b) the exercise price per share of each such Award which is an Option or Stock Appreciation Right shall be not less than the Fair Market Value per share of the Stock on the effective date of grant (or, if the Stock has not traded on such date, on the last day preceding the effective date of grant on which the Stock was traded), and (c) each such Award shall be subject to the terms and conditions of the appropriate standard form of Award Agreement approved by the Board or the Committee and shall conform to the provisions of the Plan and such other guidelines as shall be established from time to time by the Board or the Committee.

**3.3 Administration with Respect to Insiders.** With respect to participation by Insiders in the Plan, at any time that any class of equity security of the Company is registered pursuant to Section 12 of the Exchange Act, the Plan shall be administered in compliance with the requirements, if any, of Rule 16b-3.

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**3.4 Committee Complying with Section 162(m).** If the Company is a “publicly held corporation” within the meaning of Section 162(m), the Board may establish a Committee of “outside directors” within the meaning of Section 162(m) to approve the grant of any Award which might reasonably be anticipated to result in the payment of employee remuneration that would otherwise exceed the limit on employee remuneration deductible for income tax purposes pursuant to Section 162(m).

**3.5 Powers of the Committee.** In addition to any other powers set forth in the Plan and subject to the provisions of the Plan, the Committee shall have the full and final power and authority, in its discretion:

- (a) to determine the persons to whom, and the time or times at which, Awards shall be granted and the number of shares of Stock or units to be subject to each Award;
- (b) to determine the type of Award granted and to designate Options as Incentive Stock Options or Nonstatutory Stock Options;
- (c) to determine the Fair Market Value of shares of Stock or other property;
- (d) to determine the terms, conditions and restrictions applicable to each Award (which need not be identical) and any shares acquired pursuant thereto, including, without limitation, (i) the exercise or purchase price of shares purchased pursuant to any Award, (ii) the method of payment for shares purchased pursuant to any Award, (iii) the method for satisfaction of any tax withholding obligation arising in connection with Award, including by the withholding or delivery of shares of Stock, (iv) the timing, terms and conditions of the exercisability or vesting of any Award or any shares acquired pursuant thereto, (v) the Performance Award Formula and Performance Goals applicable to any Award and the extent to which such Performance Goals have been attained, (vi) the time of the expiration of any Award, (vii) the effect of the Participant’s termination of Service on any of the foregoing, and (viii) all other terms, conditions and restrictions applicable to any Award or shares acquired pursuant thereto not inconsistent with the terms of the Plan;
- (e) to determine whether an Award of SARs, Performance Shares or Performance Units will be settled in shares of Stock, cash, or in any combination thereof;
- (f) to approve one or more forms of Award Agreement;
- (g) to amend, modify, extend, cancel or renew any Award or to waive any restrictions or conditions applicable to any Award or any shares acquired pursuant thereto;
- (h) to accelerate, continue, extend or defer the exercisability or vesting of any Award or any shares acquired pursuant thereto, including with respect to the period following a Participant’s termination of Service;
- (i) without the consent of the affected Participant and notwithstanding the provisions of any Award Agreement to the contrary, to unilaterally substitute at any time a Stock Appreciation Right providing for settlement solely in shares of Stock in place of any outstanding Option, provided that such Stock Appreciation Right covers the same number of shares of Stock and provides for the same exercise price (subject in each case to adjustment in accordance with Section 4.3) as the replaced Option and otherwise provides substantially equivalent terms and conditions as the replaced Option, as determined by the Committee;

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- (j) to prescribe, amend or rescind rules, guidelines and policies relating to the Plan, or to adopt sub-plans or supplements to, or alternative versions of, the Plan, including, without limitation, as the Committee deems necessary or desirable to comply with the laws or regulations of or to accommodate the tax policy, accounting principles or custom of, foreign jurisdictions whose citizens may be granted Awards; and

(k) to correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award Agreement and to make all other determinations and take such other actions with respect to the Plan or any Award as the Committee may deem advisable to the extent not inconsistent with the provisions of the Plan or applicable law.

**3.6 Option or SAR Repricing.** Without the affirmative vote of holders of a majority of the shares of Stock cast in person or by proxy at a meeting of the stockholders of the Company at which a quorum representing a majority of all outstanding shares of Stock is present or represented by proxy, the Board shall not approve a program providing for either (a) the cancellation of outstanding Options or SARs and the grant in substitution therefore of new Options or SARs having a lower exercise price or (b) the amendment of outstanding Options or SARs to reduce the exercise price thereof. This paragraph shall not be construed to apply to "issuing or assuming a stock option in a transaction to which section 424(a) applies," within the meaning of Section 424 of the Code.

**3.7 Indemnification.** In addition to such other rights of indemnification as they may have as members of the Board or the Committee or as officers or employees of the Participating Company Group, members of the Board or the Committee and any officers or employees of the Participating Company Group to whom authority to act for the Board, the Committee or the Company is delegated shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any right granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct in duties; provided, however, that within sixty (60) days after the institution of such action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at its own expense to handle and defend the same.

#### **4. SHARES SUBJECT TO PLAN.**

**4.1 Maximum Number of Shares Issuable.** Subject to adjustment as provided in Section 4.2 and Section 4.3, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be fifteen million (15,000,000) and shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof. If an outstanding Award for any reason expires or is terminated or canceled without having been exercised or settled in full, or if shares of Stock acquired pursuant to an Award subject to forfeiture or repurchase are forfeited or repurchased by the Company at the Participant's purchase price, the shares of Stock allocable to the terminated portion of such Award or such forfeited or repurchased shares of Stock shall again be available for issuance under the Plan. Shares of Stock shall not be deemed to have been issued pursuant to the Plan (a) with respect to any portion of an Award that is settled in cash or (b) to the extent such shares are withheld or reacquired by the Company in satisfaction of tax withholding obligations pursuant to Section 16.2. Upon payment in shares of Stock pursuant to the exercise of an SAR, the number of shares available for issuance under the Plan shall be reduced only by the number of shares actually issued in such payment. If the exercise price of an Option is paid by tender to the Company, or attestation to the ownership, of shares of Stock owned by the Participant, the number of shares available for issuance under the Plan shall be reduced by the net number of shares for which the Option is exercised.

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**4.2 Adjustment for Unissued Predecessor Plan Shares.** The maximum aggregate number of shares of Stock that may be issued under the Plan as set forth in Section 4.1 shall be cumulatively increased from time to time by:

(a) the number of shares of Stock subject to that portion of any option or other award outstanding pursuant to a Predecessor Plan as of the Effective Date which, on or after the Effective Date, expires or is terminated or canceled for any reason without having been exercised or settled in full;

(b) the number of shares of Stock acquired pursuant to a Predecessor Plan subject to forfeiture or repurchase by the Company at the Participant's purchase price which, on or after the Effective Date, is so forfeited or repurchased; and

(c) the number of shares of Stock that are withheld or reacquired by the Company on or after the Effective Date in satisfaction of tax withholding obligations pursuant to a Predecessor Plan;

provided, however, that the aggregate number of shares of Stock authorized for issuance under the Predecessor Plans that may become authorized for issuance under the Plan pursuant to this Section 4.2 shall not exceed 13,701,846.

**4.3 Adjustments for Changes in Capital Structure.** Subject to any required action by the stockholders of the Company, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting normal cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate adjustments shall be made in the number and kind of shares subject to the Plan and to any outstanding Awards, in the Award limits set forth in Section 5.4, in the Nonemployee Director Options to be granted automatically pursuant to Section 7, and in the exercise or purchase price per share under any outstanding Award in order to prevent dilution or enlargement of Participants' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." Any fractional share resulting from an adjustment pursuant to this Section 4.3 shall be rounded down to the nearest whole number, and in no event may the exercise or purchase price under any Award be decreased to an amount less than the par value, if any, of the stock subject to such Award. The Committee in its sole discretion, may also make such adjustments in the terms of any Award to reflect, or related to, such changes in the capital structure of the Company or

distributions as it deems appropriate, including modification of Performance Goals, Performance Award Formulas and Performance Periods. The adjustments determined by the Committee pursuant to this Section 4.3 shall be final, binding and conclusive.

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## 5. **ELIGIBILITY AND AWARD LIMITATIONS.**

5.1 **Persons Eligible for Awards.** Awards may be granted only to Employees, Consultants and Directors. For purposes of the foregoing sentence, "Employees," "Consultants" and "Directors" shall include prospective Employees, prospective Consultants and prospective Directors to whom Awards are granted in connection with written offers of an employment or other service relationship with the Participating Company Group; provided, however, that no Stock subject to any such Award shall vest, become exercisable or be issued prior to the date on which such person commences Service. A Nonemployee Director Option may be granted only to a person who, at the time of grant, is a Nonemployee Director.

5.2 **Participation.** Awards other than Nonemployee Director Options are granted solely at the discretion of the Committee. Eligible persons may be granted more than one Award. However, excepting Nonemployee Director Options, eligibility in accordance with this Section shall not entitle any person to be granted an Award, or, having been granted an Award, to be granted an additional Award.

### 5.3 **Incentive Stock Option Limitations.**

(a) **Persons Eligible.** An Incentive Stock Option may be granted only to a person who, on the effective date of grant, is an Employee of the Company, a Parent Corporation or a Subsidiary Corporation (each being an "**ISO-Qualifying Corporation**"). Any person who is not an Employee of an ISO-Qualifying Corporation on the effective date of the grant of an Option to such person may be granted only a Nonstatutory Stock Option. An Incentive Stock Option granted to a prospective Employee upon the condition that such person become an Employee of an ISO-Qualifying Corporation shall be deemed granted effective on the date such person commences Service with an ISO-Qualifying Corporation, with an exercise price determined as of such date in accordance with Section 6.1.

(b) **Fair Market Value Limitation.** To the extent that options designated as Incentive Stock Options (granted under all stock option plans of the Participating Company Group, including the Plan) become exercisable by a Participant for the first time during any calendar year for stock having a Fair Market Value greater than One Hundred Thousand Dollars (\$100,000), the portion of such options which exceeds such amount shall be treated as Nonstatutory Stock Options. For purposes of this Section, options designated as Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of stock shall be determined as of the time the option with respect to such stock is granted. If the Code is amended to provide for a limitation different from that set forth in this Section, such different limitation shall be deemed incorporated herein effective as of the date and with respect to such Options as required or permitted by such amendment to the Code. If an Option is treated as an Incentive Stock Option in part and as a Nonstatutory Stock Option in part by reason of the limitation set forth in this Section, the Participant may designate which portion of such Option the Participant is exercising. In the absence of such designation, the Participant shall be deemed to have exercised the Incentive Stock Option portion of the Option first. Upon exercise, shares issued pursuant to each such portion shall be separately identified.

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### 5.4 **Award Limits.**

(a) **Maximum Number of Shares Issuable Pursuant to Incentive Stock Options.** Subject to adjustment as provided in Section 4.3, the maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to the exercise of Incentive Stock Options shall not exceed fifteen million (15,000,000) shares. The maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to all Awards other than Incentive Stock Options shall be the number of shares determined in accordance with Section 4.1, subject to adjustment as provided in Section 4.2 and Section 4.3 and further subject to the limitation set forth in Section 5.4(b) below.

(b) **Aggregate Limit on Full Value Awards.** Subject to adjustment as provided in Section 4.3, in no event shall more than five million (5,000,000) shares in the aggregate be issued under the Plan pursuant to the exercise or settlement of Restricted Stock Awards, Restricted Stock Unit Awards and Performance Awards.

(c) **Section 162(m) Award Limits.** The following limits shall apply to the grant of any Award if, at the time of grant, the Company is a "publicly held corporation" within the meaning of Section 162(m).

(i) **Options and SARs.** Subject to adjustment as provided in Section 4.3, no Employee shall be granted within any fiscal year of the Company one or more Options or Freestanding SARs which in the aggregate are for more than the lesser of (1) three million (3,000,000) shares or (2) two percent (2%) of the number of shares of Stock issued and outstanding as reported in the most recent periodic report filed with the Securities and Exchange Commission.

(ii) **Restricted Stock and Restricted Stock Unit Awards.** Subject to adjustment as provided in Section 4.3, no Employee shall be granted within any fiscal year of the Company one or more Restricted Stock Awards or Restricted Stock Unit Awards, subject to Vesting Conditions based on the attainment of Performance Goals, for more than the lesser of (1) one million five hundred thousand (1,500,000) shares or (2) one percent (1%) of the number of shares of Stock issued and outstanding as reported in the most recent periodic report filed with the Securities and Exchange Commission.

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(iii) **Performance Awards.** Subject to adjustment as provided in Section 4.3, no Employee shall be granted (1) Performance Shares which could result in such Employee receiving more than five hundred thousand (500,000) shares for each full fiscal year of the Company contained in the Performance Period for such Award, or (2) Performance Units which could result in such Employee receiving more than five million dollars (\$5,000,000) for each full fiscal year of the Company contained in the Performance Period for such Award. No Participant may be granted more than one Performance Award for the same Performance Period.

#### **6. TERMS AND CONDITIONS OF OPTIONS.**

Options shall be evidenced by Award Agreements specifying the number of shares of Stock covered thereby, in such form as the Committee shall from time to time establish. No Option or purported Option shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing Options may incorporate all or any of the terms of the Plan by reference and, except as otherwise set forth in Section 7 with respect to Nonemployee Director Options, shall comply with and be subject to the following terms and conditions:

**6.1 Exercise Price.** The exercise price for each Option shall be established in the discretion of the Committee; provided, however, that (a) the exercise price per share shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the Option and (b) no Incentive Stock Option granted to a Ten Percent Owner shall have an exercise price per share less than one hundred ten percent (110%) of the Fair Market Value of a share of Stock on the effective date of grant of the Option. Notwithstanding the foregoing, an Option (whether an Incentive Stock Option or a Nonstatutory Stock Option) may be granted with an exercise price lower than the minimum exercise price set forth above if such Option is granted pursuant to an assumption or substitution for another option in a manner qualifying under the provisions of Section 424(a) of the Code.

**6.2 Exercisability and Term of Options.** Options shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such Option; provided, however, that (a) no Option shall be exercisable after the expiration of ten (10) years after the effective date of grant of such Option, (b) no Incentive Stock Option granted to a Ten Percent Owner shall be exercisable after the expiration of five (5) years after the effective date of grant of such Option, and (c) no Option granted to a prospective Employee, prospective Consultant or prospective Director may become exercisable prior to the date on which such person commences Service. Subject to the foregoing, unless otherwise specified by the Committee in the grant of an Option, any Option granted hereunder shall terminate ten (10) years after the effective date of grant of the Option, unless earlier terminated in accordance with its provisions.

#### **6.3 Payment of Exercise Price.**

(a) **Forms of Consideration Authorized.** Except as otherwise provided below, payment of the exercise price for the number of shares of Stock being purchased pursuant to any Option shall be made (i) in cash, by check or in cash equivalent, (ii) by tender to the Company, or attestation to the ownership, of shares of Stock owned by the Participant having a Fair Market Value not less than the exercise price, (iii) by delivery of a properly executed notice of exercise together with irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System) (a “**Cashless Exercise**”), (iv) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (v) by any combination thereof. The Committee may at any time or from time to time grant Options which do not permit all of the foregoing forms of consideration to be used in payment of the exercise price or which otherwise restrict one or more forms of consideration.

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#### **(b) Limitations on Forms of Consideration.**

(i) **Tender of Stock.** Notwithstanding the foregoing, an Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock to the extent such tender or attestation would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company's stock. Unless otherwise provided by the Committee, an Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock unless such shares either have been owned by the Participant for more than six (6) months (and not used for another Option exercise by attestation during such period) or were not acquired, directly or indirectly, from the Company.

(ii) **Cashless Exercise.** The Company reserves, at any and all times, the right, in the Company's sole and absolute discretion, to establish, decline to approve or terminate any program or procedures for the exercise of Options by means of a Cashless Exercise, including with respect to one or more Participants specified by the Company notwithstanding that such program or procedures may be available to other Participants.

#### **6.4 Effect of Termination of Service.**

(a) **Option Exercisability.** Subject to earlier termination of the Option as otherwise provided herein and unless otherwise provided by the Committee in the grant of an Option and set forth in the Award Agreement, an Option shall be exercisable after a Participant's termination of Service only during the applicable time period determined in accordance with this Section and thereafter shall terminate:

(i) **Disability.** If the Participant's Service terminates because of the Disability of the Participant, the Option, to the extent unexercised and exercisable on the date on which the Participant's Service terminated, may be exercised by the Participant (or the



Participant's guardian or legal representative) at any time prior to the expiration of twelve (12) months after the date on which the Participant's Service terminated, but in any event no later than the date of expiration of the Option's term as set forth in the Award Agreement evidencing such Option (the "**Option Expiration Date**").

(ii) **Death.** If the Participant's Service terminates because of the death of the Participant, the Option, to the extent unexercised and exercisable on the date on which the Participant's Service terminated, may be exercised by the Participant's legal representative or other person who acquired the right to exercise the Option by reason of the Participant's death at any time prior to the expiration of twelve (12) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date. The Participant's Service shall be deemed to have terminated on account of death if the Participant dies within three (3) months after the Participant's termination of Service.

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(iii) **Other Termination of Service.** If the Participant's Service terminates for any reason, except Disability or death, the Option, to the extent unexercised and exercisable by the Participant on the date on which the Participant's Service terminated, may be exercised by the Participant at any time prior to the expiration of three (3) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(b) **Extension if Exercise Prevented by Law.** Notwithstanding the foregoing, if the exercise of an Option within the applicable time periods set forth in Section 6.4(a) is prevented by the provisions of Section 15 below, the Option shall remain exercisable until three (3) months (or such longer period of time as determined by the Committee, in its discretion) after the date the Participant is notified by the Company that the Option is exercisable, but in any event no later than the Option Expiration Date.

(c) **Extension if Participant Subject to Section 16(b).** Notwithstanding the foregoing, if a sale within the applicable time periods set forth in Section 6.4(a) of shares acquired upon the exercise of the Option would subject the Participant to suit under Section 16(b) of the Exchange Act, the Option shall remain exercisable until the earliest to occur of (i) the tenth (10th) day following the date on which a sale of such shares by the Participant would no longer be subject to such suit, (ii) the one hundred and ninetieth (190th) day after the Participant's termination of Service, or (iii) the Option Expiration Date.

**6.5 Transferability of Options.** During the lifetime of the Participant, an Option shall be exercisable only by the Participant or the Participant's guardian or legal representative. Prior to the issuance of shares of Stock upon the exercise of an Option, the Option shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Notwithstanding the foregoing, to the extent permitted by the Committee, in its discretion, and set forth in the Award Agreement evidencing such Option, a Nonstatutory Stock Option shall be assignable or transferable subject to the applicable limitations, if any, described in the General Instructions to Form S-8 Registration Statement under the Securities Act.

## **7. TERMS AND CONDITIONS OF NONEMPLOYEE DIRECTOR OPTIONS.**

Nonemployee Director Options shall be evidenced by Award Agreements specifying the number of shares of Stock covered thereby, in such form as the Committee shall from time to time establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the terms and conditions of Section 6 to the extent not inconsistent with this Section and the following terms and conditions:

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### **7.1 Grant of Nonemployee Director Options.**

(a) **Initial Option.** Subject to the execution by the Nonemployee Director of an appropriate Award Agreement, each person who first becomes a Nonemployee Director on or after the Effective Date shall be granted on the date such person first becomes a Nonemployee Director an Option (an "**Initial Option**") to purchase a number of shares of Stock determined by dividing the Initial Option Award Value (as defined below) by the Fair Market Value of a Share of Stock on such date and rounding to the nearest whole number. The Initial Option Award Value shall initially equal \$300,000. On the date of each annual meeting of the stockholders of the Company (an "**Annual Meeting**"), commencing with the Annual Meeting held in 2006 and continuing for each Annual Meeting held thereafter during the term of the Plan, the Initial Option Award Value as previously in effect shall be increased by three percent (3%), and such increased Initial Option Award Value shall be effective for Initial Options granted on and after such date.

(b) **Annual Option.** Subject to the execution by the Nonemployee Director of an appropriate Award Agreement, each Nonemployee Director (including any Director who previously did not qualify as a Nonemployee Director but who subsequently becomes a Nonemployee Director) shall be granted automatically and without further action of the Committee on the date of each Annual Meeting, commencing with the Annual Meeting held in 2005 and continuing for each Annual Meeting held thereafter during the term of the Plan, immediately following which such person remains a Nonemployee Director an Option (an "**Annual Option**") to purchase a number of shares of Stock determined by dividing the Annual Option Award Value (as defined below) by the Fair Market Value of a Share of Stock on such date and rounding to the nearest whole number; provided, however, that a Nonemployee Director granted an Initial Option after the December 1 immediately preceding the date of an Annual Meeting shall not be granted an Annual Option pursuant to this Section with respect to the same Annual Meeting. The Annual Option Award Value shall initially equal \$250,000. On the date of each Annual Meeting", commencing with the Annual Meeting held in 2006 and continuing for each Annual Meeting held thereafter during the term of the Plan, the Annual Option Award Value as previously in effect shall be increased by three percent (3%), and such increased Annual Option Award Value shall be effective for Annual

Options granted on such date.

(c) **Effective Date Option.** Subject to the execution by the Nonemployee Director of an appropriate Award Agreement, each Nonemployee Director (including any Director who previously did not qualify as a Nonemployee Director but who is a Nonemployee Director on the Effective Date) who remains a Nonemployee Director immediately following the Annual Meeting occurring on the Effective Date shall be granted automatically and without further action of the Committee on the Effective Date an Option (an **"Effective Date Option"**) to purchase eight thousand (8,000) shares of Stock; provided, however, that a Nonemployee Director granted an Initial Option after December 1, 2003 shall not be granted an Effective Date Option.

(d) **Right to Decline Nonemployee Director Option.** Notwithstanding the foregoing, any person may elect not to receive a Nonemployee Director Option by delivering written notice of such election to the Board no later than the day prior to the date such Nonemployee Director Option would otherwise be granted. A person so declining a Nonemployee Director Option shall receive no payment or other consideration in lieu of such declined Nonemployee Director Option. A person who has declined a Nonemployee Director Option may revoke such election by delivering written notice of such revocation to the Board no later than the day prior to the date such Nonemployee Director Option would be granted pursuant to Section 7.1(a) or (b), as the case may be.

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**7.2 Exercise Price.** The exercise price per share of Stock subject to a Nonemployee Director Option shall be the Fair Market Value of a share of Stock on the date of grant of the Nonemployee Director Option.

**7.3 Exercisability and Term of Nonemployee Director Options.** Except as otherwise provided in the Plan or in the Award Agreement evidencing a Nonemployee Director Option and provided that the Participant's Service has not terminated prior to the relevant date, each Nonemployee Director Option shall vest and become exercisable as to one-sixth (1/6) of the shares initially subject thereto on the date occurring six (6) months after the date of grant and as to one thirty-sixth (1/36) of the shares initially subject thereto following each full month of the Participant's continuous Service thereafter until the Nonemployee Director Option is fully vested. Each Nonemployee Director Option shall terminate and cease to be exercisable on the tenth (10th) anniversary of the date of grant of the Nonemployee Director Option, unless earlier terminated in accordance with the terms of the Plan or the Award Agreement evidencing such Option.

#### **7.4 Effect of Termination of Service.**

(a) **Option Exercisability.** Subject to earlier termination of the Nonemployee Director Option as otherwise provided herein, a Nonemployee Director Option shall be exercisable after the Participant's termination of Service only during the applicable time period determined in accordance with this Section and thereafter shall terminate:

(i) **Disability.** If the Participant's Service terminates because of the Disability of the Participant, the Nonemployee Director Option, to the extent unexercised and exercisable on the date on which the Participant's Service terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of twelve (12) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(ii) **Death.** If the Participant's Service terminates because of the death of the Participant, the Nonemployee Director Option, to the extent unexercised and exercisable on the date on which the Participant's Service terminated, may be exercised by the Participant's legal representative or other person who acquired the right to exercise the Nonemployee Director Option by reason of the Participant's death at any time prior to the expiration of twelve (12) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date. The Participant's Service shall be deemed to have terminated on account of death if the Participant dies within three (3) months after the Participant's termination of Service.

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(iii) **Retirement.** With respect to Nonemployee Director Options granted on or after May 19, 2005, if the Participant's Service terminates because of the Retirement (as defined below) of the Participant, the Nonemployee Director Option, to the extent unexercised and exercisable on the date on which the Participant's Service terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of sixty (60) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date. For purposes of this Section, **"Retirement"** means resignation from Service on the Board after attaining the age of 55 and after at least ten years of Service on the Board.

(iv) **Other Termination of Service.** If the Participant's Service terminates for any reason, except Disability, death, or Retirement (if applicable), the Nonemployee Director Option, to the extent unexercised and exercisable by the Participant on the date on which the Participant's Service terminated, may be exercised by the Participant at any time prior to the expiration of six (6) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(b) **Extension if Exercise Prevented by Law.** Notwithstanding the foregoing, if the exercise of a Nonemployee Director Option within the applicable time periods set forth in Section 7.4(a) is prevented by the provisions of Section 15 below, the Nonemployee Director Option shall remain exercisable until three (3) months after the date the Participant is notified by the Company that the Nonemployee Director Option is exercisable, but in any event no later than the Option Expiration Date.

(c) **Extension if Participant Subject to Section 16(b).** Notwithstanding the foregoing, if a sale within the applicable time periods set forth in Section 7.4(a) of shares acquired upon the exercise of the Nonemployee Director Option would subject the Participant to suit

under Section 16(b) of the Exchange Act, the Nonemployee Director Option shall remain exercisable until the earliest to occur of (i) the tenth (10th) day following the date on which a sale of such shares by the Participant would no longer be subject to such suit, (ii) the one hundred and ninetieth (190th) day after the Participant's termination of Service, or (iii) the Option Expiration Date.

#### **8. TERMS AND CONDITIONS OF STOCK APPRECIATION RIGHTS.**

Stock Appreciation Rights shall be evidenced by Award Agreements specifying the number of shares of Stock subject to the Award, in such form as the Committee shall from time to time establish. No SAR or purported SAR shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing SARs may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**8.1 Types of SARs Authorized.** SARs may be granted in tandem with all or any portion of a related Option (a "**Tandem SAR**") or may be granted independently of any Option (a "**Freestanding SAR**"). A Tandem SAR may be granted either concurrently with the grant of the related Option or at any time thereafter prior to the complete exercise, termination, expiration or cancellation of such related Option.

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**8.2 Exercise Price.** The exercise price for each SAR shall be established in the discretion of the Committee; provided, however, that (a) the exercise price per share subject to a Tandem SAR shall be the exercise price per share under the related Option and (b) the exercise price per share subject to a Freestanding SAR shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the SAR.

#### **8.3 Exercisability and Term of SARs.**

(a) **Tandem SARs.** Tandem SARs shall be exercisable only at the time and to the extent, and only to the extent, that the related Option is exercisable, subject to such provisions as the Committee may specify where the Tandem SAR is granted with respect to less than the full number of shares of Stock subject to the related Option. The Committee may, in its discretion, provide in any Award Agreement evidencing a Tandem SAR that such SAR may not be exercised without the advance approval of the Company and, if such approval is not given, then the Option shall nevertheless remain exercisable in accordance with its terms. A Tandem SAR shall terminate and cease to be exercisable no later than the date on which the related Option expires or is terminated or canceled. Upon the exercise of a Tandem SAR with respect to some or all of the shares subject to such SAR, the related Option shall be canceled automatically as to the number of shares with respect to which the Tandem SAR was exercised. Upon the exercise of an Option related to a Tandem SAR as to some or all of the shares subject to such Option, the related Tandem SAR shall be canceled automatically as to the number of shares with respect to which the related Option was exercised.

(b) **Freestanding SARs.** Freestanding SARs shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such SAR; provided, however, that no Freestanding SAR shall be exercisable after the expiration of ten (10) years after the effective date of grant of such SAR.

**8.4 Exercise of SARs.** Upon the exercise (or deemed exercise pursuant to Section 8.5) of an SAR, the Participant (or the Participant's legal representative or other person who acquired the right to exercise the SAR by reason of the Participant's death) shall be entitled to receive payment of an amount for each share with respect to which the SAR is exercised equal to the excess, if any, of the Fair Market Value of a share of Stock on the date of exercise of the SAR over the exercise price. Payment of such amount shall be made in cash, shares of Stock, or any combination thereof as determined by the Committee. Unless otherwise provided in the Award Agreement evidencing such SAR, payment shall be made in a lump sum as soon as practicable following the date of exercise of the SAR. The Award Agreement evidencing any SAR may provide for deferred payment in a lump sum or in installments. When payment is to be made in shares of Stock, the number of shares to be issued shall be determined on the basis of the Fair Market Value of a share of Stock on the date of exercise of the SAR. For purposes of Section 8, an SAR shall be deemed exercised on the date on which the Company receives notice of exercise from the Participant or as otherwise provided in Section 8.5.

**8.5 Deemed Exercise of SARs.** If, on the date on which an SAR would otherwise terminate or expire, the SAR by its terms remains exercisable immediately prior to such termination or expiration and, if so exercised, would result in a payment to the holder of such SAR, then any portion of such SAR which has not previously been exercised shall automatically be deemed to be exercised as of such date with respect to such portion.

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**8.6 Effect of Termination of Service.** Subject to earlier termination of the SAR as otherwise provided herein and unless otherwise provided by the Committee in the grant of an SAR and set forth in the Award Agreement, an SAR shall be exercisable after a Participant's termination of Service only during the applicable time period determined in accordance with Section 6.4 (treating the SAR as if it were an Option) and thereafter shall terminate.

**8.7 Nontransferability of SARs.** During the lifetime of the Participant, an SAR shall be exercisable only by the Participant or the Participant's guardian or legal representative. Prior to the exercise of an SAR, the SAR shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution.

## **9. TERMS AND CONDITIONS OF RESTRICTED STOCK AWARDS.**

Restricted Stock Awards shall be evidenced by Award Agreements specifying whether the Award is a Restricted Stock Bonus or a Restricted Stock Purchase Right and the number of shares of Stock subject to the Award, in such form as the Committee shall from time to time establish. No Restricted Stock Award or purported Restricted Stock Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing Restricted Stock Awards may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**9.1 Types of Restricted Stock Awards Authorized.** Restricted Stock Awards may be in the form of either a Restricted Stock Bonus or a Restricted Stock Purchase Right. Restricted Stock Awards may be granted upon such conditions as the Committee shall determine, including, without limitation, upon the attainment of one or more Performance Goals described in Section 10.4. If either the grant of a Restricted Stock Award or the lapsing of the Restriction Period is to be contingent upon the attainment of one or more Performance Goals, the Committee shall follow procedures substantially equivalent to those set forth in Sections 10.3 through 10.5(a).

**9.2 Purchase Price.** The purchase price for shares of Stock issuable under each Restricted Stock Purchase Right shall be established by the Committee in its discretion. No monetary payment (other than applicable tax withholding) shall be required as a condition of receiving shares of Stock pursuant to a Restricted Stock Bonus, the consideration for which shall be services actually rendered to a Participating Company or for its benefit. Notwithstanding the foregoing, the Participant shall furnish consideration in the form of cash or past services rendered to a Participating Company or for its benefit having a value not less than the par value of the shares of Stock subject to such Restricted Stock Award.

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**9.3 Purchase Period.** A Restricted Stock Purchase Right shall be exercisable within a period established by the Committee, which shall in no event exceed thirty (30) days from the effective date of the grant of the Restricted Stock Purchase Right; provided, however, that no Restricted Stock Purchase Right granted to a prospective Employee, prospective Consultant or prospective Director may become exercisable prior to the date on which such person commences Service.

**9.4 Payment of Purchase Price.** Except as otherwise provided below, payment of the purchase price for the number of shares of Stock being purchased pursuant to any Restricted Stock Purchase Right shall be made (a) in cash, by check, or in cash equivalent, (b) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (c) by any combination thereof. The Committee may at any time or from time to time grant Restricted Stock Purchase Rights which do not permit all of the foregoing forms of consideration to be used in payment of the purchase price or which otherwise restrict one or more forms of consideration. Restricted Stock Bonuses shall be issued in consideration for past services actually rendered to a Participating Company or for its benefit.

**9.5 Vesting and Restrictions on Transfer.** Shares issued pursuant to any Restricted Stock Award may or may not be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, Performance Goals as described in Section 10.4, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. During any Restriction Period in which shares acquired pursuant to a Restricted Stock Award remain subject to Vesting Conditions, such shares may not be sold, exchanged, transferred, pledged, assigned or otherwise disposed of other than pursuant to an Ownership Change Event, as defined in Section 2.1(x), or as provided in Section 9.8. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

**9.6 Voting Rights; Dividends and Distributions.** Except as provided in this Section, Section 9.5 and any Award Agreement, during the Restriction Period applicable to shares subject to a Restricted Stock Award, the Participant shall have all of the rights of a stockholder of the Company holding shares of Stock, including the right to vote such shares and to receive all dividends and other distributions paid with respect to such shares. However, in the event of a dividend or distribution paid in shares of Stock or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.3, any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant is entitled by reason of the Participant's Restricted Stock Award shall be immediately subject to the same Vesting Conditions as the shares subject to the Restricted Stock Award with respect to which such dividends or distributions were paid or adjustments were made.

**9.7 Effect of Termination of Service.** Unless otherwise provided by the Committee in the grant of a Restricted Stock Award and set forth in the Award Agreement, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then (a) the Company shall have the option to repurchase for the purchase price paid by the Participant any shares acquired by the Participant pursuant to a Restricted Stock Purchase Right which remain subject to Vesting Conditions as of the date of the Participant's termination of Service and (b) the Participant shall forfeit to the Company any shares acquired by the Participant pursuant to a Restricted Stock Bonus which remain subject to Vesting Conditions as of the date of the Participant's termination of Service. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company.

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**9.8 Nontransferability of Restricted Stock Award Rights.** Prior to the issuance of shares of Stock pursuant to a Restricted Stock Award, rights to acquire such shares shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment,

pledge, encumbrance or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or the laws of descent and distribution. All rights with respect to a Restricted Stock Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

#### 10. **TERMS AND CONDITIONS OF PERFORMANCE AWARDS.**

Performance Awards shall be evidenced by Award Agreements in such form as the Committee shall from time to time establish. No Performance Award or purported Performance Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing Performance Awards may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**10.1 Types of Performance Awards Authorized.** Performance Awards may be in the form of either Performance Shares or Performance Units. Each Award Agreement evidencing a Performance Award shall specify the number of Performance Shares or Performance Units subject thereto, the Performance Award Formula, the Performance Goal(s) and Performance Period applicable to the Award, and the other terms, conditions and restrictions of the Award.

**10.2 Initial Value of Performance Shares and Performance Units.** Unless otherwise provided by the Committee in granting a Performance Award, each Performance Share shall have an initial value equal to the Fair Market Value of one (1) share of Stock, subject to adjustment as provided in Section 4.3, on the effective date of grant of the Performance Share, and each Performance Unit shall have an initial value of one hundred dollars (\$100). The final value payable to the Participant in settlement of a Performance Award determined on the basis of the applicable Performance Award Formula will depend on the extent to which Performance Goals established by the Committee are attained within the applicable Performance Period established by the Committee.

**10.3 Establishment of Performance Period, Performance Goals and Performance Award Formula.** In granting each Performance Award, the Committee shall establish in writing the applicable Performance Period, Performance Award Formula and one or more Performance Goals which, when measured at the end of the Performance Period, shall determine on the basis of the Performance Award Formula the final value of the Performance Award to be paid to the Participant. Unless otherwise permitted in compliance with the requirements under Section 162(m) with respect to "performance-based compensation," the Committee shall establish the Performance Goal(s) and Performance Award Formula applicable to each Performance Award no later than the earlier of (a) the date ninety (90) days after the commencement of the applicable Performance Period or (b) the date on which 25% of the Performance Period has elapsed, and, in any event, at a time when the outcome of the Performance Goals remains substantially uncertain. Once established, the Performance Goals and Performance Award Formula shall not be changed during the Performance Period. The Company shall notify each Participant granted a Performance Award of the terms of such Award, including the Performance Period, Performance Goal(s) and Performance Award Formula.

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**10.4 Measurement of Performance Goals.** Performance Goals shall be established by the Committee on the basis of targets to be attained ("**Performance Targets**") with respect to one or more measures of business or financial performance (each, a "**Performance Measure**"), subject to the following:

(a) **Performance Measures.** Performance Measures shall have the same meanings as used in the Company's financial statements, or, if such terms are not used in the Company's financial statements, they shall have the meaning applied pursuant to generally accepted accounting principles, or as used generally in the Company's industry. Performance Measures shall be calculated with respect to the Company and each Subsidiary Corporation consolidated therewith for financial reporting purposes or such division or other business unit as may be selected by the Committee. For purposes of the Plan, the Performance Measures applicable to a Performance Award shall be calculated in accordance with generally accepted accounting principles, but prior to the accrual or payment of any Performance Award for the same Performance Period and excluding the effect (whether positive or negative) of any change in accounting standards or any extraordinary, unusual or nonrecurring item, as determined by the Committee, occurring after the establishment of the Performance Goals applicable to the Performance Award. Each such adjustment, if any, shall be made solely for the purpose of providing a consistent basis from period to period for the calculation of Performance Measures in order to prevent the dilution or enlargement of the Participant's rights with respect to a Performance Award. Performance Measures may be one or more of the following, as determined by the Committee:

- (i) sales revenue;
- (ii) gross margin;
- (iii) operating margin;
- (iv) operating income;
- (v) pre-tax profit;

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- (vi) earnings before interest, taxes and depreciation and amortization;

- (vii) net income;
- (viii) expenses;
- (ix) the market price of the Stock;
- (x) earnings per share;
- (xi) return on stockholder equity;
- (xii) return on capital;
- (xiii) return on net assets;
- (xiv) economic value added; and
- (xv) market share.

(b) **Performance Targets.** Performance Targets may include a minimum, maximum, target level and intermediate levels of performance, with the final value of a Performance Award determined under the applicable Performance Award Formula by the level attained during the applicable Performance Period. A Performance Target may be stated as an absolute value or as a value determined relative to a standard selected by the Committee.

#### 10.5 Settlement of Performance Awards.

(a) **Determination of Final Value.** As soon as practicable following the completion of the Performance Period applicable to a Performance Award, the Committee shall certify in writing the extent to which the applicable Performance Goals have been attained and the resulting final value of the Award earned by the Participant and to be paid upon its settlement in accordance with the applicable Performance Award Formula.

(b) **Discretionary Adjustment of Award Formula.** In its discretion, the Committee may, either at the time it grants a Performance Award or at any time thereafter, provide for the positive or negative adjustment of the Performance Award Formula applicable to a Performance Award granted to any Participant who is not a “covered employee” within the meaning of Section 162(m) (a “**Covered Employee**”) to reflect such Participant’s individual performance in his or her position with the Company or such other factors as the Committee may determine. If permitted under a Covered Employee’s Award Agreement, the Committee shall have the discretion, on the basis of such criteria as may be established by the Committee, to reduce some or all of the value of the Performance Award that would otherwise be paid to the Covered Employee upon its settlement notwithstanding the attainment of any Performance Goal and the resulting value of the Performance Award determined in accordance with the Performance Award Formula. No such reduction may result in an increase in the amount payable upon settlement of another Participant’s Performance Award.

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(c) **Notice to Participants.** As soon as practicable following the Committee’s determination and certification in accordance with Sections 10.5(a) and (b), the Company shall notify each Participant of the determination of the Committee.

(d) **Payment in Settlement of Performance Awards.** As soon as practicable following the Committee’s determination and certification in accordance with Sections 10.5(a) and (b), payment shall be made to each eligible Participant (or such Participant’s legal representative or other person who acquired the right to receive such payment by reason of the Participant’s death) of the final value of the Participant’s Performance Award. Payment of such amount shall be made in cash, shares of Stock, or a combination thereof as determined by the Committee. Unless otherwise provided in the Award Agreement evidencing a Performance Award, payment shall be made in a lump sum. An Award Agreement may provide for deferred payment in a lump sum or in installments. If any payment is to be made on a deferred basis, the Committee may, but shall not be obligated to, provide for the payment during the deferral period of Dividend Equivalents or interest.

(e) **Provisions Applicable to Payment in Shares.** If payment is to be made in shares of Stock, the number of such shares shall be determined by dividing the final value of the Performance Award by the value of a share of Stock determined by the method specified in the Award Agreement. Such methods may include, without limitation, the closing market price on a specified date (such as the settlement date) or an average of market prices over a series of trading days. Shares of Stock issued in payment of any Performance Award may be fully vested and freely transferable shares or may be shares of Stock subject to Vesting Conditions as provided in Section 9.5. Any shares subject to Vesting Conditions shall be evidenced by an appropriate Award Agreement and shall be subject to the provisions of Sections 9.5 through 9.8 above.

**10.6 Voting Rights; Dividend Equivalent Rights and Distributions.** Participants shall have no voting rights with respect to shares of Stock represented by Performance Share Awards until the date of the issuance of such shares, if any (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Performance Share Award that the Participant shall be entitled to receive Dividend Equivalents with respect to the payment of cash dividends on Stock having a record date prior to the date on which the Performance

Shares are settled or forfeited. Such Dividend Equivalents, if any, shall be credited to the Participant in the form of additional whole Performance Shares as of the date of payment of such cash dividends on Stock. The number of additional Performance Shares (rounded to the nearest whole number) to be so credited shall be determined by dividing (a) the amount of cash dividends paid on such date with respect to the number of shares of Stock represented by the Performance Shares previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. Dividend Equivalents may be paid currently or may be accumulated and paid to the extent that Performance Shares become nonforfeitable, as determined by the Committee. Settlement of Dividend Equivalents may be made in cash, shares of Stock, or a combination thereof as determined by the Committee, and may be paid on the same basis as settlement of the related Performance Share as provided in Section 10.5. Dividend Equivalents shall not be paid with respect to Performance Units. In the event of a dividend or distribution paid in shares of Stock or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.3, appropriate adjustments shall be made in the Participant's Performance Share Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Performance Share Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Performance Goals as are applicable to the Award.

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**10.7 Effect of Termination of Service.** Unless otherwise provided by the Committee in the grant of a Performance Award and set forth in the Award Agreement, the effect of a Participant's termination of Service on the Performance Award shall be as follows:

(a) **Death or Disability.** If the Participant's Service terminates because of the death or Disability of the Participant before the completion of the Performance Period applicable to the Performance Award, the final value of the Participant's Performance Award shall be determined by the extent to which the applicable Performance Goals have been attained with respect to the entire Performance Period and shall be prorated based on the number of months of the Participant's Service during the Performance Period. Payment shall be made following the end of the Performance Period in any manner permitted by Section 10.5.

(b) **Other Termination of Service.** If the Participant's Service terminates for any reason except death or Disability before the completion of the Performance Period applicable to the Performance Award, such Award shall be forfeited in its entirety; provided, however, that in the event of an involuntary termination of the Participant's Service, the Committee, in its sole discretion, may waive the automatic forfeiture of all or any portion of any such Award.

**10.8 Nontransferability of Performance Awards.** Prior to settlement in accordance with the provisions of the Plan, no Performance Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Performance Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

#### **11. TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT AWARDS.**

Restricted Stock Unit Awards shall be evidenced by Award Agreements specifying the number of Restricted Stock Units subject to the Award, in such form as the Committee shall from time to time establish. No Restricted Stock Unit Award or purported Restricted Stock Unit Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing Restricted Stock Units may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**11.1 Grant of Restricted Stock Unit Awards.** Restricted Stock Unit Awards may be granted upon such conditions as the Committee shall determine, including, without limitation, upon the attainment of one or more Performance Goals described in Section 10.4. If either the grant of a Restricted Stock Unit Award or the Vesting Conditions with respect to such Award is to be contingent upon the attainment of one or more Performance Goals, the Committee shall follow procedures substantially equivalent to those set forth in Sections 10.3 through 10.5(a).

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**11.2 Purchase Price.** No monetary payment (other than applicable tax withholding, if any) shall be required as a condition of receiving a Restricted Stock Unit Award, the consideration for which shall be services actually rendered to a Participating Company or for its benefit.

**11.3 Vesting.** Restricted Stock Units may or may not be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, Performance Goals as described in Section 10.4, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award.

**11.4 Voting Rights, Dividend Equivalent Rights and Distributions.** Participants shall have no voting rights with respect to shares of Stock represented by Restricted Stock Units until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Restricted Stock Unit Award that the Participant shall be entitled to receive Dividend Equivalents with respect to the payment of cash dividends on Stock having a record date prior to date on which Restricted Stock Units held by such Participant are settled. Such Dividend Equivalents, if any, shall be paid by crediting the Participant with additional whole Restricted Stock Units as of the date of payment of such cash dividends on Stock. The number of additional Restricted Stock Units (rounded to the nearest whole number) to be so credited shall be determined by dividing (a) the amount of cash dividends paid on such date with respect to the number of shares of

Stock represented by the Restricted Stock Units previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. Such additional Restricted Stock Units shall be subject to the same terms and conditions and shall be settled in the same manner and at the same time (or as soon thereafter as practicable) as the Restricted Stock Units originally subject to the Restricted Stock Unit Award. In the event of a dividend or distribution paid in shares of Stock or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.3, appropriate adjustments shall be made in the Participant's Restricted Stock Unit Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Vesting Conditions as are applicable to the Award.

**11.5 Effect of Termination of Service.** Unless otherwise provided by the Committee in the grant of a Restricted Stock Unit Award and set forth in the Award Agreement, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then the Participant shall forfeit to the Company any Restricted Stock Units pursuant to the Award which remain subject to Vesting Conditions as of the date of the Participant's termination of Service.

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**11.6 Settlement of Restricted Stock Unit Awards.** The Company shall issue to a Participant on the date on which Restricted Stock Units subject to the Participant's Restricted Stock Unit Award vest or on such other date determined by the Committee, in its discretion, and set forth in the Award Agreement one (1) share of Stock (and/or any other new, substituted or additional securities or other property pursuant to an adjustment described in Section 11.4) for each Restricted Stock Unit then becoming vested or otherwise to be settled on such date, subject to the withholding of applicable taxes. Notwithstanding the foregoing, if permitted by the Committee and set forth in the Award Agreement, the Participant may elect in accordance with terms specified in the Award Agreement to defer receipt of all or any portion of the shares of Stock or other property otherwise issuable to the Participant pursuant to this Section.

**11.7 Nontransferability of Restricted Stock Unit Awards.** Prior to the issuance of shares of Stock in settlement of a Restricted Stock Unit Award, the Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Restricted Stock Unit Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

## **12. DEFERRED COMPENSATION AWARDS.**

**12.1 Establishment of Deferred Compensation Award Programs.** This Section 12 shall not be effective unless and until the Committee determines to establish a program pursuant to this Section. The Committee, in its discretion and upon such terms and conditions as it may determine, may establish one or more programs pursuant to the Plan under which:

(a) Participants designated by the Committee who are Insiders or otherwise among a select group of highly compensated Employees may irrevocably elect, prior to a date specified by the Committee, to reduce such Participant's compensation otherwise payable in cash (subject to any minimum or maximum reductions imposed by the Committee) and to be granted automatically at such time or times as specified by the Committee one or more Awards of Stock Units with respect to such numbers of shares of Stock as determined in accordance with the rules of the program established by the Committee and having such other terms and conditions as established by the Committee.

(b) Participants designated by the Committee who are Insiders or otherwise among a select group of highly compensated Employees may irrevocably elect, prior to a date specified by the Committee, to be granted automatically an Award of Stock Units with respect to such number of shares of Stock and upon such other terms and conditions as established by the Committee in lieu of:

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(i) shares of Stock otherwise issuable to such Participant upon the exercise of an Option;

(ii) cash or shares of Stock otherwise issuable to such Participant upon the exercise of an SAR; or

(iii) cash or shares of Stock otherwise issuable to such Participant upon the settlement of a Performance Award.

**12.2 Terms and Conditions of Deferred Compensation Awards.** Deferred Compensation Awards granted pursuant to this Section 12 shall be evidenced by Award Agreements in such form as the Committee shall from time to time establish. No such Deferred Compensation Award or purported Deferred Compensation Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing Deferred Compensation Awards may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

(a) **Vesting Conditions.** Deferred Compensation Awards shall not be subject to any vesting conditions.

(b) **Terms and Conditions of Stock Units.**

(i) **Voting Rights; Dividend Equivalent Rights and Distributions.** Participants shall have no voting rights with respect to shares of Stock represented by Stock Units until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, a Participant shall be entitled to receive Dividend



Equivalents with respect to the payment of cash dividends on Stock having a record date prior to date on which Stock Units held by such Participant are settled. Such Dividend Equivalents shall be paid by crediting the Participant with additional whole and/or fractional Stock Units as of the date of payment of such cash dividends on Stock. The method of determining the number of additional Stock Units to be so credited shall be specified by the Committee and set forth in the Award Agreement. Such additional Stock Units shall be subject to the same terms and conditions and shall be settled in the same manner and at the same time (or as soon thereafter as practicable) as the Stock Units originally subject to the Stock Unit Award. In the event of a dividend or distribution paid in shares of Stock or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.3, appropriate adjustments shall be made in the Participant's Stock Unit Award so that it represent the right to receive upon settlement any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Award.

(ii) **Settlement of Stock Unit Awards.** A Participant electing to receive an Award of Stock Units pursuant to this Section 12 shall specify at the time of such election a settlement date with respect to such Award. The Company shall issue to the Participant as soon as practicable following the earlier of the settlement date elected by the Participant or the date of termination of the Participant's Service, a number of whole shares of Stock equal to the number of whole Stock Units subject to the Stock Unit Award. Such shares of Stock shall be fully vested, and the Participant shall not be required to pay any additional consideration (other than applicable tax withholding) to acquire such shares. Any fractional Stock Unit subject to the Stock Unit Award shall be settled by the Company by payment in cash of an amount equal to the Fair Market Value as of the payment date of such fractional share.

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(iii) **Nontransferability of Stock Unit Awards.** Prior to their settlement in accordance with the provision of the Plan, no Stock Unit Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Stock Unit Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

### 13. **STANDARD FORMS OF AWARD AGREEMENT.**

13.1 **Award Agreements.** Each Award shall comply with and be subject to the terms and conditions set forth in the appropriate form of Award Agreement approved by the Committee and as amended from time to time. Any Award Agreement may consist of an appropriate form of Notice of Grant and a form of Agreement incorporated therein by reference, or such other form or forms, including electronic media, as the Committee may approve from time to time.

13.2 **Authority to Vary Terms.** The Committee shall have the authority from time to time to vary the terms of any standard form of Award Agreement either in connection with the grant or amendment of an individual Award or in connection with the authorization of a new standard form or forms; provided, however, that the terms and conditions of any such new, revised or amended standard form or forms of Award Agreement are not inconsistent with the terms of the Plan.

### 14. **CHANGE IN CONTROL.**

#### 14.1 **Effect of Change in Control on Options and SARs.**

(a) **Accelerated Vesting.** Notwithstanding any other provision of the Plan to the contrary except as provided in this Section 14.1(a), the Committee, in its sole discretion, may provide in any Award Agreement or, in the event of a Change in Control, may take such actions as it deems appropriate to provide for the acceleration of the exercisability and vesting in connection with such Change in Control of any or all outstanding Options and SARs and shares acquired upon the exercise of such Options and SARs upon such conditions and to such extent as the Committee shall determine. Any unexercisable or unvested portion of each outstanding Nonemployee Director Option and any shares acquired upon the exercise thereof shall be immediately exercisable and vested in full as of the date ten (10) days prior to the date of the Change in Control but conditioned upon the consummation of the Change in Control.

(b) **Assumption or Substitution.** In the event of a Change in Control, the surviving, continuing, successor, or purchasing entity or parent thereof, as the case may be (the "**Acquiror**"), may, without the consent of any Participant, either assume the Company's rights and obligations under outstanding Options and SARs or substitute for outstanding Options and SARs substantially equivalent options and SARs (as the case may be) for the Acquiror's stock. Any Options or SARs which are not assumed by the Acquiror in connection with the Change in Control nor exercised as of the time of consummation of the Change in Control shall terminate and cease to be outstanding effective as of the time of consummation of the Change in Control.

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(c) **Cash-Out of Options.** The Committee may, in its sole discretion and without the consent of any Participant, determine that, upon the occurrence of a Change in Control, each or any Option or SAR outstanding immediately prior to the Change in Control shall be canceled in exchange for a payment with respect to each vested share of Stock subject to such canceled Option or SAR in (i) cash, (ii) stock of the Company or of a corporation or other business entity a party to the Change in Control, or (iii) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the excess of the Fair Market Value of the consideration to be paid per share of Stock in the Change in Control over the exercise price per share under such Option or SAR (the "**Spread**"). In the event such determination is made by the Committee, the Spread (reduced by applicable withholding taxes, if any) shall be paid to Participants in respect of their canceled Options and SARs as soon as practicable following the date of the Change in Control.

**14.2 Effect of Change in Control on Restricted Stock Awards.** The Committee may, in its discretion, provide in any Award Agreement evidencing a Restricted Stock Award that, in the event of a Change in Control, the lapsing of the Restriction Period applicable to the shares subject to the Restricted Stock Award held by a Participant whose Service has not terminated prior to the Change in Control shall be accelerated effective immediately prior to the consummation of the Change in Control to such extent as specified in such Award Agreement. Any acceleration of the lapsing of the Restriction Period that was permissible solely by reason of this Section 14.2 and the provisions of such Award Agreement shall be conditioned upon the consummation of the Change in Control.

**14.3 Effect of Change in Control on Performance Awards.** The Committee may, in its discretion, provide in any Award Agreement evidencing a Performance Award that, in the event of a Change in Control, the Performance Award held by a Participant whose Service has not terminated prior to the Change in Control or whose Service terminated by reason of the Participant's death or Disability shall become payable effective as of the date of the Change in Control to such extent as specified in such Award Agreement.

**14.4 Effect of Change in Control on Restricted Stock Unit Awards.** The Committee may, in its discretion, provide in any Award Agreement evidencing a Restricted Stock Unit Award that, in the event of a Change in Control, the Restricted Stock Unit Award held by a Participant whose Service has not terminated prior to such date shall be settled effective as of the date of the Change in Control to such extent as specified in such Award Agreement.

**14.5 Effect of Change in Control on Deferred Compensation Awards.** The Committee may, in its discretion, provide in any Award Agreement evidencing a Deferred Compensation Award that, in the event of a Change in Control, the Stock Units pursuant to such Award shall be settled effective as of the date of the Change in Control to such extent as specified in such Award Agreement.

## **15. COMPLIANCE WITH SECURITIES LAW.**

The grant of Awards and the issuance of shares of Stock pursuant to any Award shall be subject to compliance with all applicable requirements of federal, state and foreign law with respect to such securities and the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, no Award may be exercised or shares issued pursuant to an Award unless (a) a registration statement under the Securities Act shall at the time of such exercise or issuance be in effect with respect to the shares issuable pursuant to the Award or (b) in the opinion of legal counsel to the Company, the shares issuable pursuant to the Award may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares hereunder shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to issuance of any Stock, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

## **16. TAX WITHHOLDING.**

**16.1 Tax Withholding in General.** The Company shall have the right to deduct from any and all payments made under the Plan, or to require the Participant, through payroll withholding, cash payment or otherwise, including by means of a Cashless Exercise of an Option, to make adequate provision for, the federal, state, local and foreign taxes, if any, required by law to be withheld by the Participating Company Group with respect to an Award or the shares acquired pursuant thereto. The Company shall have no obligation to deliver shares of Stock, to release shares of Stock from an escrow established pursuant to an Award Agreement, or to make any payment in cash under the Plan until the Participating Company Group's tax withholding obligations have been satisfied by the Participant.

**16.2 Withholding in Shares.** The Company shall have the right, but not the obligation, to deduct from the shares of Stock issuable to a Participant upon the exercise or settlement of an Award, or to accept from the Participant the tender of, a number of whole shares of Stock having a Fair Market Value, as determined by the Company, equal to all or any part of the tax withholding obligations of the Participating Company Group. The Fair Market Value of any shares of Stock withheld or tendered to satisfy any such tax withholding obligations shall not exceed the amount determined by the applicable minimum statutory withholding rates.

## **17. AMENDMENT OR TERMINATION OF PLAN.**

The Committee may amend, suspend or terminate the Plan at any time. However, without the approval of the Company's stockholders, there shall be (a) no increase in the maximum aggregate number of shares of Stock that may be issued under the Plan (except by operation of the provisions of Section 4.3), (b) no change in the class of persons eligible to receive Incentive Stock Options, and (c) no other amendment of the Plan that would require approval of the Company's stockholders under any applicable law, regulation or rule. No amendment, suspension or termination of the Plan shall affect any then outstanding Award unless expressly provided by the Committee. In any event, no amendment, suspension or termination of the Plan may adversely affect any then outstanding Award without the consent of the Participant unless necessary to comply with any applicable law, regulation or rule.

## **18. MISCELLANEOUS PROVISIONS.**

**18.1 Repurchase Rights.** Shares issued under the Plan may be subject to one or more repurchase options, or other conditions and

restrictions as determined by the Committee in its discretion at the time the Award is granted. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

**18.2 Provision of Information.** Each Participant shall be given access to information concerning the Company equivalent to that information generally made available to the Company's common stockholders.

**18.3 Rights as Employee, Consultant or Director.** No person, even though eligible pursuant to Section 5, shall have a right to be selected as a Participant, or, having been so selected, to be selected again as a Participant. Nothing in the Plan or any Award granted under the Plan shall confer on any Participant a right to remain an Employee, Consultant or Director or interfere with or limit in any way any right of a Participating Company to terminate the Participant's Service at any time. To the extent that an Employee of a Participating Company other than the Company receives an Award under the Plan, that Award shall in no event be understood or interpreted to mean that the Company is the Employee's employer or that the Employee has an employment relationship with the Company.

**18.4 Rights as a Stockholder.** A Participant shall have no rights as a stockholder with respect to any shares covered by an Award until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such shares are issued, except as provided in Section 4.3 or another provision of the Plan.

**18.5 Fractional Shares.** The Company shall not be required to issue fractional shares upon the exercise or settlement of any Award.

**18.6 Severability.** If any one or more of the provisions (or any part thereof) of this Plan shall be held invalid, illegal or unenforceable in any respect, such provision shall be modified so as to make it valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions (or any part thereof) of the Plan shall not in any way be affected or impaired thereby.

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**18.7 Beneficiary Designation.** Subject to local laws and procedures, each Participant may file with the Company a written designation of a beneficiary who is to receive any benefit under the Plan to which the Participant is entitled in the event of such Participant's death before he or she receives any or all of such benefit. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Company, and will be effective only when filed by the Participant in writing with the Company during the Participant's lifetime. If a married Participant designates a beneficiary other than the Participant's spouse, the effectiveness of such designation may be subject to the consent of the Participant's spouse. If a Participant dies without an effective designation of a beneficiary who is living at the time of the Participant's death, the Company will pay any remaining unpaid benefits to the Participant's legal representative.

**18.8 Unfunded Obligation.** Participants shall have the status of general unsecured creditors of the Company. Any amounts payable to Participants pursuant to the Plan shall be unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974. No Participating Company shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Participant account shall not create or constitute a trust or fiduciary relationship between the Committee or any Participating Company and a Participant, or otherwise create any vested or beneficial interest in any Participant or the Participant's creditors in any assets of any Participating Company. The Participants shall have no claim against any Participating Company for any changes in the value of any assets which may be invested or reinvested by the Company with respect to the Plan.

**18.9 Choice of Law.** Except to the extent governed by applicable federal law, the validity, interpretation, construction and performance of the Plan and each Award Agreement shall be governed by the laws of the State of California, without regard to its conflict of law rules.

IN WITNESS WHEREOF, the undersigned Secretary of the Company certifies that the foregoing sets forth the Ross Stores, Inc. 2004 Equity Incentive Plan as duly adopted and amended by the Committee through March 22, 2007.

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Secretary

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#### PLAN HISTORY AND NOTES TO COMPANY

March 17, 2004	Board adopts Plan with a reserve of 15,000,000 shares, subject to increase by up to 13,529,070 shares from Predecessor Plan awards.
May 20, 2004	Stockholders approve Plan.

May 17, 2005	Compensation Committee amends Section 7.4 of Plan to extend the post-termination exercise period following retirement of a director holding Nonemployee Director Options granted on or after May 19, 2005 to a period of 60 months.
March 22, 2007	Compensation Committee amends Plan to delete Section 10.5(c) [Settlement of Performance Awards--Effect of Leaves of Absence]
IMPORTANT NOTE: Implementation of Section 12—Deferred Compensation Awards or Section 11.6—deferral of RSU settlement	Upon establishment of a Deferred Compensation Award program pursuant to Section 12 or deferral of settlement of RSUs pursuant to Section 11.6, determine whether such program will constitute a “top-hat” pension plan under ERISA. If so, file notice with Dept. of Labor under ERISA Reg. 2520.104-23 within 120 days of adoption of resolutions by the Committee to establish the program to obtain exemption from reporting and disclosure requirements of ERISA.
IMPORTANT NOTE: IRC 162(m) 5 year reapproval of performance goals	Because the Committee may change the targets under performance goals, Section 162(m) requires stockholder reapproval of the material terms of performance goals no later than the annual meeting in the 5th year following the year in which the public company stockholders initially approved such material terms. See Treas. Reg. 1.162-27(e)(4)(vi).
IMPORTANT NOTE: Nasdaq/NYSE evergreen formula plan term limited to 10 years	Because the Plan has share add-back features, the Nasdaq and NYSE stockholder approval rules require that the plan term not exceed 10 years without stockholder reapproval. See NASD Rule 4350(i)(1)(A) and IM-4320-5; NYSE Listed Company Manual Sec. 303A(8) and FAQs Regarding New Rules on Stockholder Approval for Equity Compensation Plans posted on NYSE website, dated 12/16/2003.

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# THIRD AMENDMENT TO THE EMPLOYMENT AGREEMENT

T H E   T H I R D   A M E N D M E N T   T O   T H E   E

April 2007, by Ross Stores, Inc. (the "Company") and Michael Balmuth (the "Executive"). The Executive and the Company previously entered into an Employment Agreement effective May 31, 2001; a First Amendment to the Employment Agreement effective January 30, 2003; and a Second Amendment to the Employment Agreement effective May 18, 2005 (the original Agreement, First Amendment to the Employment Agreement and Second Amendment to the Employment Agreement are attached and collectively referred to herein as "the Agreement"), and it is now the intention of the Executive and the Company to further amend the Agreement as set forth below. Accordingly, the Executive and the Company now enter into this Third Amendment.

I. The Executive and the Company amend the Agreement by deleting Paragraph 1 of the Agreement in its entirety and replacing it with the following new Paragraph 1:

1. **Term.** The employment of the Executive by the Company will continue as of the date hereof and end on January 29, 2011, unless extended or terminated in accordance with this Agreement, including the extensions contemplated both in paragraphs 1 and 4(b). During March 2009, and during March every other year thereafter (every two years) for so long as the Executive is employed by the Company, upon the written request of the Executive, the Board shall consider extending the Executive's employment with the Company. Such request must be delivered to the Chairman of the Compensation Committee no later than the last day in February which precedes the March in which the requested extension will be considered. The Board shall advise the Executive, in writing, on or before the April 1<sup>st</sup> following its consideration of the Executive's written request, whether it approves of such extension. The failure of the Board to provide such written advice shall constitute approval of the Executive's request for the extension. If the Executive's request for an extension is approved, this Agreement shall be extended two additional years.

II. The Executive and the Company further amend the Agreement by deleting the first sentence of Paragraph 4(a) of the Agreement in its entirety and replacing it with the following new sentence:

4(a). **Salary.** During his employment, the Company shall pay the Executive a base salary of not less than Nine Hundred and Eighty Eight Thousand Dollars (\$988,000) per annum.

III. The Executive and the Company further amend the Agreement by deleting the third sentence of Paragraph 7(f) of the Agreement in its entirety and replacing it with the following new sentence:

A "Change in Control" shall be deemed to have occurred if: (1) any person or group (within the meaning of Rule 13d-3 of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended) shall acquire during the twelve-month period ending on the date of the most recent acquisition by such person or group, in one or a series of transactions, whether through sale of stock or merger, ownership of stock of the Company that constitutes 35% or more of the total voting power of the stock of the Company or any successor to the Company; (2) a merger in which the Company is a party pursuant to which any person or such group acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Company, or (3) the sale, exchange, or transfer of all or substantially all of the Company's assets (other than a sale, exchange, or transfer to one or more corporations where the stockholders of the Company before and after such sale, exchange, or transfer, directly or indirectly, are the beneficial owners of at least a majority of the voting stock of the corporation(s) to which the assets were transferred).

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IV. The Executive and the Company further amend the Agreement by adding the following new Paragraph 9(c)(iv):

Notwithstanding the foregoing, in no event shall the Executive be entitled to any payments or benefits under paragraph 9(a) of the Agreement if he is entitled to payments under this paragraph 9(c).

V. The Executive and the Company further amend the Agreement by deleting the second sentence of Paragraph 9(d) of the Agreement in its entirety and replacing it with the following new sentence:

Any stock options granted to the Executive by the Company shall continue to vest only through the date on which the Executive's employment terminates, and unless otherwise provided by their terms, any restricted stock, performance share awards or other equity awards that were granted to the Executive by the Company that remain unvested as of the date on which the Executive's employment terminates shall automatically be forfeited and the Executive shall have no further rights with respect to such awards.

VI. The Executive and the Company further amend the Agreement by adding the following new sentence as the last sentence of Paragraph 9(e) of the Agreement:

In addition, the Company shall pay the Executive an annual bonus for the 2011 fiscal year of the Company. Such bonus shall not be paid until due under the applicable Company bonus plan.

VII. The Executive and the Company amend the Agreement by deleting Paragraph 10 of the Agreement in its entirety and replacing it with the following new Paragraph 10:

**10. Certain Employee Acknowledgements**

**(a) Employee Acknowledgement.** The Company and the Executive acknowledge that (i) the Company has a special interest in and derives significant benefit from the unique skills and experience of the Executive; (ii) as a result of the Executive's service with the Company, the Executive will use and have access to some of the Company's proprietary and valuable confidential information during the course of the Executive's employment; (iii) the confidential information has been developed and created by the Company at substantial expense and constitutes valuable proprietary assets of the Company, and the Company will suffer substantial damage and irreparable harm which will be difficult to compute if, during the term of the Executive's employment or thereafter, the Executive should disclose or improperly use such confidential information in violation of the provisions of this Agreement; (iv) the Company will suffer substantial damage and irreparable harm which will be difficult to compute if the Executive competes with the company in violation of this Agreement; (v) the Company will suffer substantial damage which will be difficult to compute if, the Executive solicits or interferes with the Company's employees, clients, or customers; (vi) the provisions of this Agreement are reasonable and necessary for the protection of the business of the Company; and (vii) the provisions of this Agreement will not preclude the Executive from obtaining other gainful employment or service.

**(b) Non-Compete.**

- (i) During the Term of Employment and for a period of twenty-four (24) months following the Executive's termination of employment with the Company, the Executive shall not, directly or indirectly, own, manage, control, be employed by, consult with, participate in, or be connected in any manner with the ownership, management, operation, control of, or otherwise become involved with, any Competing Business, nor shall the Executive undertake any planning to engage in any such activity.

For purposes of this Agreement, a Competing Business shall mean any of the following: (1) any business that is in whole or in substantial part competitive with the business of the Company then being conducted or under consideration, (2) any off-price retailer or retailer of discount merchandise, including without limitation, Burlington Coat Factory Warehouse Corporation, Federated Department Stores, Inc., TJX Companies Inc., Retail Ventures Inc., Kohl's Corporation, Stein Mart, Inc., Foot Locker, Inc., Payless ShoeSource, Inc., Bed, Bath & Beyond Inc., Linens 'n Things, Inc., Tuesday Morning Corporation, and (3) any affiliates, subsidiaries or successors of businesses identified above.

- (ii) The foregoing restrictions in paragraph 10(b)(i) shall have no force or effect in the event that: (i) the Executive's employment with the Company is terminated either by the Company pursuant to paragraph 7(d)[Without Cause] or by the Executive pursuant to paragraph 7(e) [Termination by the Executive for Good Reason]; or (ii) the Company fails to approve or grant an extension of this Agreement in accordance with paragraph 1 hereof.

- (iii) Paragraph 10(b)(i) shall not prohibit the Executive from making any investment of 1% or less of the equity securities of any publicly-traded corporation which is considered to be a Competing Business.

**(c) Non-Solicitation of Employees.** During the Term of Employment and for a period of 24 months following the Executive's termination of that employment with the Company, the Executive shall not, without the written permission of the Company or an affected affiliate, directly or indirectly (i) solicit, employ or retain, or have or cause any other person or entity to solicit, employ or retain, any person who is employed by the Company or was employed by the Company during the 6-month period prior to such solicitation, employment, or retainer, (ii) encourage any such person not to devote his or her full business time to the Company, or (iii) agree to hire or employ any such person.

**(d) Non-Solicitation of Third Parties.** During the Term of Employment and for a period of 24 months following the Executive's termination of employment with the Company, the Executive shall not directly or indirectly solicit or otherwise influence any entity with a business arrangement with the Company, including, without limitation, customers, suppliers, sales representatives, lenders, lessors, and lessees, to discontinue, reduce, or otherwise materially or adversely affect such relationship.

**(e) Non-Disparagement.** The Executive acknowledges and agrees that the Executive will not defame or criticize the services, business, integrity, veracity, or personal or professional reputation of the Company or any of its directors, officers, employees, affiliates, or agents of any of the foregoing in either a professional or personal manner either during the term of the Executive's employment or thereafter.

- VII. The Executive and the Company amend the Agreement by deleting Paragraph 22 of the Agreement in its entirety and replacing it with the following new Paragraph 22:

**22. Compliance with Section 409A.** Notwithstanding any other provision of this Agreement to the contrary, the provision, time and manner of payment or distribution of all compensation and benefits provided by this Agreement that constitute nonqualified deferred compensation subject to and not exempted from the requirements of Code Section 409A ("Section 409A Deferred Compensation") shall be subject to, limited by and construed in accordance with the requirements of Code Section 409A and all regulations and other guidance promulgated by the Secretary of the Treasury pursuant to such Section (such Section, regulations and other guidance being referred to herein as "Section 409A"), including the following:

- (a) Separation from Service.** Payments and benefits constituting Section 409A Deferred Compensation otherwise payable or provided pursuant to paragraph 9 upon the Executive's termination of employment shall be paid or provided only at the time of a



termination of the Executive's employment which constitutes a Separation from Service. For the purposes of this Agreement, a "Separation from Service" is a separation from service within the meaning of Section 409A.

**(b) Six-Month Delay Applicable to Specified Employees.** If, at the time of a Separation from Service of the Executive, the Executive is a "specified employee" within the meaning of Section 409A (a "Specified Employee"), then any payments and benefits constituting Section 409A Deferred Compensation to be paid or provided pursuant to paragraph 9 and/or paragraph 4(h) upon the Separation from Service of the Executive shall be paid or provided commencing on the later of (i) the date that is six (6) months after the date of such Separation from Service or, if earlier, the date of death of the Executive (in either case, the "Delayed Payment Date"), or (ii) the date or dates on which such Section 409A Deferred Compensation would otherwise be paid or provided in accordance with paragraph 9. All such amounts that would, but for this paragraph 22(b), become payable prior to the Delayed Payment Date shall be accumulated and paid on the Delayed Payment Date.

**(c) Health Care and Estate Planning Benefits.** In the event that all or any of the health care or estate planning benefits to be provided pursuant to paragraphs 4(i) or 4(j) as a result of a Participant's Separation from Service constitute Section 409A Deferred Compensation, the Company shall provide for such benefits constituting Section 409A Deferred Compensation in a manner that complies with Section 409A. To the extent necessary to comply with Section 409A, the Company shall determine the health care premium cost necessary to provide such benefits constituting Section 409A Deferred Compensation for the applicable coverage period and shall pay such premium cost which becomes due and payable during the applicable coverage period on the applicable due date for such premiums; provided, however, that if the Executive is a Specified Employee, the Company shall not pay any such premium cost until the Delayed Payment Date. If the Company's payment pursuant to the previous sentence is subject to a Delayed Payment Date, the Executive shall pay the premium cost otherwise payable by the Company prior to the Delayed Payment Date, and on the Delayed Payment Date the Company shall reimburse the Executive for such Company premium cost paid by the Executive and shall pay the balance of the Company's premium cost necessary to provide such benefit coverage for the remainder of the applicable coverage period as and when it becomes due and payable over the applicable period.

**(d) Stock-Based Awards.** The vesting of any stock-based compensation awards which constitute Section 409A Deferred Compensation and are held by the Executive, if the Executive is a Specified Employee, shall be accelerated in accordance with this Agreement to the extent applicable; provided, however, that the payment in settlement of any such awards shall occur on the Delayed Payment Date. Any stock-based compensation which vests and becomes payable upon a Change in Control in accordance with paragraph 4(b) shall not be subject to this paragraph 22(d).

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**(e) Rights of the Company; Release of Liability.** It is the mutual intention of the Executive and the Company that the provision of all payments and benefits pursuant to this Agreement be made in compliance with the requirements of Section 409A. To the extent that the provision of any such payment or benefit pursuant to the terms and conditions of this Agreement would fail to comply with the applicable requirements of Section 409A, the Company may, in its sole and absolute discretion and without the consent of the Executive, make such modifications to the timing or manner of providing such payment and/or benefit to the extent it determines necessary or advisable to comply with the requirements of Section 409A; provided, however, that the Company shall not be obligated to make any such modifications. Any such modifications made by the Company shall, to the maximum extent permitted in compliance with the requirements of Section 409A, preserve the aggregate monetary face value of such payments and/or benefits provided by this Agreement in the absence of such modification. The Executive acknowledges that (i) the provisions of this paragraph 22 may result in a delay in the time at which payments would otherwise be made pursuant to this Agreement and (ii) the Company is authorized to amend this Agreement, to void or amend any election made by the Executive under this Agreement and/or to delay the payment of any monies and/or provision of any benefits in such manner as may be determined by the Company, in its discretion, to be necessary or appropriate to comply with Section 409A (including any transition or grandfather rules thereunder) without prior notice to or consent of the Executive. The Executive hereby releases and holds harmless the Company, its directors, officers and stockholders from any and all claims that may arise from or relate to any tax liability, penalties, interest, costs, fees or other liability incurred by the Executive as a result of the application of Code Section 409A.

**(f) Interest.** If, in accordance with this paragraph 22, this Agreement is modified to delay the date of any payment or benefit which, in the absence of such modification, would have occurred within six (6) months following the date of termination of Executive's employment with the Company (the "Original Payment Date") to a date six (6) months or more following the date of termination of Executive's employment with the Company (the "Delayed Payment Date"), then the principal amount of such payment or benefit shall accrue interest from the Original Payment Date to the Delayed Payment Date at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code. The Company shall pay such accrued interest to Executive on the Delayed Payment Date.

**(g) Attorney's Fees and Costs.** Any dispute or claim relating to or arising out of any delay in the Company's provision of payments or benefits in accordance with any modification of this Agreement pursuant to this paragraph 22 or the provision of interest in accordance with paragraph 22(f) shall be resolved by binding arbitration in accordance with paragraph 19. However, notwithstanding the provisions of paragraph 20 regarding attorney's fees and costs to the contrary, the Company shall reimburse Executive for any and all attorney's fees and costs reasonably incurred by Executive in clarifying or enforcing Executive's rights with respect to such delayed payments or benefits or interest if Executive establishes liability with respect to the merits of the claim in respect of which such attorney's fees and costs are incurred. Executive shall reimburse the Company for any and all attorney's fees and costs reasonably incurred by Company in defending any such claim brought by Executive if the arbitrator determines that such claim by Executive is frivolous or maintained in bad faith.

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Except for the amendments, as set forth above, the Agreement and all of its terms remain in force and in effect.

ROSS STORES, INC.

EXECUTIVE

/s/ Norman Ferber  
Norman Ferber

4/9/07  
Date

/s/ Michael Balmuth  
Michael Balmuth

4/6/07  
Date

June 12, 2007

Ross Stores, Inc.  
Pleasanton, California

We have reviewed, in accordance with standards of the Public Company Accounting Oversight Board (United States), the unaudited interim financial information of Ross Stores, Inc. and subsidiaries for the three-month periods ended May 5, 2007 and April 29, 2006, and have issued our report thereon dated June 12, 2007. As indicated in such report, because we did not perform an audit, we expressed no opinion on that information.

We are aware that our report referred to above, which is included in your Quarterly Report on Form 10-Q for the quarter ended May 5, 2007, is incorporated by reference in Registration Statements No. 33-61373, No. 33-51916, No. 33-51896, No. 33-51898, No. 33-41415, No. 33-41413, No. 33-29600, No. 333-56831, No. 333-06119, No. 333-34988, No. 333-51478, and No. 333-115836 of Ross Stores, Inc., all on Form S-8.

We also are aware that the aforementioned report, pursuant to Rule 436(c) under the Securities Act of 1933, is not considered a part of the Registration Statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of Sections 7 and 11 of that Act.

Yours truly,

/s/Deloitte & Touche LLP

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## Subsidiaries of the Registrant

<b>Operating Subsidiaries</b>	<b>State or Jurisdiction of Incorporation or Organization</b>
Ross Merchandising, Inc.	Delaware
Ross Procurement, Inc.	Delaware
Ross Dress For Less, Inc.	Virginia
Retail Assurance Group, Ltd.	Bermuda

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Ross Stores, Inc.  
Certification of Chief Executive Officer  
Pursuant to Sarbanes-Oxley Act Section 302(a)

I, Michael Balmuth, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Ross Stores, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 13, 2007

/s/Michael Balmuth  
Michael Balmuth  
Vice Chairman, President  
and Chief Executive Officer

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Ross Stores, Inc.  
Certification of Chief Financial Officer  
Pursuant to Sarbanes-Oxley Act Section 302(a)

I, John G. Call, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Ross Stores, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 13, 2007

/s/J. Call  
John G. Call  
Senior Vice President, Chief Financial Officer,  
Principal Accounting Officer and Corporate Secretary

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Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report of Ross Stores, Inc. (the "Company") on Form 10-Q for the quarter ended May 5, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Balmuth, as Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 ("Section 906"), that, to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: June 13, 2007

/s/Michael Balmuth

Michael Balmuth  
Vice Chairman, President  
and Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report of Ross Stores, Inc. (the "Company") on Form 10-Q for the quarter ended May 5, 2007 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John G. Call, as Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 ("Section 906"), that, to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: June 13, 2007

/s/J. Call

John G. Call

Senior Vice President, Chief Financial Officer,

Principal Accounting Officer and Corporate Secretary

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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