

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form S-1**

REGISTRATION STATEMENT UNDER  
THE SECURITIES ACT OF 1933

**Zumiez Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**5600**

(Primary Standard Industrial Classification Code Number)

**91-1040022**

(I.R.S. Employer Identification Number)

**6300 Merrill Creek Parkway, Suite B  
Everett, WA 98203  
(425) 551-1500**

(Address, including zip code and telephone number, including area code, of registrant's principal executive offices)

**Richard M. Brooks  
President and Chief Executive Officer  
Zumiez Inc.  
6300 Merrill Creek Parkway, Suite B  
Everett, WA 98203**

(Name, address, including zip code and telephone number, including area code, of agent for service)

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box:

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

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box:

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Common Stock, no par value	\$57,500,000	\$6,767.75

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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

SUBJECT TO COMPLETION, DATED FEBRUARY 17, 2005

PROSPECTUS

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**Zumiez Inc.**  
**Common Stock**

This is Zumiez Inc.'s initial public offering. We are offering \_\_\_\_\_ shares of our common stock and the selling shareholders identified in this prospectus are offering an additional \_\_\_\_\_ shares of our common stock. We currently estimate that the initial public offering price will be between \$ \_\_\_\_\_ and \$ \_\_\_\_\_ per share. We will not receive any proceeds from the sale of the shares offered by the selling shareholders.

Prior to this offering, there has been no public market for our common stock. We have filed an application for our common stock to be quoted on the Nasdaq National Market under the symbol "ZUMZ."

**Investing in our common stock involves risks. See "Risk Factors" beginning on page 8.**

	<u>Per Share</u>	<u>Total</u>
Public Offering Price	\$ _____	\$ _____
Underwriting Discounts and Commissions	\$ _____	\$ _____
Proceeds to Zumiez Inc.	\$ _____	\$ _____
Proceeds to the Selling Shareholders	\$ _____	\$ _____

Delivery of the shares of our common stock will be made on or about \_\_\_\_\_, 2005.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is accurate or complete. Any representation to the contrary is a criminal offense.**

We and the selling shareholders have granted the underwriters an option to purchase a maximum of \_\_\_\_\_ and \_\_\_\_\_ additional shares, respectively, of our common stock to cover over-allotment of shares, if any, exercisable at any time until 30 days after the date of this prospectus.

*Joint Book Running Managers*

**Wachovia Securities**

**Piper Jaffray**

**William Blair & Company**

The date of this prospectus is \_\_\_\_\_, 2005.



**zumiez**  
SHOP || INSTORE || ONLINE

Store front and interior photographs of a new Zumiez store location and our locations by state.

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**You should rely only on the information contained in this prospectus. We and the underwriters have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We and the underwriters are not making an offer to sell or seeking offers to buy these securities in any jurisdiction where an offer or sale is not permitted. You should assume that the information appearing herein is accurate as of the date appearing on the front cover of this prospectus only. Our business, financial condition, results of operations and prospects may have changed since that date.**

### Certain Terms Used in this Prospectus:

Unless otherwise expressly stated or the context otherwise requires, in this prospectus:

- "Zumiez," "we," "us," "our" and similar references refer to Zumiez Inc.
- We report "comparable store sales" based on net sales, and stores are included in our comparable store sales beginning on the first anniversary of their first day of operation. Changes in our comparable store sales between two periods are based on net sales of stores which were in operation during both of the two periods being compared and, if a store is included in the calculation of comparable store sales for only a portion of one of the two periods being compared, then that store is included in the calculation for only the comparable portion of the other period. When additional square footage is added to a store that is included in comparable store sales, that store remains in comparable store sales. There may be variations in the way in which some of our competitors and other apparel retailers calculate comparable or same store sales. As a result, data in this prospectus regarding our comparable store sales may not be comparable to similar data made available by our competitors or other apparel retailers.
- Through and including December 31, 2002, our fiscal year ended on December 31 and was the same as the calendar year. After December 31, 2002, we changed our fiscal year to end on the Saturday closest to January 31 and our fiscal years to consist of four 13-week quarters with an extra week added to the fourth quarter every five or six years. We refer to the fiscal year ended January 31, 2004 as "fiscal 2003" and to the fiscal year ended January 29, 2005 as "fiscal 2004" and, for subsequent fiscal years, we refer to each fiscal year by using the calendar year that is prior to the year in which our fiscal year actually ends.
- As a result of this change in our fiscal year, our financial statements included elsewhere in this prospectus include our statement of operations for the one month period ended February 1, 2003, which was the one month transition period following the end of fiscal 2002 and prior to the beginning of fiscal 2003. Information in this prospectus regarding the compound annual growth rate of our net sales, our net sales per store and our operating profit, as well as the annual percentage changes in our comparable store net sales and other data regarding changes in our results of operations for periods encompassing fiscal 2002 and fiscal 2003 do not take into account this one month transition period. We refer to this one month transition period which began on January 1, 2003 and ended on February 1, 2003 as the "one month ended February 1, 2003."
- "SKU" means stock keeping unit, which is an identification, usually numeric, of a particular product that allows it to be tracked for inventory purposes.
- References to the square footage of our stores refer to gross square footage, including retail selling, storage and back-office space.
- Net sales include our in-store sales and our Internet sales and, accordingly, information in this prospectus with respect to comparable store sales, net sales per store and net sales per square foot includes our Internet sales. For fiscal 1999 through fiscal 2003, Internet sales represented less than 1% of our annual net sales. Sales with respect to gift cards are deferred and recognized when gift cards are redeemed.

## PROSPECTUS SUMMARY

*This summary highlights selected information contained in greater detail elsewhere in this prospectus and does not contain all of the information that you should consider before investing in our common stock. You should carefully read the following summary together with the more detailed information regarding us and our common stock being sold in this offering, including "Risk Factors" and the financial statements and the related notes, appearing elsewhere in this prospectus before making an investment decision.*

### **Zumiez Inc.**

We are a leading specialty retailer of action sports related apparel, footwear, equipment and accessories operating under the Zumiez brand name. As of January 29, 2005, we operated 140 stores primarily located in shopping malls, giving us a presence in 18 states. Our stores cater to young men and women between the ages of 12 and 24 who seek popular brands representing a lifestyle centered on activities that include skateboarding, surfing, snowboarding, bicycle motocross (or "BMX") and motocross. We support the action sports lifestyle and promote our brand through a multi-faceted marketing approach that is designed to integrate our brand image with our customers' activities and interests. This approach, combined with our differentiated merchandising strategy, store design, comprehensive training programs and passionate employees, allows us to provide an experience for our customers that we believe is consistent with their attitudes, fashion tastes and identities and is otherwise unavailable in most malls.

Our stores bring the look and feel of an independent specialty shop to the mall by emphasizing the action sports lifestyle through a distinctive store environment and high-energy sales personnel. We seek to staff our stores with store associates who are knowledgeable users of our products, which we believe provides our customers with enhanced customer service and supplements our ability to identify and react quickly to emerging trends and fashions. We design our stores to appeal to teenagers and to serve as a destination for our customers. Most of our stores, which average approximately 2,600 square feet, feature couches and action sports oriented video game stations that are intended to encourage our customers to shop for longer periods of time and to interact with each other and our store associates. To increase customer traffic, we generally locate our stores near busy areas of the mall such as food courts, movie theaters, music or game stores and other popular teen retailers. We believe that our distinctive store concept and compelling store economics will provide continued opportunities for growth in both new and existing markets.

We believe that our customers desire merchandise and fashion that is rooted in the action sports lifestyle and reflects their individuality. We strive to keep our merchandising mix fresh by continuously introducing new brands and styles. Our focus on a diverse collection of brands allows us to quickly adjust to changing fashion trends. The brands we currently offer include Billabong, Burton, DC Shoe, Element, Hurley, Quiksilver, Roxy, RVCA and Volcom, among many others. We believe that our strategic mix of both apparel and hardgoods, including skateboards, snowboards, bindings, components and other equipment, allows us to strengthen the potential of the brands we sell and helps to affirm our credibility with our customers. In addition, we supplement our stores with a select offering of private label apparel and products as a value proposition that we believe complements our overall merchandise selection.

Over our 26-year history, we have developed a corporate culture based on a passion for the action sports lifestyle. Our management philosophy emphasizes an integrated combination of results measurement, training and incentive programs, all designed to drive sales productivity at the individual store associate level. We empower our store managers to make store-level business decisions and consistently reward their success. We seek to enhance the productivity of our employees and encourage their advancement by offering comprehensive in-store, regional and national training programs, which we refer to collectively as "Zumiez University." We have:

- increased our store count from 53 as of the end of fiscal 1999 to 140 as of the end of fiscal 2004;

- improved net sales per store from approximately \$882,000 in fiscal 1999 to approximately \$1.1 million in fiscal 2003, representing a compound annual growth rate of 6.4%;
- maintained net sales per square foot in excess of \$440 for our last four fiscal years ending with fiscal 2003;
- increased net sales from approximately \$44.5 million in fiscal 1999 to approximately \$117.9 million in fiscal 2003, representing a compound annual growth rate of 27.5%;
- increased operating profit from \$3.1 million in fiscal 1999 to \$7.5 million in fiscal 2003, representing a compound annual growth rate of 24.5%; and
- been profitable in every fiscal year of our 26-year history.

In fiscal 2002, certain affiliates of Brentwood Private Equity III, LLC, a private equity firm (the "Brentwood Affiliates"), acquired an indirect minority interest in us through Zumiez Holdings LLC, or "Zumiez Holdings." Since the investment by the Brentwood Affiliates, we have positioned ourselves for accelerated growth by enhancing our infrastructure and deepening our management team. We believe that these initiatives will improve our ability to continue to expand our business.

### **Competitive Strengths**

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

- attractive lifestyle retailing concept targeting the large action sports segment;
- differentiated merchandising strategy in which we offer an extensive selection of relevant brands and styles encompassing apparel, equipment and accessories;
- deep-rooted corporate culture that we believe allows us to successfully attract and retain passionate and knowledgeable employees;
- distinctive store experience that is designed to enhance our image as an authentic action sports retailer;
- disciplined operating philosophy and comprehensive training programs driven by our experienced management team; and
- high-impact, integrated marketing approach designed to reach our target customer audience through interactive events, promotions, live entertainment and contests.

### **Growth Strategy**

We intend to expand our presence as a leading action sports lifestyle retailer by:

- opening new store locations;
- continuing to generate sales growth through improved store level productivity;
- enhancing our operating efficiency; and
- enhancing our brand awareness through continued marketing and promotion.

## **The Action Sports Market**

We believe that action sports are a permanent and growing aspect of youth culture, reaching not only consumers that actually participate in action sports, but also those who seek brands and styles that fit a desired action sports image. According to Board-Trac, a market research firm, retail sales of skateboard, snowboard and surf/bodyboard apparel, equipment and accessories in the United States were estimated to be approximately \$12.1 billion in 2003. We believe that events such as the ESPN X Games, the inclusion of snowboarding as a medal event in the Winter Olympics and the national recognition of leading board sport athletes have broadened general awareness of the action sports lifestyle.

We believe teens and young adults are the primary participants in action sports. This concentrated interest is particularly appealing for us, as teens have significant spending power. According to Teen Research Unlimited, a market research firm, spending by U.S. teens was projected to be \$169 billion in 2004 and has increased at an average of 5% per year over the past seven years. We believe that teens enjoy shopping in malls and purchasing clothing and fashion-related merchandise.

## **Corporate Information**

We were founded in 1978 as a Washington corporation. In 2002, we reincorporated in Delaware and, in connection with this offering, we intend to reincorporate back to Washington. Our principal executive offices are located at 6300 Merrill Creek Parkway, Suite B, Everett, WA 98203. Our telephone number is (425) 551-1500 and our principal website address is [www.zumiez.com](http://www.zumiez.com). The information contained on our website does not constitute part of, nor is it incorporated into, this prospectus.

## The Offering

Common stock offered by Zumiez	shares
Common stock offered by selling shareholders	shares
Common stock to be outstanding immediately after this offering	shares
Use of Proceeds	We intend to use the net proceeds from this offering to fund new store openings and growth, for working capital and for other general corporate purposes. We will not receive any proceeds from the sale of shares of our common stock by the selling shareholders. See "Use of Proceeds."
Proposed Nasdaq National Market symbol	"ZUMZ"
Risk Factors	See "Risk Factors" beginning on page 9 for a discussion of some of the factors that you should consider carefully before deciding to purchase our common stock.

The number of shares of common stock that will be outstanding immediately after this offering is based on the number of shares outstanding on January 29, 2005 and excludes the following shares:

- shares issuable upon exercise of outstanding options at January 29, 2005, with a weighted average exercise price of \$ per share;
- an aggregate of additional shares available for future awards under our 2004 Stock Option Plan (the "2004 Option Plan") at January 29, 2005;
- an aggregate of additional shares that will be initially available for future awards under our 2005 Equity Incentive Plan (the "2005 Incentive Plan") and our 2005 Employee Stock Purchase Plan (the "Stock Purchase Plan"), plus scheduled annual increases and other potential increases in the number of shares reserved for issuance under the 2005 Incentive Plan; and
- an aggregate of up to additional shares of common stock issuable by us if the underwriters' over-allotment option is exercised in full.

Unless specifically stated otherwise, the information in this prospectus:

- gives effect to a for one split of our outstanding common stock that will be effected prior to completion of this offering;
- assumes no exercise of the underwriters' over-allotment option to purchase up to additional shares of common stock from us and up to additional shares of common stock from the selling shareholders;
- assumes no exercise of outstanding options;
- is based upon the number of our shares and options outstanding on January 29, 2005;
- assumes that all of the shares of our common stock held by Zumiez Holdings have been distributed in accordance with the terms of its limited liability company agreement, which distribution will occur prior to the closing of this offering; and

- assumes the adoption and filing of our new articles of incorporation in the State of Washington, referred to in this prospectus as our articles of incorporation, and the adoption of our new bylaws, referred to in this prospectus as our bylaws, in connection with our reincorporation in the State of Washington, which will be completed prior to the closing of this offering.

As noted above, unless otherwise expressly stated or the context otherwise requires, information concerning ownership of our common stock assumes that all of the shares of our common stock held by Zumiez Holdings have been distributed in accordance with the terms of its limited liability company agreement. This distribution will occur prior to the closing of this offering. See "Certain Relationships and Related Transactions—Equity Sales and Related Transactions." The exact number of shares that will be distributed to the persons entitled to those shares will depend upon the public offering price of our common stock in this offering. The information in this preliminary prospectus regarding the number of shares of common stock owned by those persons has been calculated based upon an assumed public offering price of \$ \_\_\_\_\_ per share (the mid-point of the price range reflected on the cover of this preliminary prospectus) and will change unless the actual public offering price in this offering is \$ \_\_\_\_\_ per share.

## Summary Financial Data

The following tables provide summary historical financial data for the periods indicated. You should read this information in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the related notes included elsewhere in this prospectus.

Through and including December 31, 2002, our fiscal year ended on December 31 and was the same as the calendar year. Subsequent to December 31, 2002, we changed our fiscal year to end on the Saturday closest to January 31 and, as a result, the following tables include financial data as of and for the one month ended February 1, 2003. Each fiscal year ended subsequent to December 31, 2002 consists of four 13-week quarters, with an extra week added to the fourth quarter every five or six years. Our fiscal years ended December 31, 2001 and 2002 and January 31, 2004 each consisted of 52 weeks.

The summary statement of operations data for the fiscal years ended December 31, 2001 and 2002, the one month ended February 1, 2003 and the fiscal year ended January 31, 2004 and the summary balance sheet data as of December 31, 2002, February 1, 2003 and January 31, 2004 are derived from our audited financial statements, which are included elsewhere in this prospectus. The summary balance sheet data as of December 31, 2001 are derived from our audited financial statements not included in this prospectus. The summary statement of operations data for the nine month periods ended November 1, 2003 and October 30, 2004 and the summary balance sheet data as of October 30, 2004 are derived from our unaudited financial statements included elsewhere in this prospectus.

	Fiscal Year Ended December 31,		One Month Ended February 1, 2003	Fiscal Year Ended January 31, 2004	Nine Months Ended	
	2001	2002			November 1, 2003	October 30, 2004
(In thousands, except share and per share data)						
<b>Statement of Operations Data:</b>						
Net sales	\$ 84,735	\$ 101,391	\$ 6,392	\$ 117,857	\$ 78,039	\$ 100,582
Cost of goods sold	57,534	71,017	4,575	81,320	54,824	69,165
Gross margin	27,201	30,374	1,817	36,537	23,215	31,417
Selling, general and administrative expenses	20,470	23,404	2,013	29,076	20,587	26,248
Operating profit (loss)	6,731	6,970	(196)	7,461	2,628	5,169
Other income (expense)	(3)	148	—	8	4	5
Interest expense	(322)	(317)	(12)	(293)	(245)	(218)
Earnings (loss) before income taxes	6,406	6,801	(208)	7,176	2,387	4,956
Provision (benefit) for income taxes(1)	—	1,096	(39)	2,701	799	1,936
Net income (loss)	\$ 6,406	\$ 5,705	\$ (169)	\$ 4,475	\$ 1,588	\$ 3,020
Net income (loss) per share(2)						
Basic	\$ 163.52	\$ 127.79	\$ (3.87)	\$ 102.38	\$ 36.33	\$ 69.09
Diluted	\$ 130.23	\$ 108.65	\$ (3.87)	\$ 90.34	\$ 31.98	\$ 60.72
Weighted average shares outstanding(2)						
Basic	39,175	44,642	43,710	43,710	43,710	43,710
Diluted	49,191	52,508	43,710	49,535	49,661	49,737

(1) For fiscal 2001 and for a portion of fiscal 2002 ended November 3, 2002, we were treated as a Subchapter S corporation for federal income tax purposes and, as a result, we were exempt from paying federal and state income taxes for those periods. As a result, our results of operations for fiscal 2001 do not reflect any provision for income taxes and our provision for income taxes for fiscal 2002 reflects a provision for the last two months of fiscal 2002. Accordingly, our provision for income taxes and our total and per share net income for fiscal 2001 and 2002 are not comparable to our provision for income taxes and our total and per share net income for the subsequent periods reflected in this table. See note 1 to our financial statements included elsewhere in this prospectus.

(2) Before giving effect to a \_\_\_\_\_ for one split of our outstanding common stock that will be effective prior to completion of this offering.

	December 31,		February 1, 2003	January 31, 2004	October 30, 2004
	2001	2002			
(In thousands)					
<b>Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 645	\$ 7,722	\$ 482	\$ 578	\$ 897
Working capital	502	(1,510)	(1,436)	1,698	(1,012)
Total assets	28,180	42,608	36,003	41,558	62,526
Total long term liabilities	1,631	1,001	954	1,336	1,491
Total shareholders' equity	11,916	14,136	13,967	18,438	21,511

	Fiscal Year Ended December 31,		One Month Ended February 1, 2003	Fiscal Year Ended January 31, 2004	Nine Months Ended	
	2001	2002			November 1, 2003	October 30, 2004
(Dollars in thousands except net sales per square foot)						

<b>Other Financial Data:</b>							
Gross margin percentage(1)		32.1%	30.0%	28.4%	31.0%	29.7%	31.2%
Capital expenditures	\$ 7,500	\$ 7,186	\$ 42	\$ 5,937	\$ 2,713	\$ 7,583	
Depreciation	\$ 2,348	\$ 3,571	\$ 332	\$ 4,185	\$ 3,042	\$ 3,999	
<b>Store Data:</b>							
Number of stores open at end of period		80	99	99	113	105	132
Comparable store sales increase (decrease)(2)(3)		20.2%	(1.1)%	(5.7)%	4.3%	2.1%	8.2%
Net sales per store(3)(4)	\$ 1,203	\$ 1,105	\$ 65	\$ 1,131	\$ 774	\$ 807	
Total square footage at end of period(5)	194,651	247,476	247,476	288,784	266,372	349,200	
Average square footage per store at end of period(6)		2,464	2,500	2,500	2,533	2,537	2,645
Net sales per square foot(3)(7)	\$ 506	\$ 443	\$ 26	\$ 448	\$ 306	\$ 310	

- (1) Gross margin percentage represents gross margin divided by net sales.
- (2) Comparable store sales percentage changes are calculated by comparing comparable store sales for the applicable fiscal year or nine-month period to comparable store sales for the prior fiscal year or for the comparable nine-month period in the prior fiscal year. Comparable store sales are based on net sales, and stores are considered comparable beginning on the first anniversary of their first day of operation. See "Certain Terms Used in this Prospectus" on page ii for more information about how we compute comparable store sales.
- (3) Comparable store sales, net sales per store and net sales per square foot include our in-store sales and our Internet sales. Our Internet sales represented less than 1.0% of our total net sales in each of the periods presented.
- (4) Net sales per store represents net sales for the period divided by the average number of stores open during the period. For purposes of this calculation, the average number of stores open during the period is equal to the sum of the number of stores open as of the end of each month during the period divided by the number of months in the period.
- (5) Total square footage at end of period includes retail selling, storage and back office space.
- (6) Average square footage per store at end of period is calculated on the basis of the total square footage at end of period, including retail selling, storage and back office space, of all stores open at the end of the period.
- (7) Net sales per square foot represents net sales for the period divided by the average square footage of stores open during the period. For purposes of this calculation, the average square footage of stores open during the period is equal to the sum of the total square footage of the stores open as of the end of each month during the period divided by the number of months in the period.

## RISK FACTORS

*An investment in our common stock involves a high degree of risk. You should carefully consider the risks described below, together with the financial statements and other information contained in this prospectus, before making a decision to buy our common stock. If any of the following risks actually occurs, our business, financial condition and results of operations could suffer. In these circumstances, the market price of our common stock could decline, and you may lose all or part of your investment in our common stock. In addition, the risks described below are not the only risks that we face, and the occurrence of other risks to which we are subject could also have a material adverse effect on our business, financial condition and results of operations and on the market price of our common stock.*

### **Risks Related to Our Business**

***Our growth strategy depends on our ability to open and operate a significant number of new stores each year, which could strain our resources and cause the performance of our existing stores to suffer.***

Our growth will largely depend on our ability to open and operate new stores successfully. However, our ability to open new stores is subject to a variety of risks and uncertainties, and we may be unable to open new stores as planned, and any failure to successfully open and operate new stores would have a material adverse effect on our results of operations and on the market price of our common stock. We opened 27 stores in fiscal 2004 and 15 stores in fiscal 2003. We plan to open approximately 35 stores in fiscal 2005, an increase of 25.0% over our store base as of the end of fiscal 2004. We intend to continue to open a significant number of new stores in future years while remodeling a portion of our existing store base annually. However, there can be no assurance that we will open the planned number of new stores in fiscal 2005 or thereafter. In addition, our proposed expansion will place increased demands on our operational, managerial and administrative resources. These increased demands could cause us to operate our business less effectively, which in turn could cause deterioration in the financial performance of our individual stores and our overall business. To the extent our new store openings are in markets where we already have stores, we may experience reduced net sales in existing stores in those markets. In addition, successful execution of our growth strategy may require that we obtain additional financing, and we cannot assure you that we will be able to obtain that financing on acceptable terms or at all.

***If we fail to effectively execute our expansion strategy, we may not be able to successfully open new store locations in a timely manner, if at all, which could have an adverse affect on our net sales and results of operations.***

Our ability to open and operate new stores successfully depends on many factors, including, among others, our ability to:

- identify suitable store locations, the availability of which is outside of our control;
- negotiate acceptable lease terms, including desired tenant improvement allowances;
- source sufficient levels of inventory at acceptable costs to meet the needs of new stores;
- hire, train and retain store personnel;
- successfully integrate new stores into our existing operations; and
- identify and satisfy the merchandise preferences of new geographic areas.

In addition, many of our planned new stores are to be opened in regions of the United States in which we currently have few, or no, stores. The expansion into these markets may present competitive, merchandising and distribution challenges that are different from those currently encountered in our existing markets. Any of these challenges could adversely affect our business and results of operations.

***Our business is dependent upon our being able to anticipate, identify and respond to changing fashion trends, customer preferences and other fashion-related factors; failure to do so could have a material adverse effect on us.***

Customer tastes and fashion trends in the action sports lifestyle market are volatile and tend to change rapidly. Our success depends on our ability to effectively anticipate, identify and respond to changing fashion tastes and consumer preferences, and to translate market trends into appropriate, saleable product offerings in a timely manner. If we are unable to successfully anticipate, identify or respond to changing styles or trends and misjudge the market for our products or any new product lines, our sales may be lower than predicted and we may be faced with a substantial amount of unsold inventory or missed opportunities. In response to such a situation, we may be forced to rely on markdowns or promotional sales to dispose of excess or slow-moving inventory, which could have a material adverse effect on our results of operations.

***Our ability to attract customers to our stores depends heavily on the success of the shopping malls in which our stores are located; any decrease in customer traffic in those malls could cause our sales to be less than expected.***

In order to generate customer traffic we depend heavily on locating our stores in prominent locations within successful shopping malls. Sales at these stores are derived, in part, from the volume of traffic in those malls. Our stores benefit from the ability of a mall's other tenants to generate consumer traffic in the vicinity of our stores and the continuing popularity of malls as shopping destinations. Our sales volume and mall traffic generally may be adversely affected by, among other things, economic downturns in a particular area, competition from Internet retailers, non-mall retailers and other malls and the closing or decline in popularity of other stores in the malls in which we are located. A reduction in mall traffic as a result of these or any other factors could have a material adverse effect on our business, results of operations and financial condition.

***Our sales and inventory levels fluctuate on a seasonal basis, leaving our operating results particularly susceptible to changes in back-to-school and holiday shopping patterns.***

Our sales are typically disproportionately higher in the third and fourth fiscal quarters of each fiscal year due to increased sales during the back-to-school and winter holiday shopping seasons. Sales during these periods cannot be used as an accurate indicator of annual results. Our sales in the first and second fiscal quarters are typically lower due, in part, to the traditional retail slowdown immediately following the winter holiday season. Any significant decrease in sales during the back-to-school and winter holiday seasons would have a material adverse effect on our financial condition and results of operations. In addition, in order to prepare for the back-to-school and winter holiday shopping seasons, we must order and keep in stock significantly more merchandise than we would carry during other parts of the year. Any unanticipated decrease in demand for our products during these peak shopping seasons could require us to sell excess inventory at a substantial markdown, which could have a material adverse effect on our business, results of operations and financial condition.

***Our quarterly results of operations are volatile and may decline.***

Our quarterly results of operations have fluctuated significantly in the past and can be expected to continue to fluctuate significantly in the future. As discussed above, our sales and operating results are typically lower in the first and second quarters of our fiscal year due, in part, to the traditional retail slowdown immediately following the winter holiday season. Our quarterly results of operations are affected by a variety of other factors, including:

- the timing of new store openings and the relative proportion of our new stores to mature stores;
- fashion trends and changes in consumer preferences;
- calendar shifts of holiday or seasonal periods;

- changes in our merchandise mix;
- timing of promotional events;
- general economic conditions and, in particular, the retail sales environment;
- actions by competitors or mall anchor tenants;
- weather conditions;
- the level of pre-opening expenses associated with our new stores; and
- inventory shrinkage beyond our historical average rates.

***Our business is susceptible to weather conditions that are out of our control, and unseasonable weather could have a negative impact on our results of operations.***

Our business is susceptible to unseasonable weather conditions. For example, extended periods of unseasonably warm temperatures during the winter season or cool weather during the summer season could render a portion of our inventory incompatible with those unseasonable conditions. These prolonged unseasonable weather conditions, particularly in the western United States where we have a concentration of stores, could have a material adverse effect on our business and results of operations.

***We may be unable to compete favorably in the highly competitive retail industry, and if we lose customers to our competitors, our sales could decrease.***

The teenage and young adult retail apparel, hardgoods and accessories industry is highly competitive. We compete with other retailers for vendors, teenage and young adult customers, suitable store locations, qualified store associates and management personnel. In the softgoods markets, which includes apparel, accessories and footwear, we currently compete with other teenage-focused retailers such as Abercrombie & Fitch Co., Aeropostale, Inc., American Eagle Outfitters, Inc., Anchor Blue Clothing Company, Charlotte Russe Inc., Claire's Stores, Inc., Forever 21, Inc., Hollister Co., Hot Topic, Inc., Old Navy, Inc., Pacific Sunwear of California, Inc., The Buckle, Inc., The Wet Seal, Inc. and Urban Outfitters, Inc. In addition, in the softgoods market we compete with independent specialty shops, department stores, and direct marketers that sell similar lines of merchandise and target customers through catalogs and e-commerce. In the hardgoods markets, which includes skateboards, snowboards, bindings, components and other equipment, we compete directly or indirectly with the following categories of companies: other specialty retailers that compete with us across a significant portion of our merchandising categories, such as local snowboard and skate shops; large-format sporting goods stores and chains, such as Big 5 Sporting Goods Corporation, Dick's Sporting Goods, Inc., Sport Chalet, Inc. and The Sports Authority Inc., which operates stores under the brand names Sports Authority, Gart Sports, Oshman's and Sportmart; and Internet retailers.

Some of our competitors are larger and have substantially greater financial, marketing and other resources than we do. Direct competition with these and other retailers may increase significantly in the future, which could require us, among other things, to lower our prices and could result in the loss of our customers. Current and increased competition could have a material adverse effect on our business, results of operations and financial condition.

***If we fail to maintain good relationships with vendors or if a vendor is otherwise unable or unwilling to supply us with adequate quantities of their products at acceptable prices, our business and financial performance could suffer.***

Our business is dependent on continued good relations with our vendors. In particular, we believe that we generally are able to obtain attractive pricing and other terms from vendors because we are perceived as a desirable customer, and a deterioration in our relationship with our vendors would likely have a material adverse effect on our business. We do not have any contractual relationships with our

vendors and, accordingly, there can be no assurance that our vendors will provide us with an adequate supply or quality of products or acceptable pricing. Our vendors could discontinue selling to us or raise the prices they charge at any time. There can be no assurance that we will be able to acquire desired merchandise in sufficient quantities on terms acceptable to us in the future. Also, certain of our vendors sell their products directly to the retail market and therefore compete with us directly, and other vendors may decide to do so in the future. There can be no assurance that such vendors will not decide to discontinue supplying their products to us, supply us only less popular or lesser quality items, raise the prices they charge us or focus on selling their products directly. Any inability to acquire suitable merchandise at acceptable prices, or the loss of one or more key vendors, would have a material adverse effect on our business, results of operations and financial condition.

***If we lose key management or are unable to attract and retain the talent required for our business, our financial performance could suffer.***

Our performance depends largely on the efforts and abilities of our senior management, including our Co-Founder and Chairman, Thomas D. Campion, our President and Chief Executive Officer, Richard M. Brooks, our Chief Financial Officer, Brenda I. Morris, and our General Merchandising Manager, Lynn K. Kilbourne. None of our employees, except Mr. Brooks, has an employment agreement with us and we do not have, and do not plan to obtain, key person life insurance covering any of our employees. If we lose the services of one or more of our key executives, we may not be able to successfully manage our business or achieve our growth objectives. As our business grows, we will need to attract and retain additional qualified management personnel in a timely manner and we may not be able to do so.

***Our failure to meet our staffing needs could adversely affect our ability to implement our growth strategy and could have a material impact on our results of operations.***

Our success depends in part upon our ability to attract, motivate and retain a sufficient number of qualified employees, including regional managers, district managers, store managers and store associates, who understand and appreciate our corporate culture based on a passion for the action sports lifestyle and are able to adequately represent this culture to our customers. Qualified individuals of the requisite caliber, skills and number needed to fill these positions may be in short supply in some areas, and the employee turnover rate in the retail industry is high. Competition for qualified employees could require us to pay higher wages to attract a sufficient number of suitable employees. If we are unable to hire and retain store managers and store associates capable of consistently providing a high level of customer service, as demonstrated by their enthusiasm for our culture and knowledge of our merchandise, our ability to open new stores may be impaired and the performance of our existing and new stores could be materially adversely affected. We are also dependent upon temporary personnel to adequately staff our stores and distribution center, particularly during busy periods such as the back-to-school and winter holiday seasons. There can be no assurance that we will receive adequate assistance from our temporary personnel, or that there will be sufficient sources of temporary personnel. Although none of our employees is currently covered by collective bargaining agreements, we cannot guarantee that our employees will not elect to be represented by labor unions in the future, which could increase our labor costs and could subject us to the risk of work stoppages and strikes. Any such failure to meet our staffing needs, any material increases in employee turnover rates, any increases in labor costs or any work stoppages or interruptions or strikes could have a material adverse effect on our business or results of operations.

***Our operations, including our sole distribution center, are concentrated in the western United States, which makes us susceptible to adverse conditions in this region.***

Our home office and sole distribution center are located in a single facility in Washington, and a substantial number of our stores are located in Washington and the western half of the United States. As a result, our business may be more susceptible to regional factors than the operations of more geographically diversified competitors. These factors include, among others, economic and weather

conditions, demographic and population changes and fashion tastes. In addition, we rely on a single distribution center in Everett, Washington to receive, store and distribute merchandise to all of our stores and to fulfill our Internet sales. As a result, a natural disaster or other catastrophic event, such as an earthquake affecting western Washington, in particular, or the West Coast, in general, could significantly disrupt our operations and have a material adverse effect on our business, results of operations and financial condition.

***We are required to make substantial rental payments under our operating leases and any failure to make these lease payments when due would likely have a material adverse effect on our business and growth plans.***

We do not own any of our retail stores or our combined home office and distribution center, but instead we lease all of these facilities under operating leases. Payments under these operating leases account for a significant portion of our operating expenses. For example, total rental expenses (which were comprised of minimum rental expenses and additional rental payments based on sales) under operating leases were \$7.8 million and \$8.9 million for the nine months ended October 30, 2004 and fiscal year 2003, respectively, and, as of October 30, 2004, we were a party to operating leases requiring future minimum lease payments aggregating approximately \$49.8 million through 2009 and approximately \$25.1 million thereafter. In addition to future minimum lease payments, substantially all of our store leases provide for additional rental payments based on sales of the respective stores, as well as common area maintenance charges. We expect that any new stores we open will also be leased by us under operating leases, which will further increase our operating lease expenses.

Our substantial operating lease obligations could have significant negative consequences, including:

- increasing our vulnerability to general adverse economic and industry conditions;
- limiting our ability to obtain additional financing;
- requiring that a substantial portion of our available cash be applied to pay our rental obligations, thus reducing cash available for other purposes;
- limiting our flexibility in planning for or reacting to changes in our business or in the industry in which we compete; and
- placing us at a disadvantage with respect to some of our competitors.

We depend on cash flow from operations to pay our lease expenses and to fulfill our other cash needs. If our business does not generate sufficient cash flow from operating activities, and sufficient funds are not otherwise available to us from borrowings under bank loans or from other sources, we may not be able to service our operating lease expenses, grow our business, respond to competitive challenges or to fund our other liquidity and capital needs, which would have a material adverse effect on us.

***The terms of our revolving credit facility impose operating and financial restrictions on us that may impair our ability to respond to changing business and economic conditions. This impairment could have a significant adverse impact on our business.***

Our \$20 million revolving credit facility, which we use for inventory financing and other general corporate purposes, contains a number of significant restrictions and covenants that generally limit our ability to, among other things, (1) incur additional indebtedness or certain lease obligations outside the ordinary course of business; (2) enter into sale/leaseback transactions; (3) make certain changes in our management; and (4) undergo a change in ownership. In addition, our obligations under the revolving credit facility are secured by almost all of our personal property, including, among other things, our inventory, equipment and fixtures. Our revolving credit facility also contains financial covenants that require us to meet certain specified financial ratios, including a debt to earnings ratio, an earnings to

interest expense ratio and an inventory to debt ratio. Our ability to comply with these ratios may be affected by events beyond our control.

A breach of any of these restrictive covenants or our inability to comply with the required financial ratios could result in a default under the revolving credit facility. If a default occurs, the lender may elect to declare all borrowings outstanding, together with accrued interest and other fees, to be immediately due and payable. If we are unable to repay outstanding borrowings when due, whether at their maturity or if declared due and payable by the lender following a default, the lender has the right to proceed against the collateral granted to it to secure the indebtedness. As a result, any breach of these covenants or failure to comply with these ratios could have a material adverse effect on us. In that regard, in fiscal 2002 we breached certain financial covenants in a prior credit facility which required that we obtain waivers from the lender. There can be no assurance that we will not breach the covenants or fail to comply with the ratios in our revolving credit facility or any other debt agreements we may enter into in the future and, if a breach occurs, there can be no assurance that we will be able to obtain necessary waivers or amendments from the lenders.

The restrictions contained in our revolving credit facility could: (1) limit our ability to plan for or react to market conditions or meet capital needs or otherwise restrict our activities or business plans; and (2) adversely affect our ability to finance our operations, strategic acquisitions, investments or other capital needs or to engage in other business activities that would be in our interest.

***Our business could suffer as a result of United Parcel Service being unable to distribute our merchandise.***

We rely upon United Parcel Service for our product shipments, including shipments to, from and between our stores. Accordingly, we are subject to risks, including employee strikes and inclement weather, which may affect United Parcel Service's ability to meet our shipping needs. Among other things, any circumstances that require us to use other delivery services for all or a portion of our shipments could result in increased costs and delayed deliveries and could harm our business materially. In addition, although we have a contract with United Parcel Service that expires in June 2007, United Parcel Service has the right to terminate the contract upon 30 days written notice. Although the contract with United Parcel Service provides certain discounts from the shipment rates in effect at the time of shipment, the contract does not limit United Parcel Services' ability to raise the shipment rates at any time. Accordingly, we are subject to the risk that United Parcel Service may increase the rates they charge, that United Parcel Service may terminate their contract with us, that United Parcel Service may decrease the rate discounts provided to us when an existing contract is renewed or that we may be unable to agree on the terms of a new contract with United Parcel Service, any of which could materially adversely affect our operating results.

***Our business could suffer if a manufacturer fails to use acceptable labor practices.***

We do not control our vendors or the manufacturers that produce the products we buy from them, nor do we control the labor practices of our vendors and these manufacturers. The violation of labor or other laws by any of our vendors or these manufacturers, or the divergence of the labor practices followed by any of our vendors or these manufacturers from those generally accepted as ethical in the United States, could interrupt, or otherwise disrupt, the shipment of finished products or damage our reputation. Any of these, in turn, could have a material adverse effect on our financial condition and results of operations. In that regard, most of the products sold in our stores are manufactured overseas, primarily in Asia and Central America, which may increase the risk that the labor practices followed by the manufacturers of these products may differ from those considered acceptable in the United States.

***Our failure to adequately anticipate a correct mix of private label merchandise may have a material adverse effect on our business.***

Sales from private label merchandise accounted for 12.8% of our net sales in fiscal 2004. We may take steps to increase the percentage of net sales of private label merchandise in the future, although there

can be no assurance that we will be able to achieve increases in private label merchandise sales as a percentage of net sales. Because our private label merchandise generally carries higher gross margins than other merchandise, our failure to anticipate, identify and react in a timely manner to fashion trends with our private label merchandise, particularly if the percentage of net sales derived from private label merchandise increases, may have a material adverse effect on our comparable store sales, financial condition and results of operations.

***Most of our merchandise is produced by foreign manufacturers; therefore the availability and costs of these products may be negatively affected by risks associated with international trade and other international conditions.***

Most of our merchandise is produced by manufacturers in Asia and Central America. Some of these facilities are also located in regions that may be affected by natural disasters, political instability or other conditions that could cause a disruption in trade. Trade restrictions such as increased tariffs or quotas, or both, could also affect the importation of merchandise generally and increase the cost and reduce the supply of merchandise available to us. Any reduction in merchandise available to us or any increase in its cost due to tariffs, quotas or local issues that disrupt trade could have a material adverse effect on our results of operations. Although the prices charged by vendors for the merchandise we purchase are generally denominated in United States dollars, a continued decline in the relative value of the United States dollar to foreign currencies could lead to increased merchandise costs, which could negatively affect our competitive position and our results of operation.

***If our information systems hardware or software fails to function effectively or does not scale to keep pace with our planned growth, our operations could be disrupted and our financial results could be harmed.***

Over the past several years, we have made improvements to our existing hardware and software systems, as well as implemented new systems. If these or any other information systems and software do not work effectively, this could adversely impact the promptness and accuracy of our transaction processing, financial accounting and reporting and our ability to manage our business and properly forecast operating results and cash requirements. To manage the anticipated growth of our operations and personnel, we may need to continue to improve our operational and financial systems, transaction processing, procedures and controls, and in doing so could incur substantial additional expenses which could harm our financial results. In addition, as discussed below, we may be required to improve our financial and managerial controls, reporting systems and procedures to comply with Section 404 of the Sarbanes-Oxley Act of 2002.

***Our inability or failure to protect our intellectual property or our infringement of other's intellectual property could have a negative impact on our operating results.***

We believe that our trademarks and domain names are valuable assets that are critical to our success. The unauthorized use or other misappropriation of our trademarks or domain names could diminish the value of the Zumiez brand, our store concept, our private label brands or our goodwill and cause a decline in our net sales. At this time, we have not secured protection for our trademarks in any jurisdiction outside of the United States, and thus we cannot prevent other persons from using our trademarks outside of the United States, which also could materially adversely affect our business. We are also subject to the risk that we may infringe on the intellectual property rights of third parties. Any infringement or other intellectual property claim made against us, whether or not it has merit, could be time-consuming, result in costly litigation, cause product delays or require us to pay royalties or license fees. As a result, any such claim could have a material adverse effect on our operating results.

***The effects of war or acts of terrorism could adversely affect our business.***

Substantially all of our stores are located in shopping malls. Any threat of terrorist attacks or actual terrorist events, particularly in public areas, could lead to lower customer traffic in shopping malls. In

addition, local authorities or mall management could close shopping malls in response to security concerns. Mall closures, as well as lower customer traffic due to security concerns, would likely result in decreased sales. Additionally, the escalation of the armed conflicts in the Middle East, or the threat, escalation or commencement of war or other armed conflict elsewhere, could significantly diminish consumer spending, and result in decreased sales for us. Decreased sales would have a material adverse effect on the our business, financial condition and results of operations.

***Failure to successfully integrate any businesses or stores that we acquire could have an adverse impact on our results of operations.***

We may from time to time acquire other retail stores, individually or in groups. We may experience difficulties in assimilating any stores we may acquire, and any such acquisitions may also result in the diversion of our capital and our management's attention from other business issues and opportunities. We may not be able to successfully integrate any stores that we may acquire, including their facilities, personnel, financial systems, distribution, operations and general operating procedures. If we fail to successfully integrate acquisitions, we could experience increased costs and other operating inefficiencies, which could have an adverse effect on our results of operations.

***Our directors, executive officers and significant shareholders have significant influence over, and in certain cases control, our management and affairs.***

Our directors, executive officers and significant shareholders will, in the aggregate, beneficially own approximately % of our outstanding common stock immediately following the completion of this offering. Specifically, the Brentwood Affiliates will beneficially own approximately % of our outstanding common stock immediately following this offering, and Thomas D. Campion, our Chairman of the Board, and Richard M. Brooks, our President and Chief Executive Officer, will beneficially own approximately % and %, of our outstanding common stock, respectively, immediately following this offering.

As a result, these shareholders will have significant influence over, and in some circumstances will control, matters requiring approval by our shareholders, including the election of directors and approval of mergers, consolidations, sales of assets, recapitalizations and amendments to our articles of incorporation. These shareholders may take actions with which you do not agree, including actions that delay, defer or prevent a change of control of our company and that could cause the price that investors are willing to pay for our common stock to decline.

***Our Internet operations subject us to numerous risks that could have an adverse effect on our results of operations.***

Although Internet sales constitute only a small portion of our overall sales, our Internet operations subject us to certain risks that could have an adverse effect on our operational results, including:

- diversion of traffic and sales from our stores;
- liability for online content; and
- risks related to the computer systems that operate our website and related support systems, including computer viruses and electronic break-ins and similar disruptions.

In addition, risks beyond our control, such as governmental regulation of the Internet, entry of our vendors in the Internet business in competition with us, online security breaches and general economic conditions specific to the Internet and online commerce could have an adverse effect on our results of operations.

***The outcome of litigation could have a material adverse effect on our business.***

We are involved, from time to time, in litigation incidental to our business. Management believes, after considering a number of factors and the nature of the legal proceedings to which we are subject, that the outcome of current litigation will not have a material adverse effect upon our results of operations or financial condition. However, management's assessment of our current litigation could change in light of the discovery of facts not presently known to us or determinations by judges, juries or other finders of fact that are not in accord with management's evaluation of the possible liability or outcome of such litigation. As a result, there can be no assurance that the actual outcome of pending or future litigation will not have a material adverse effect on our results of operations.

***We will incur significant expenses as a result of being a public company, which could negatively impact our business and financial performance.***

We will incur significant legal, accounting, insurance and other expenses as a result of being a public company. The Sarbanes-Oxley Act of 2002, as well as related rules implemented by the SEC and The Nasdaq Stock Market, have required changes in corporate governance practices of public companies. We expect that compliance with these laws, rules and regulations, including compliance with Section 404 of the Sarbanes-Oxley Act as discussed in the following paragraph, will substantially increase our legal and accounting costs and make some activities more time-consuming and costly. We also expect these laws, rules and regulations to make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as officers.

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

Reporting obligations as a public company and our anticipated growth are likely to place a considerable strain on our financial and management systems, processes and controls, as well as on our personnel. In addition, as a public company we will be required to document and test our internal controls over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 so that our management can certify as to the effectiveness of our internal controls and our auditors can publicly attest to this certification by the time our annual report for fiscal 2005 is due and thereafter, which will require us to document and possibly make significant changes to our internal controls over financial reporting. As a result, we may be required to improve our financial and managerial controls, reporting systems and procedures, to incur substantial expenses to test our systems and to make such improvements and to hire additional personnel. If our management is unable to certify the effectiveness of our internal controls or if our auditors cannot attest to our certification, we could be subject to regulatory scrutiny and a loss of public confidence, which could have a material adverse effect on our business and our stock price. In addition, if we do not maintain adequate financial and management personnel, processes and controls, we may not be able to accurately report our financial performance on a timely basis, which could cause a decline in our stock price and adversely affect our ability to raise capital.

***Risks Related to this Offering***

***Our stock price may be volatile and the market price of our common stock may decline.***

Prior to this offering, our common stock has not been sold in a public market. We cannot predict the extent to which a trading market will develop or how liquid that market might become. An active trading market for our common stock may never develop or may not be sustained, which could adversely affect your ability to sell your shares and the market price of your shares. The initial public offering price for the shares was determined by negotiations between us, the selling shareholders and the underwriters

and does not purport to be indicative of prices at which our common stock will trade upon completion of this offering.

The stock market in general, and the market for stocks of some retailers, has been highly volatile. As a result, the market price of our common stock is likely to be similarly volatile, and investors in our common stock may experience a decrease, which could be substantial, in the value of their stock, including decreases unrelated to our operating performance or prospects. The price of our common stock could be subject to wide fluctuations in response to a number of factors, including those listed elsewhere in this "Risk Factors" section and others such as:

- variations in our operating performance and the performance of our competitors;
- actual or anticipated fluctuations in our quarterly or annual operating results;
- changes in our net sales or earnings estimates or recommendations by securities analysts;
- publication of research reports by securities analysts about us or our competitors or our industry;
- our failure or the failure of our competitors to meet analysts' projections or guidance that we or our competitors may give to the market;
- additions and departures of key personnel;
- strategic decisions by us or our competitors, such as acquisitions, divestitures, spin-offs, joint ventures, strategic investments or changes in business strategy;
- the passage of legislation or other regulatory developments affecting us or our industry;
- speculation in the press or investment community;
- changes in accounting principles;
- terrorist acts, acts of war or periods of widespread civil unrest; and
- changes in general market and economic conditions.

In the past, securities class action litigation has often been initiated against companies following periods of volatility in their stock price. This type of litigation could result in substantial costs and divert our management's attention and resources, and could also require us to make substantial payments to satisfy judgments or to settle litigation.

***We may invest or spend the proceeds of this offering in ways you may not agree with or in ways which may not yield a return.***

We will have broad discretion over the net proceeds from this offering received by us. We may use these funds to acquire or invest in businesses, stores or products. We have not reserved or allocated specific amounts for any particular purposes, and we cannot specify with certainty how we will use these funds. Accordingly, our management will have considerable discretion in the application of these funds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. These funds may be used for purposes that do not improve our operating results or the market value of our stock. Until these funds are used, they may be placed in investments that do not produce income or that lose value.

***Future sales of our common stock in the public market could cause our stock price to fall.***

Sales of our common stock in the public market after this offering, or the perception that such sales might occur, could cause the market price of our common stock to decline. Immediately after completion of this offering, we will have \_\_\_\_\_ shares of common stock outstanding, including approximately \_\_\_\_\_ shares that will be beneficially owned by the Brentwood Affiliates. In general, the shares sold in this offering will be freely transferable without restriction or additional registration under the Securities

Act of 1933, or the "Securities Act." In addition, of the remaining shares of our common stock that will be outstanding immediately after completion of this offering and based on shares outstanding as of January 29, 2005, approximately shares will be available for sale in the public markets immediately upon the completion of this offering and approximately shares will be available for sale in the public markets 180 days (subject to extension for up to an additional 18 days under limited circumstances as described under "Underwriting") after the completion of this offering following the expiration of lock-up agreements entered into by our directors and officers and a number of our shareholders for the benefit of the underwriters. Furthermore, immediately after completion of this offering and based on shares outstanding as of January 29, 2005, the holders of approximately shares of our outstanding common stock, including the Brentwood Affiliates, will have the right to include those shares in any registration statement we file with the SEC, subject to exceptions, which would enable those shares to be sold in the public markets, subject, in certain cases, to the restrictions under the lock-up agreements referred to above.

Any or all of the shares subject to the lock-up agreements may be released for sale in the public market prior to expiration of the lock-up period at the discretion of Wachovia Capital Markets, LLC and Piper Jaffray & Co. To the extent shares are sold into the public market, the market price of our common stock could decline. For additional information, see "Shares Eligible for Future Sale" and "Underwriting."

***Purchasers in this offering will immediately experience substantial dilution in net tangible book value of their shares.***

The initial public offering price of our common stock in this offering is considerably more than the net tangible book value per share of our outstanding common stock. Our common stock has in the past been sold at prices substantially lower than the initial public offering price that you will pay, and you will suffer immediate dilution of \$ per share in net tangible book value, calculated on an "as adjusted" basis that gives effect to the sale of the shares by us in this offering at an assumed initial offering price of \$ per share of common stock (the mid-point of the price range set forth on the cover of this preliminary prospectus). See "Dilution."

***We have outstanding options that have the potential to dilute shareholder value and cause the price of our common stock to decline.***

In the past, we have offered, and we expect to continue to offer, stock options or other forms of stock-based compensation to our directors, officers and employees. Stock options issued in the past have per share exercise prices below the initial public offering price per share. As of January 29, 2005, we had options outstanding to purchase shares of our common stock at exercise prices ranging from \$ to \$ per share, and a weighted average exercise price of \$ per share. If some or all of these options are exercised and such shares are sold into the public market, the market price of our common stock may decline.

***Washington law and our articles of incorporation and bylaws contain antitakeover provisions that could delay or discourage takeover attempts that shareholders may consider favorable.***

Certain provisions of our articles of incorporation and our bylaws and of Washington law may discourage, delay or prevent transactions that our shareholders may consider favorable, including transactions that could provide for payment of a premium over the prevailing market price of our common stock, and also may limit the price that investors are willing to pay in the future for our common stock. For example, our articles of incorporation contain provisions, such as allowing our board of directors to issue preferred stock with rights superior to those of our common stock without the consent of our shareholders and prohibitions on cumulative voting in the election of directors, which could make it more difficult for a third party to acquire us without the consent of our board of directors. In addition, our articles of incorporation provide for our board of directors to be divided into three classes serving staggered terms of three years each, permit removal of directors only for cause, provide that

vacancies on the board of directors may be filled only by the affirmative vote of a majority of directors then in office, require two-thirds shareholder approval of certain types of business transactions and restrict the ability of shareholders to amend our bylaws and nominate candidates for election to our board of directors. Furthermore, our bylaws require advance notice of shareholder proposals and nominations of candidates for election to our board of directors and eliminate the ability of shareholders to call for special shareholder meetings. In addition, Chapter 23B.19 of the Washington Business Corporation Act prohibits certain business combinations between us and certain significant shareholders unless certain conditions are met. These provisions may have the effect of delaying, deterring or preventing a third-party from acquiring us. See "Description of Capital Stock—Antitakeover Effects of Washington Law and Certain Provisions of Our Articles of Incorporation and Our Bylaws."

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS AND MARKET DATA

This prospectus includes forward-looking statements. All statements other than statements of historical facts contained in this prospectus, including statements of our expectations regarding net sales, selling, general and administrative expenses, profitability, financial position, business strategy, new store openings, and plans and objectives of management, are forward-looking statements. The words "believe," "may," "will," "estimate," "continue," "anticipate," "intend," "expect" and similar expressions, as they relate to us and our business, industry, markets and consumers, are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including, among others, those described in "Risk Factors" and elsewhere in this prospectus, and the following:

- our ability to open and operate new stores successfully;
- our ability to anticipate, identify and respond to fashion trends and customer preferences;
- our dependence on mall traffic for our sales;
- seasonal fluctuations in our business;
- unseasonable weather conditions;
- competition, including promotional and pricing competition; and
- changes in the availability or cost of merchandise, labor or delivery services.

These risks are not exhaustive. Other sections of this prospectus include additional factors that could adversely impact our business and financial performance. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time and it is not possible for our management to predict all risk factors, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. We assume no obligation to update any forward-looking statements as a result of new information, future events or developments.

You should not rely upon forward-looking statements as predictions of future events. We cannot assure you that the events and circumstances reflected in the forward-looking statements will be achieved or occur and actual results could differ materially from those projected or implied in the forward-looking statements.

The market and demographic data included in this prospectus concerning our business and markets, including data regarding retail sales of skateboard, snowboard and surf/bodyboard merchandise, data regarding participation in board sports and data regarding spending by teenagers in the United States is estimated and is based on data made available by market research firms, industry trade associations or other publicly available information. The accuracy and completeness of this information is not guaranteed and this information has not been independently verified.

## USE OF PROCEEDS

We estimate that the net proceeds from the shares to be sold by us in this offering will be approximately \$            million, or approximately \$            million if the underwriters' over-allotment option is exercised in full, in each case based on an assumed initial offering price of \$            per share (the mid-point of the price range set forth on the cover of this preliminary prospectus), after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We will not receive any of the proceeds from the sale of the shares by the selling shareholders.

We intend to use the net proceeds from this offering to fund new store openings and growth, for working capital and for other general corporate purposes. As a result, we will retain broad discretion over the use of the net proceeds from this offering. In that regard, we consider possible acquisitions of other businesses and stores from time to time and we may therefore apply a portion of the net proceeds to finance all or a portion of the cost of acquisitions. However, we do not currently have any binding agreements or commitments with respect to any acquisition, and we might be required to obtain additional financing if we were to proceed with an acquisition. Pending application, we intend to invest the net proceeds of this offering in short-term, interest-bearing, investment-grade securities.

The principal purposes of this offering are (1) to provide additional funds for the purposes described above, (2) to attract and retain qualified employees by providing them with equity incentives and (3) to create a public market for our common stock for the benefit of our current shareholders.

## DIVIDEND POLICY

We do not anticipate paying any cash dividends on our common stock in the foreseeable future. We anticipate that we will retain all of our available funds for use in the operation and expansion of our business. Any future determination as to the payment of cash dividends will be at the discretion of our board of directors and will depend on our financial condition, operating results, current and anticipated cash needs, plans for expansion and other factors that our board of directors considers to be relevant. In addition, financial and other covenants in any instruments and agreements that we enter into in the future may restrict our ability to pay cash dividends on our common stock.

## CAPITALIZATION

The following table sets forth our cash and cash equivalents and our capitalization as of October 30, 2004, as follows:

- on an actual basis;
- on an as adjusted basis to give effect to our sale of \_\_\_\_\_ shares of common stock in this offering at an assumed initial public offering price of \$ \_\_\_\_\_ per share (the mid-point of the price range set forth on the cover of this preliminary prospectus), after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this information together with the sections of this prospectus entitled "Selected Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and related notes appearing elsewhere in this prospectus.

	As of October 30, 2004	
	Actual	As Adjusted
	(Dollars in thousands, except per share data)	
Cash and cash equivalents	\$ 897	\$ _____
Long-term debt(1)	\$ —	\$ _____
Shareholders' equity(2)		
Preferred stock, par value \$0.01 per share, _____ shares authorized, none issued and outstanding actual; _____ shares authorized, none issued and outstanding as adjusted	—	—
Common stock, par value \$0.01 per share, _____ shares authorized, _____ shares issued and outstanding actual; _____ shares authorized, _____ shares issued and outstanding as adjusted	44	
Additional paid-in capital	—	
Employee stock options	54	
Retained earnings	21,561	
Receivable from parent	(148)	
Total shareholders' equity	21,511	
Total capitalization(1)	\$ 21,511	\$ _____

(1) All of the indebtedness outstanding under our \$20.0 million revolving credit facility is classified as short-term debt. As of October 30, 2004, we had \$6.1 million of short-term debt and \$841,000 of letters of credit outstanding under our revolving credit facility. See note 5 to our financial statements included elsewhere in this prospectus. In addition, see notes 9 and 13 to our financial statements appearing elsewhere in this prospectus for information as to our obligations under operating leases.

(2) The outstanding share information in the table above excludes:

- shares issuable upon exercise of outstanding options;
- an aggregate of \_\_\_\_\_ additional shares available for future awards under our 2004 Option Plan;
- an aggregate of \_\_\_\_\_ additional shares that will be initially available for future awards under our 2005 Incentive Plan and our Stock Purchase Plan, plus scheduled annual increases and other potential increases in the number of shares reserved for issuance under the 2005 Incentive Plan; and
- an aggregate of up to \_\_\_\_\_ additional shares of common stock issuable by us if the underwriters' over-allotment option is exercised in full.

## DILUTION

As of January 29, 2005, our net tangible book value was approximately \$ \_\_\_\_\_ million, or \$ \_\_\_\_\_ per outstanding share of our common stock. The net tangible book value per share of our common stock is the difference between our total tangible assets and our total liabilities, divided by the number of shares of common stock outstanding at that date. For new investors in our common stock, dilution is the per share difference between the initial public offering price of our common stock and the net tangible book value of our common stock.

After giving effect to our receipt of the net proceeds from our sale of shares of common stock in this offering at an assumed initial public offering price of \$ \_\_\_\_\_ per share (the mid-point of the price range set forth on the cover of this preliminary prospectus), after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, our net tangible book value at January 29, 2005 would have been approximately \$ \_\_\_\_\_ million, or \$ \_\_\_\_\_ per share. This represents an immediate increase in our net tangible book value of \$ \_\_\_\_\_ per share to existing shareholders and an immediate dilution of \$ \_\_\_\_\_ per share to new investors purchasing shares of common stock in this offering. The following table illustrates this per share dilution:

Assumed initial public offering price per share	\$ _____
Net tangible book value per share as of January 29, 2005	
Increase in net tangible book value per share attributable to new investors	\$ _____
As adjusted net tangible book value per share after giving effect to this offering	\$ _____
<b>Dilution per share to new investors</b>	<b>\$ _____</b>

The following table summarizes, as of January 29, 2005, the differences between the number and percentage of shares of common stock purchased from us by our existing shareholders and new investors purchasing shares of common stock from us in this offering, as well as the total consideration and the average price per share paid by them:

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing shareholders		% \$ _____		% \$ _____	
New investors					
<b>Total</b>		<b>100% \$ _____</b>		<b>100%</b>	

The discussion and tables above exclude, as of January 29, 2005:

- shares issuable upon exercise of outstanding options;
- an aggregate of \_\_\_\_\_ additional shares available for future awards under our 2004 Option Plan;
- an aggregate of \_\_\_\_\_ additional shares that will be initially available for future awards under our 2005 Incentive Plan and our Stock Purchase Plan, plus scheduled annual increases and other potential increases in the number of shares reserved for issuance under the 2005 Incentive Plan; and
- an aggregate of up to \_\_\_\_\_ additional shares of common stock issuable by us if the underwriters' over-allotment option is exercised in full.

If all of the stock options outstanding at January 29, 2005 were exercised and if the underwriters' over-allotment option were exercised in full, the number of shares held by existing shareholders would increase to \_\_\_\_\_ shares, or approximately \_\_\_\_\_ % of the total number of shares of common stock to be outstanding immediately after this offering, and the number of shares held by new investors would increase to \_\_\_\_\_ shares, or approximately \_\_\_\_\_ % of the total number of shares of our common stock to be outstanding immediately after this offering, in each case based upon shares outstanding as of January 29, 2005, and the total consideration paid by existing shareholders and new investors would have been approximately \$ \_\_\_\_\_ and \$ \_\_\_\_\_, respectively, or approximately \_\_\_\_\_ % and \_\_\_\_\_ %, respectively, of the total consideration paid.

## SELECTED FINANCIAL DATA

The following selected financial data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the related notes included elsewhere in this prospectus.

Through and including December 31, 2002, our fiscal year ended on December 31 and was the same as the calendar year. Subsequent to December 31, 2002, we changed our fiscal year to end on the Saturday closest to January 31 and, as a result, the following tables include financial data as of and for the one month ended February 1, 2003. Each fiscal year ended subsequent to December 31, 2002 consists of four 13-week quarters, with an extra week added to the fourth quarter every five or six years. Our fiscal years ended December 31, 1999, 2000, 2001 and 2002 and January 31, 2004 each consisted of 52 weeks.

The selected statement of operations data for the fiscal years ended December 31, 2001 and 2002, the one month ended February 1, 2003 and the fiscal year ended January 31, 2004 and the selected balance sheet data as of December 31, 2002, February 1, 2003 and January 31, 2004 are derived from our audited financial statements, which are included elsewhere in this prospectus. The selected statement of operations data for the fiscal years ended December 31, 1999 and 2000 and the selected balance sheet data as of December 31, 1999, 2000 and 2001 are derived from our audited financial statements not included in this prospectus. The selected statement of operations data for the nine month periods ended November 1, 2003 and October 30, 2004 and the selected balance sheet data as of October 30, 2004 are derived from our unaudited financial statements included elsewhere in this prospectus.

	Fiscal Year Ended December 31,				One Month Ended February 1, 2003	Fiscal Year Ended January 31, 2004	Nine Months Ended	
	1999	2000	2001	2002			November 1, 2003	October 30, 2004
(In thousands, except share and per share data)								
<b>Statement of Operations Data:</b>								
Net sales	\$ 44,541	\$ 60,827	\$ 84,735	\$ 101,391	\$ 6,392	\$ 117,857	\$ 78,039	\$ 100,582
Cost of goods sold	31,457	41,027	57,534	71,017	4,575	81,320	54,824	69,165
Gross margin	13,084	19,800	27,201	30,374	1,817	36,537	23,215	31,417
Selling, general and administrative expenses	9,981	14,010	20,470	23,404	2,013	29,076	20,587	26,248
Operating profit (loss)	3,103	5,790	6,731	6,970	(196)	7,461	2,628	5,169
Other income (expense)	35	36	(3)	148	—	8	4	5
Interest expense	(223)	(335)	(322)	(317)	(12)	(293)	(245)	(218)
Earnings (loss) before income taxes	2,915	5,491	6,406	6,801	(208)	7,176	2,387	4,956
Provision (benefit) for income taxes(1)	—	—	—	1,096	(39)	2,701	799	1,936
Net income (loss)	\$ 2,915	\$ 5,491	\$ 6,406	\$ 5,705	\$ (169)	\$ 4,475	\$ 1,588	\$ 3,020
Net income (loss) per share(2)								
Basic	\$ 65.54	\$ 140.23	\$ 163.52	\$ 127.79	\$ (3.87)	\$ 102.38	\$ 36.33	\$ 69.09
Diluted	\$ 54.71	\$ 112.46	\$ 130.23	\$ 108.65	\$ (3.87)	\$ 90.34	\$ 31.98	\$ 60.72
Weighted average shares outstanding(2)								
Basic	44,480	39,156	39,175	44,642	43,710	43,710	43,710	43,710
Diluted	53,278	48,825	49,191	52,508	43,710	49,535	49,661	49,737

(1) For fiscal 1999, 2000, 2001 and for a portion of fiscal 2002 ended November 3, 2002, we were treated as a Subchapter S corporation for federal income tax purposes and, as a result, we were exempt from paying federal and state income taxes for those periods. As a result, our results of operations for fiscal 1999, 2000 and 2001 do not reflect any provision for income taxes and our provision for income taxes for fiscal 2002 reflects a provision for the last two months of fiscal 2002. Accordingly, our provision for income taxes and our total and per share net income for fiscal 1999, 2000, 2001 and 2002 are not comparable to our provision for income taxes and our total and per share net income for the subsequent periods reflected in this table. See note 1 to our financial statements included elsewhere in this prospectus.

(2) Before giving effect to a for one split of our outstanding common stock that will be effective prior to completion of this offering.

	December 31,				February 1,	January 31,	October 30,
	1999	2000	2001	2002	2003	2004	2004

(In thousands)

#### Balance Sheet Data:

Cash and cash equivalents	\$ 2,010	\$ 3,536	\$ 645	\$ 7,722	\$ 482	\$ 578	\$ 897
Working capital	323	1,024	502	(1,510)	(1,436)	1,698	(1,012)
Total assets	15,649	20,996	28,180	42,608	36,003	41,558	62,526
Total long term liabilities	2,097	1,461	1,631	1,001	954	1,336	1,491
Total shareholders' equity	4,604	7,488	11,916	14,136	13,967	18,438	21,511

	Fiscal Year Ended December 31,				One Month Ended	Fiscal Year Ended	Nine Months Ended	
	1999	2000	2001	2002	February 1, 2003	January 31, 2004	November 1, 2003	October 30, 2004

(Dollars in thousands, except net sales per square foot)

#### Other Financial Data:

Gross margin percentage(1)	29.4%	32.6%	32.1%	30.0%	28.4%	31.0%	29.7%	31.2%
Capital expenditures	\$ 2,529	\$ 3,315	\$ 7,500	\$ 7,186	\$ 42	\$ 5,937	\$ 2,713	\$ 7,583
Depreciation	\$ 1,365	\$ 1,694	\$ 2,348	\$ 3,571	\$ 332	\$ 4,185	\$ 3,042	\$ 3,999

#### Store Data:

Number of stores open at end of period	53	64	80	99	99	113	105	132
Comparable store sales increase (decrease)(2)(3)	8.5%	18.5%	20.2%	(1.1)%	(5.7)%	4.3%	2.1%	8.2%
Net sales per store(3)(4)	\$ 882	\$ 1,049	\$ 1,203	\$ 1,105	\$ 65	\$ 1,131	\$ 774	\$ 807
Total square footage at end of period(5)	124,395	147,223	194,651	247,476	247,476	288,784	266,372	349,200
Average square footage per store at end of period(6)	2,347	2,300	2,464	2,500	2,500	2,533	2,537	2,645
Net sales per square foot(3)(7)	\$ 386	\$ 456	\$ 506	\$ 443	\$ 26	\$ 448	\$ 306	\$ 310

- (1) Gross margin percentage represents gross margin divided by net sales.
- (2) Comparable store sales percentage changes are calculated by comparing comparable store sales for the applicable fiscal year or nine-month period to comparable store sales for the prior fiscal year or for the comparable nine-month period in the prior fiscal year. Comparable store sales are based on net sales, and stores are considered comparable beginning on the first anniversary of their first day of operation. See "Certain Terms Used in this Prospectus" on page ii for more information about how we compute comparable store sales.
- (3) Comparable store sales, net sales per store and net sales per square foot include our in-store sales and our Internet sales. Our Internet sales represented less than 1.0% of our total net sales in each of the periods presented.
- (4) Net sales per store represents net sales for the period divided by the average number of stores open during the period. For purposes of this calculation, the average number of stores open during the period is equal to the sum of the number of stores open as of the end of each month during the period divided by the number of months in the period.
- (5) Total square footage at end of period includes retail selling, storage and back office space.
- (6) Average square footage per store at end of period is calculated on the basis of the total square footage at end of period, including retail selling, storage and back office space, of all stores open at the end of the period.
- (7) Net sales per square foot represents net sales for the period divided by the average square footage of stores open during the period. For purposes of this calculation, the average square footage of stores open during the period is equal to the sum of the total square footage of the stores open as of the end of each month during the period divided by the number of months in the period.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our financial statements and related notes included elsewhere in this prospectus. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including those discussed in "Risk Factors" above. See "Cautionary Note Regarding Forward-Looking Statements and Market Data."*

*Through and including December 31, 2002, our fiscal year ended on December 31. Subsequent to December 31, 2002, we changed our fiscal year to end on the Saturday closest to January 31 and to consist of four 13-week quarters, with an extra week added to the fourth quarter every five or six years. Our fiscal years ended December 31, 2001, December 31, 2002 and January 31, 2004 each consisted of 52 weeks and references in this discussion to "fiscal 2001," "fiscal 2002," "fiscal 2003" and "fiscal 2004" refer to the 52-week periods ended December 31, 2001, December 31, 2002, January 31, 2004 and January 29, 2005, respectively.*

*As a result of this change in our fiscal year, the financial data and our financial statements included elsewhere in this prospectus include financial information for the one month ended February 1, 2003, which was the one month transition period following the end of fiscal 2002 and prior to the beginning of fiscal 2003. The following discussion of our results of operations for fiscal 2003 compared to 2002 disregards this one month transition period because we do not believe it is material to an understanding of our results of operations.*

### Overview

We were founded in 1978 by Thomas D. Campion, our Chairman. Our current President and Chief Executive Officer, Richard M. Brooks, joined us as Chief Financial Officer in 1993. In fiscal 2002, certain affiliates (the "Brentwood Affiliates") of Brentwood Private Equity III, LLC, a private equity firm, acquired an indirect 41% minority interest in us through Zumiez Holdings LLC, or "Zumiez Holdings." Since the investment by the Brentwood Affiliates, we have positioned ourselves for accelerated growth by enhancing our infrastructure and deepening our management team. Although these initiatives resulted in increased operating expenses as a percentage of net sales in fiscal 2003 as compared to fiscal 2002, we believe that they improved our ability to continue to expand our business. Moreover, the additional expenses resulting from these initiatives consisted primarily of infrastructure improvements, most of which were incurred during fiscal 2003, and increased administrative personnel costs, and we believe that we can leverage these additional expenses to the extent we are able to increase our net sales.

Our net sales increased from approximately \$44.5 million in fiscal 1999 to approximately \$117.9 million in fiscal 2003, a compound annual growth rate of 27.5%. Net sales for the first nine months of fiscal 2004 increased by \$22.5 million, or 28.9%, over net sales for the first nine months of fiscal 2003. Over the four fiscal years ended with fiscal 2003, we increased our store base from 53 to 113 and our comparable store net sales increased an average of 10.5% per fiscal year. As of January 29, 2005, we operated 140 stores that averaged approximately 2,600 square feet per store, giving us a presence in 18 states.

We intend to expand our presence as a leading action sports lifestyle retailer by opening new stores and continuing to generate sales growth through improved store level productivity. We have successfully and consistently implemented our store concept across a variety of mall classifications and geographic locations, and our strategy is to continue to open stores in both new and existing markets. We plan to open 35 new stores in fiscal 2005 and to continue an aggressive pace of store openings in future years. Through our merchandising and marketing efforts, we have generally been successful in increasing the level of net sales in our existing stores and we will seek to continue such increases going forward.

We believe that we have developed an economically compelling store model. Our new stores opened during fiscal 2003 generated average net sales of approximately \$1.0 million during their first full year of operations. On average, our net investment to open these stores was approximately \$360,000, which includes capital expenditures, net of landlord contributions, and initial inventory, net of payables. However, net sales and other operating results for stores that we open or have opened subsequent to the end of fiscal 2003, as well as our net investment to open those stores, may differ substantially from net sales and other operating results and our net investment for stores we opened in fiscal 2003. See "Business—Stores."

In any given period, our overall gross margin may be impacted by changes in the margins of the various products we offer as well as changes in the relative mix of revenues from different categories of apparel and hardgoods products that we sell. A number of other factors may also positively or negatively impact our gross margins and results of operations, including, but not limited to:

- the timing of new store openings and the relative proportion of our new stores to mature stores;
- fashion trends and changes in consumer preferences;
- calendar shifts of holiday or seasonal periods;
- timing of promotional events;
- general economic conditions and, in particular, the retail sales environment;
- actions by competitors or mall anchor tenants;
- weather conditions;
- the level of pre-opening expenses associated with our new stores; and
- inventory shrinkage beyond our historical average rates.

We believe our ability to effectively manage our gross margin despite these factors is evidenced by the relative stability of our gross margin as a percentage of net sales over the last five fiscal years. Over the past five fiscal years, our annual gross margin as a percentage of our net sales has ranged from a low of 29.4% to a high of 32.6%. We achieved these results while continuing to adjust our merchandise mix to respond to changing consumer preferences and market conditions.

One of our goals is to better leverage our expenses, particularly general corporate overhead and semi-fixed costs such as occupancy costs, through increases in both comparable store sales and total net sales. At the store level, our strategy is to increase comparable store sales, in an effort to improve operating results by spreading our store level fixed costs over increased net sales per comparable store. We also seek to increase our total net sales, both through increases in comparable store sales and by opening new stores, in an effort to better leverage our corporate level expenses and decrease our general and administrative expenses as a percentage of our net sales.

## **General**

Net sales constitute gross sales net of returns. Comparable store sales percentage changes are based on net sales, and stores are considered comparable beginning on the first anniversary of their first day of operation. See "Certain Terms Used in this Prospectus" on page ii for further information as to how we compute our comparable store sales. We believe that there are variations in the way in which some of our competitors and other apparel retailers calculate comparable or same store sales. As a result, data in this prospectus regarding our comparable store sales may not be comparable to similar data made available by our competitors or other retailers.

Cost of goods sold consists of the cost of merchandise sold to customers, inbound shipping costs, distribution costs, buying and merchandising costs and store occupancy costs. This may not be comparable to the way in which our competitors or other retailers compute their cost of goods sold.

In early February 2005, we completed our move from the 49,000 square foot combined home office and distribution facility we occupied since 1994 to a new 87,000 square foot combined home office and distribution center. As a result, we expect a slight increase in fiscal 2005 and future periods in our distribution and warehousing costs that are included as a component of our cost of goods sold.

Selling, general and administrative expenses consist primarily of store personnel wages and benefits, administrative staff and infrastructure expenses, store supplies, depreciation and facility expenses, and training and marketing costs. Credit card fees, insurance and other miscellaneous operating costs are also included in selling, general and administrative expenses. This may not be comparable to the way in which our competitors or other retailers compute their selling, general and administrative expenses. We expect that our selling, general and administrative costs will also increase in future periods due in part to increased expenses associated with operating as a public company, including compliance with the Sarbanes-Oxley Act of 2002.

In conjunction with the Brentwood Affiliates' investment in fiscal 2002, we terminated our Subchapter S tax election on November 4, 2002 and elected to be taxed as a Subchapter C corporation under the Internal Revenue Code. As a result, we became subject to federal and state income taxes. Prior to this date, we were not subject to federal or state income taxes and, accordingly, our financial statements for fiscal 2001 do not include any provision for income taxes and our financial statements for fiscal 2002 reflect a provision for income taxes for the last two months of fiscal 2002. Accordingly, our provision for income taxes and net income for fiscal 2001 and fiscal 2002 are not comparable to our provision for income taxes and net income for subsequent periods.

In connection with this offering, we recognized stock-based compensation expense of approximately \$95,000 in fiscal 2004 and we would have expected to recognize approximately \$164,000, \$164,000, \$164,000, \$164,000, \$121,000, \$78,000, \$78,000 and \$28,000 of additional stock-based compensation expense in fiscal 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012, respectively. As a result of implementing Statement of Financial Accounting Standards No. 123R, "Share-Based Payment (Revised 2004)," outstanding unvested options will result in additional compensation expense that otherwise would only have been recognized on a pro-forma basis. Accordingly, our results of operations in future periods will be adversely affected by this additional stock-based compensation expense. For more information regarding the implementation of SFAS 123R, see "—Recently Issued Accounting Pronouncements" below.

Our success is largely dependent upon our ability to anticipate, identify and respond to the fashion tastes of our customers and to provide merchandise that satisfies customer demands. Any inability to provide appropriate merchandise in sufficient quantities in a timely manner could have a material adverse effect on our business, operating results and financial condition.

## Results of Operations

The following table presents, for the periods indicated, selected items in the statements of operations as a percent of net sales:

	Fiscal Year Ended December 31,		One Month Ended February 1, 2003	Fiscal Year Ended January 31, 2004	Nine Months Ended	
	2001	2002			November 1, 2003	October 30, 2004
Net sales	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Cost of goods sold	67.9	70.0	71.6	69.0	70.3	68.8
Gross margin	32.1	30.0	28.4	31.0	29.7	31.2
Selling, general and administrative expenses	24.2	23.1	31.5	24.7	26.3	26.1
Operating profit (loss)	7.9	6.9	(3.1)	6.3	3.4	5.1
Other income	—	0.1	—	—	—	—
Interest expense	(0.3)	(0.3)	(0.2)	(0.2)	(0.3)	(0.2)
Earnings (loss) before income taxes	7.6	6.7	(3.3)	6.1	3.1	4.9
Provision (benefit) for income taxes	—	1.1	(0.6)	2.3	1.1	1.9
Net income (loss)	7.6%	5.6%	(2.7)%	3.8%	2.0%	3.0%

### Nine Months Ended October 30, 2004 Compared with Nine Months Ended November 1, 2003

#### Net Sales

Net sales increased to \$100.6 million for the nine months ended October 30, 2004 from \$78.0 million for the nine months ended November 1, 2003, an increase of \$22.6 million, or 28.9%. This increase in net sales was due to an increase in comparable store net sales of approximately \$5.9 million and an increase in net sales from non-comparable stores, as defined below, of approximately \$16.7 million. We sometimes refer to stores that are not comparable stores as "non-comparable stores." For information as to how we define comparable stores, see "Certain Terms Used in this Prospectus" on page ii.

Comparable store net sales increased by 8.2% for the nine months ended October 30, 2004 compared to the nine months ended November 1, 2003. This increase was primarily due to higher net sales of footwear, accessories and skateboard hardgoods at our comparable stores, partially offset by lower net sales of snowboard hardgoods at those stores. The increase in non-comparable store net sales was primarily due to 20 new stores that we opened subsequent to November 1, 2003.

#### Gross Margin

Gross margin for the nine months ended October 30, 2004 was \$31.4 million compared with \$23.2 million for the nine months ended November 1, 2003, an increase of \$8.2 million, or 35.3%. As a percentage of net sales, gross margin for the nine months ended October 30, 2004 increased to 31.2% of net sales, compared with 29.7% of net sales for the nine months ended November 1, 2003. The increase in gross margin as a percentage of net sales was due primarily to the increase in net sales for the nine months ended October 30, 2004 compared to the nine months ended November 1, 2003, which allowed us leverage certain fixed costs, primarily occupancy costs, over greater total net sales.

#### Selling, General and Administrative Expenses

Selling, general and administrative, or "SG&A," expenses for the nine months ended October 30, 2004 were \$26.2 million compared with \$20.6 million for the nine months ended November 1, 2003, an increase of \$5.6 million, or 27.5%. This increase was primarily the result of costs associated with operating new stores as well as increases in infrastructure and administrative staff to support our growth. As a

percentage of net sales, SG&A expenses decreased to 26.1% for the nine months ended October 30, 2004 compared with 26.3% for the nine months ended November 1, 2003, due primarily to the increase in net sales for the nine months ended October 30, 2004 compared to the nine months ended November 1, 2003, which allowed us to leverage certain semi-fixed costs, such as costs of maintaining and staffing our combined home office and distribution center, over greater total net sales.

### ***Operating Profit***

As a result of the above factors, operating profit increased by \$2.6 million, or 96.7%, to \$5.2 million for the nine months ended October 30, 2004 from \$2.6 million for the nine months ended November 1, 2003. As a percentage of net sales, operating profit increased to 5.1% for the nine months ended October 30, 2004 from 3.4% for the nine months ended November 1, 2003.

### ***Provision for Income Taxes***

Provision for income taxes was \$1.9 million for the nine months ended October 30, 2004 compared with \$799,000 for the nine months ended November 1, 2003. The effective tax rate was 39.1% for the nine months ended October 30, 2004 compared with 33.5% for the nine months ended November 1, 2003.

### ***Net Income***

Net income increased by \$1.4 million, or 90.2%, to \$3.0 million for the nine months ended October 30, 2004 from \$1.6 million for the nine months ended November 1, 2003. As a percentage of net sales, net income was 3.0% for the nine months ended October 30, 2004 compared with 2.0% for the nine months ended November 1, 2003.

### **Year Ended January 31, 2004 Compared with Year Ended December 31, 2002**

Through and including December 31, 2002, our fiscal year ended on December 31. Subsequent to December 31, 2002, we changed our fiscal year to end on the Saturday closest to January 31 and to consist of four 13-week quarters, with an extra week added to the fourth quarter every five or six years. Our fiscal years ended December 31, 2002 and January 31, 2004 each consisted of 52 weeks. As a result of this change in our fiscal year, the financial data and our financial statements included elsewhere in this prospectus include financial information for the one month ended February 1, 2003, which was the one month transition period following the end of fiscal 2002 and prior to the beginning of fiscal 2003. The following discussion of our results of operations for fiscal 2003 compared to fiscal 2002 disregards this one month transition period because we do not believe it is material to an understanding of our results of operations.

### ***Net Sales***

Net sales increased to \$117.9 million for fiscal 2003 from \$101.4 million for fiscal 2002, an increase of \$16.5 million, or 16.2%. This increase in total net sales was due to an increase in comparable store net sales of approximately \$3.5 million and an increase in net sales from non-comparable stores of approximately \$13.0 million.

Comparable store net sales increased by 4.3% in fiscal 2003 compared to fiscal 2002. This increase was primarily due to higher net sales of men's and juniors' apparel and accessories at our comparable stores, partially offset by lower net sales of skateboard hardgoods and boys' apparel at those stores. The increase in non-comparable store net sales was primarily due to the opening of 15 new stores subsequent to the end of fiscal 2002.

### **Gross Margin**

Gross margin for fiscal 2003 was \$36.5 million compared with \$30.4 million for fiscal 2002, an increase of \$6.1 million, or 20.3%. As a percentage of net sales, gross margin increased to 31.0% in fiscal 2003 from 30.0% in fiscal 2002. The increase in gross margin as a percentage of net sales was due primarily to the increase in net sales for fiscal 2003 compared fiscal 2002, which allowed us leverage certain fixed costs, primarily occupancy costs, over greater overall net sales and, to a lesser extent, to improved pricing from some of our vendors due to our larger merchandise purchases and reduced freight and distribution costs as a percentage of net sales.

### **Selling, General and Administrative Expenses**

SG&A expenses in fiscal 2003 were \$29.1 million compared with \$23.4 million in fiscal 2002, an increase of \$5.7 million, or 24.2%. This increase was primarily the result of costs associated with operating new stores as well as increases in infrastructure and staff to support our growth. As a percentage of net sales, SG&A expenses increased to 24.7% in fiscal 2003 from 23.1% in fiscal 2002. The increase in SG&A expenses as a percentage of net sales was attributable to an increase in store payroll for new stores, and to the fact that the costs of additional infrastructure and administrative staff to support our growth increased at a faster rate than our net sales.

### **Operating Profit**

As a result of the above factors, operating profit increased by \$491,000, or 7.0%, to \$7.5 million in fiscal 2003 from \$7.0 million in fiscal 2002. As a percentage of net sales, operating profit was 6.3% in fiscal 2003 compared with 6.9% in fiscal 2002.

### **Provision for Income Taxes**

Provision for income taxes was \$2.7 million for fiscal 2003 compared with \$1.1 million for fiscal 2002. Effective November 4, 2002, we terminated our Subchapter S tax election for federal income tax purposes. As a Subchapter S corporation, we were not subject to federal and state income taxes and, accordingly, our financial statements reflected in this prospectus do not include a provision for income taxes for periods prior to November 4, 2002. The provision for income taxes for fiscal 2002 therefore reflects a provision for only the last two months of fiscal 2002, while fiscal 2003 reflects a full year's provision for income taxes. Accordingly, the provision for income taxes in fiscal 2002 is not comparable to the provision for income taxes in fiscal 2003. The effective tax rate was 37.6% for fiscal 2003 compared with 16.1% for fiscal 2002.

### **Net Income**

Net income decreased by \$1.2 million, or 21.6%, to \$4.5 million in fiscal 2003 from \$5.7 million in fiscal 2002. This decrease in net income was due primarily to the termination of our election to be taxed as a Subchapter S corporation, effective November 4, 2002. As a percentage of net sales, net income was 3.8% in fiscal 2003 compared with 5.6% in fiscal 2002. Earnings before income taxes increased by \$375,000, or 5.5%, to \$7.2 million in fiscal 2003 from \$6.8 million in fiscal 2002. As a percentage of net sales, earnings before income taxes decreased to 6.1% in fiscal 2003 from 6.7% in fiscal 2002.

## **Year Ended December 31, 2002 Compared with Year Ended December 31, 2001**

### **Net Sales**

Net sales increased to \$101.4 million for fiscal 2002 from \$84.7 million for fiscal 2001, an increase of \$16.7 million, or 19.7%. This increase in total net sales was due to an increase in net sales from non-comparable stores of approximately \$18.1 million, offset by a decrease of approximately \$1.4 million in comparable store net sales.

Comparable store net sales decreased by 1.1% in fiscal 2002 compared to fiscal 2001, due chiefly to a more difficult economic environment in fiscal 2002. The decrease in our comparable store net sales was primarily attributable to lower net sales of skateboard hardgoods, men's apparel and footwear at our comparable stores, partially offset by higher net sales of accessories and juniors' apparel at those stores. The increase in non-comparable store net sales was primarily due to the opening of 20 new stores subsequent to the end of fiscal 2001.

### ***Gross Margin***

Gross margin for fiscal 2002 was \$30.4 million compared with \$27.2 million for fiscal 2001, an increase of \$3.2 million, or 11.7%. As a percentage of net sales, gross margin decreased to 30.0% in fiscal 2002 from 32.1% in fiscal 2001. The decrease in gross margin as a percentage of net sales was due primarily to the decrease in comparable store net sales for fiscal 2002 compared with fiscal 2001, which resulted in an increase in certain store-level fixed costs, primarily occupancy costs, as a percentage of net sales.

### ***Selling, General and Administrative Expenses***

SG&A expenses in fiscal 2002 were \$23.4 million compared with \$20.5 million in fiscal 2001, an increase of \$2.9 million, or 14.3%. This increase was primarily the result of costs associated with operating new stores as well as increases in infrastructure and staff to support our growth. As a percentage of net sales, SG&A expenses decreased to 23.1% in fiscal 2002 from 24.2% in fiscal 2001. The decrease in SG&A expenses as a percentage of net sales was due to the fact that the costs of additional infrastructure and administrative and corporate staff to support our growth increased at a slower rate than our net sales, reflecting our efforts to contain SG&A expense in light of lower comparable store net sales in fiscal 2002.

### ***Operating Profit***

As a result of the above factors, operating profit increased by \$239,000, or 3.6%, to \$7.0 million in fiscal 2002 from \$6.7 million in fiscal 2001. As a percentage of net sales, operating profit decreased to 6.9% in fiscal 2002 from 7.9% in fiscal 2001.

### ***Provision for Income Taxes***

Provision for income taxes was \$1.1 million for fiscal 2002. This reflects a provision for only the last two months of fiscal 2002 due to the termination of our Subchapter S tax election effective November 4, 2002. There was no provision for income taxes in fiscal 2001, during which we were taxed as a Subchapter S corporation. Accordingly, the provision for income taxes in fiscal 2002 is not comparable to the provision for income taxes in fiscal 2001.

### ***Net Income***

Net income decreased by \$701,000, or 10.9%, to \$5.7 million in fiscal 2002 from \$6.4 million in fiscal 2001. This decrease was in part attributable to the termination of our election to be taxed as a Subchapter S corporation effective November 4, 2002. As a percentage of net sales, net income was 5.6% in fiscal 2002 compared with 7.6% in fiscal 2001. Earnings before income tax increased by \$395,000, or 6.2%, to \$6.8 million in fiscal 2002 from \$6.4 million in fiscal 2001. As a percentage of net sales, earnings before income taxes decreased to 6.7% in fiscal 2002 from 7.6% in fiscal 2001.

### ***Seasonality and Quarterly Results***

We have historically experienced and expect to continue to experience seasonal and quarterly fluctuations in our comparable store sales and operating results. As is the case with many retailers of apparel and related merchandise, our business is subject to seasonal influences. Our net sales and

operating results are typically lower in the first and second quarters of our fiscal year, while the winter holiday and back-to-school periods historically have accounted for the largest percentage of our annual net sales. Quarterly results of operations may also fluctuate significantly as a result of a variety of factors, including the timing of store openings and the relative proportion of our new stores to mature stores, fashion trends and changes in consumer preferences, calendar shifts of holiday or seasonal periods, timing of promotional events, general economic conditions, competition and weather conditions.

The following table sets forth selected unaudited quarterly statement of operations data for the periods indicated. The unaudited quarterly information has been prepared on a basis consistent with the audited consolidated financial statements included elsewhere in this prospectus and includes all adjustments, consisting only of normal recurring adjustments, which we consider necessary for a fair presentation of the information shown. This information should be read in conjunction with the audited consolidated financial statements and the notes thereto appearing elsewhere in this prospectus. The operating results for any fiscal quarter are not indicative of the operating results for a full fiscal year or for any future period and there can be no assurance that any trend reflected in such results will continue in the future.

	Fiscal Year Ended January 31, 2004				Fiscal Year Ended January 29, 2005		
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	First Quarter	Second Quarter	Third Quarter
(Dollars in thousands, except per share data)							
<b>Statement of Operations Data</b>							
Net sales	\$ 19,989	\$ 23,601	\$ 34,448	\$ 39,819	\$ 24,829	\$ 30,615	\$ 45,138
Gross margin	4,909	6,595	11,710	13,323	6,131	9,101	16,185
Operating profit (loss)	\$ (1,006)	\$ (96)	\$ 3,730	\$ 4,833	\$ (930)	\$ 523	\$ 5,576
Net income (loss)	\$ (629)	\$ (90)	\$ 2,307	\$ 2,887	\$ (678)	\$ 239	\$ 3,459
Basic net income (loss) per share	\$ (14.39)	\$ (2.06)	\$ 52.78	\$ 66.05	\$ (15.51)	\$ 5.47	\$ 79.14
Diluted net income (loss) per share	\$ (14.39)	\$ (2.06)	\$ 46.49	\$ 58.18	\$ (15.51)	\$ 4.83	\$ 68.81
Number of stores open at end of period	99	102	105	113	118	129	132
Comparable store sales increase (decrease)	(4.8)%	3.5%	5.4%	9.2%	8.3%	6.8%	9.0%

Comparable store sales percentage changes are calculated by comparing comparable store sales for the applicable fiscal quarter to comparable store sales for the same fiscal quarter in the prior fiscal year. Comparable store sales are based on net sales and stores are considered comparable beginning on the first anniversary of the first day of operations. See "Certain Terms Used in this Prospectus" on page ii for more information about how we compute comparable store sales.

### Liquidity and Capital Resources

Our primary capital requirements are for capital investments, inventory, store remodeling, store fixtures and ongoing infrastructure improvements such as technology enhancements and distribution capabilities. Historically, our main sources of liquidity have been cash flows from operations and borrowings under our revolving credit facility.

The significant components of our working capital are inventory and liquid assets such as cash and receivables, specifically credit card receivables, reduced by short-term debt, accounts payable and accrued expenses. Our working capital position benefits from the fact that we generally collect cash from sales to customers the same day or within several days of the related sale, while we typically have extended payment terms with our vendors.

Our capital requirements include construction and fixture costs related to the opening of new stores and for maintenance and remodeling expenditures for existing stores. Future capital requirements will depend on many factors, including the pace of new store openings, the availability of suitable locations for new stores, and the nature of arrangements negotiated with landlords. In that regard, our net investment to open a new store has varied significantly in the past due to a number of factors, including the

geographic location and size of the new store, and is likely to vary significantly in the future. During fiscal 2005, we expect to spend approximately \$13.5 million on capital expenditures, a majority of which will relate to leasehold improvements and furniture and fixtures for the 35 new stores we plan to open in fiscal 2005, and a smaller amount will relate to equipment, systems and improvements for our distribution center and support infrastructure. However, there can be no assurance that the number of stores that we actually open in fiscal 2005 will not be different from the number of stores we plan to open, or that actual fiscal 2005 capital expenditures will not differ from this expected amount. We expect cash flows from operations, available borrowings under our revolving credit facility and proceeds from this offering will be sufficient to meet our foreseeable cash requirements for at least the next twelve months.

Net cash provided by operating activities for the first nine months of fiscal 2004 was \$3.1 million, primarily related to income from operations, partially offset by changes in working capital resulting primarily from increased inventory levels in excess of increases in accounts payable. Net cash used by operating activities for the first nine months of fiscal 2003 was \$2.8 million, primarily related to increased inventory levels, partially offset by income from operations and increases in accounts payable.

Net cash provided by operating activities in fiscal 2003 was \$7.0 million, primarily related to income from operations, partially offset by an increase in inventory levels and a decrease in accounts payable. Net cash provided by operating activities in fiscal 2002 was \$7.9 million, primarily related to income from operations, partially offset by an increase in inventory levels. Net cash provided by operating activities in fiscal 2001 was \$9.1 million, primarily related to income from operations, partially offset by an increase in inventory levels.

Net cash used in investing activities for the first nine months of fiscal 2004 and fiscal 2003 was \$7.6 million, and \$2.7 million, respectively, in each case primarily related to capital expenditures for new store openings.

Net cash used in investing activities in fiscal 2003 was \$5.9 million, primarily related to capital expenditures for new store openings and existing store renovations. Net cash used in investing activities in fiscal 2002 was \$7.2 million, also primarily related to capital expenditures for new store openings and existing store renovations. Net cash used in investing activities in fiscal 2001 was \$9.0 million, primarily related to capital expenditures for new store openings, existing store renovations and an advance to a shareholder.

Net cash provided by financing activities for the first nine months of fiscal 2004 and fiscal 2003 was \$4.8 million and \$5.5 million, respectively, in each case primarily related to net borrowings under our revolving credit facility.

Net cash used in financing activities in fiscal 2003 was \$942,000, primarily related to net repayments of borrowing under our revolving credit facility and net repayments of long-term debt. Net cash provided by financing activities in fiscal 2002 was \$6.3 million, primarily related to the sale of stock to Zumiez Holdings. Net cash used by financing activities in fiscal 2001 was \$3.0 million, primarily related to payment of dividends to our shareholders.

We have a \$20.0 million secured revolving credit facility with a lender. The revolving credit facility provides for the issuance of commercial letters of credit in an amount not to exceed \$7.5 million outstanding at any time and with a term not to exceed 180 days, although the amount of borrowings available at any time under our revolving credit facility is reduced by the amount of letters of credit outstanding at that time. As of October 30, 2004, we had approximately \$6.1 million of borrowings and approximately \$841,000 of letters of credit outstanding under the revolving credit facility. The revolving credit facility bears interest at floating rates based on the lower of the prime rate (4.75% at October 30, 2004) minus a prime margin or the LIBOR rate (2.08% at October 30, 2004) plus a LIBOR margin, with the margin in each case depending on the ratio of our adjusted funded debt (as defined in the loan agreement, as amended) to EBITDAR (as defined in the loan agreement, as amended). The revolving credit facility will expire on July 1, 2006. The borrowing capacity can be increased to \$25.0 million if we request

and if we are in compliance with certain provisions. Our obligations under the revolving credit facility are secured by almost all of our personal property, including, among other things, our inventory, equipment and fixtures. We must also provide financial information and statements to our lender and we must reduce the amount of any outstanding advances under the revolving credit facility to no more than \$5.0 million for a period of at least 30 consecutive days of each year. We pay an annual fee of between 0.1% and 0.2% of any unused amount under our revolving credit facility. Our revolving credit facility also contains financial covenants that require us to meet certain specified financial ratios, including a debt to earnings ratio, an earnings to interest expense ratio and an inventory to debt ratio. We were in compliance with all covenants at January 29, 2005.

### Contractual Obligations and Commercial Commitments

The following table summarizes the total amount of future payments due under certain of our contractual obligations at October 30, 2004 and the amount of those payments due in future periods as of October 30, 2004:

	Payments Due In						
	Total	Fourth Quarter of Fiscal 2004	Fiscal Year				2009 and Beyond
			2005	2006	2007	2008	
(Dollars in thousands)							
Contractual obligations(1)							
Non-cancelable operating lease obligations	\$ 74,906	\$ 2,574	\$ 10,195	\$ 10,115	\$ 9,500	\$ 8,789	\$ 33,733
<b>Total contractual cash obligations</b>	<b>\$ 74,906</b>	<b>\$ 2,574</b>	<b>\$ 10,195</b>	<b>\$ 10,115</b>	<b>\$ 9,500</b>	<b>\$ 8,789</b>	<b>\$ 33,733</b>

(1) The table excludes borrowings under our \$20.0 million revolving credit facility because the line of credit is not classified as long-term debt.

We occupy our retail stores and combined home office and distribution facility under operating leases generally with terms of seven to ten years. Some of our leases have early cancellation clauses, which permit the lease to be terminated if certain sales levels are not met in specific periods. Some leases contain renewal options for periods ranging from one to five years under substantially the same terms and conditions as the original leases. Most of our store leases require payment of a specified minimum rent, plus a contingent rent based on a percentage of the store's net sales in excess of a specified threshold. Amounts in the above table do not include contingent rent. Most of our lease agreements have defined escalating rent provisions, which we have straight-lined over the term of the lease, including any lease renewals deemed to be probable. For certain locations, we receive cash tenant allowances and we have reported these amounts as a deferred liability which is amortized to rent expense over the term of the lease. In addition, most of our leases require payment of real estate taxes, insurance and certain common area and maintenance costs in addition to the future minimum operating lease payments shown in the table above. We amortize our leasehold improvements over the shorter of the useful life of the asset or the lease term.

### Off-Balance Sheet Obligations

Our only off-balance sheet contractual obligations and commercial commitments as of October 30, 2004 relate to operating lease obligations and letters of credit. We have excluded these items from our balance sheet in accordance with generally accepted accounting principles. We presently do not have any non-cancelable purchase commitments. At October 30, 2004, we had outstanding purchase orders to acquire merchandise from vendors for approximately \$25.0 million. These purchases are expected to be financed by cash flows from operations and our revolving credit facility. We have an option to cancel these commitments with no notice prior to shipment. At October 30, 2004, we had \$841,000 of letters of credit outstanding under our revolving credit facility.

## Impact of Inflation

We do not believe that inflation has had a material impact on our net sales or operating results for the past three fiscal years.

## Quantitative and Qualitative Disclosures About Market Risk

During different times of the year, due to the seasonality of our business, we have borrowed under our revolving credit facility. To the extent we borrow under our revolving credit facility, which bears interests at floating rates based either on the prime rate or LIBOR, we are exposed to market risk related to changes in interest rates. At October 30, 2004, we had borrowings of \$6.1 million outstanding under our credit facility at an interest rate of 4.5% per annum. If interest rates were to increase by 100 basis points, for every \$1.0 million outstanding on our revolving credit facility, our operating income would be reduced by approximately \$10,000 per year. We are not a party to any derivative financial instruments.

## Critical Accounting Policies and Estimates

In preparing financial statements in accordance with United States generally accepted accounting principles, or "GAAP," we are required to make estimates and assumptions that have an impact on the assets, liabilities, revenue and expense amounts reported. These estimates can also affect supplemental information disclosed by us, including information about contingencies, risk, and financial condition. We believe, given current facts and circumstances, that our estimates and assumptions are reasonable, adhere to GAAP, and are consistently applied. Inherent in the nature of an estimate or assumption is the fact that actual results may differ from estimates and estimates may vary as new facts and circumstances arise. In preparing the financial statements, we make routine estimates and judgments in determining the net realizable value of accounts receivable, inventory, fixed assets, and prepaid allowances. We believe our most critical accounting estimates and assumptions are in the following areas:

*Valuation of merchandise inventories.* We carry our merchandise inventories at the lower of cost or market. Merchandise inventories may include items that have been written down to our best estimate of their net realizable value. Our decisions to write-down our merchandise inventories are based on our current rate of sale, the age of the inventory and other factors. Actual final sales prices to our customers may be higher or lower than our estimated sales prices and could result in a fluctuation in gross margin. Historically, any additional write-downs have not been significant and we do not adjust the historical carrying value of merchandise inventories upwards based on actual sales experience.

*Leasehold improvements and equipment.* We review the carrying value of our leasehold improvements and equipment for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Measurement of the impairment loss is based on the fair value of the asset or group of assets. Generally, fair value will be determined using valuation techniques, such as the expected present value of future cash flows. The actual economic lives of these assets may be different than our estimated useful lives, thereby resulting in a different carrying value. These evaluations could result in a change in the depreciable lives of those assets and therefore our depreciation expense in future periods.

*Revenue recognition and sales returns reserve.* We recognize revenue upon purchase by customers at our retail store locations or upon shipment for orders placed through our website as both title and risk of loss have transferred. We offer a return policy of generally 30 days and we accrue for estimated sales returns based on our historical sales returns results. The amounts of these sales returns reserves vary during the year due to the seasonality of our business. Actual sales returns could be higher or lower than our estimated sales returns due to customer buying patterns that could differ from historical trends.

*Stock-based compensation.* We account for our employee compensation plans under the recognition and measurement provisions of Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations. We amortize stock-based compensation using the straight-line

method over the vesting period of the related options, which is either five or eight years. We have recorded deferred stock-based compensation representing the difference between the option exercise price and the fair value of our common stock on the grant date for financial reporting purposes. We determined the fair value of our common stock based upon several factors, including the market capitalization of similar retailers, management and third party estimates, and the expected valuation we would obtain in an initial public offering. Had different assumptions or criteria been used to determine the fair value of our common stock, different amounts of stock-based compensation could have been reported.

Pro forma information regarding net income (loss) attributable to common stockholders and net income (loss) per share attributable to common stockholders is required in order to show our net income (loss) as if we had accounted for employee stock options under the fair value method of SFAS No. 123, as amended by SFAS No. 148. This information is contained in note 2 to our financial statements included elsewhere in this prospectus. The fair values of options and shares issued pursuant to our option plans at each grant date were estimated using the minimum-value method, which requires us to make certain assumptions regarding dividend payments, risk-free interest rates and the options' expected terms. Had different assumptions or criteria been used to determine the fair value of our common stock, different amounts of pro-forma stock-based compensation could have been reported.

### **Recently Issued Accounting Pronouncements**

In November 2004, the Financial Accounting Standards Board, or "FASB," issued Statement of Financial Accounting Standards No. 151, "Inventory Costs—an Amendment of ARB No. 43, Chapter 4." This statement clarifies the accounting for abnormal amounts of idle facility expense, freight, handling costs and spoilage, requiring these items be recognized as current-period charges. In addition, this statement requires that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. The provisions of this statement are effective for inventory costs incurred during fiscal years beginning after June 15, 2005 and will become effective for us beginning with our fiscal year ending in January 2007. The effect of adopting this statement is not expected to be significant to our financial position and results of operations.

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 123R, "Share-Based Payment (Revised 2004)." This statement addresses the accounting for share-based payment transactions in which a company receives employee services in exchange for the company's equity instruments or liabilities that are based on the fair value of the company's equity securities or may be settled by the issuance of these securities. SFAS 123R eliminates the ability to account for share-based payments using APB 25, "Accounting for Stock Issued to Employees" and generally requires that such transactions be accounted for using a fair value method. The provisions of this statement are effective for fiscal periods beginning after June 15, 2005 and will become effective for us beginning with the third quarter of our fiscal year ending in January 2006. We have not yet determined which transition method we will use to adopt SFAS 123R. The full impact that the adoption of this statement will have on our financial position and results of operations will be determined by share-based payments granted in future periods but will increase the compensation expense that would otherwise have been recognized in accordance with APB 25. In addition, outstanding unvested options will result in additional compensation expense that otherwise would only have been recognized on a pro-forma basis.

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 153, "Exchanges of Non-Monetary Assets." This statement refines the measurement of exchanges of non-monetary assets between entities. The provisions of this statement are effective for fiscal periods beginning after June 15, 2005 and will become effective for us beginning with the third quarter of our fiscal year ending in January 2006. Historically, we have not transacted significant exchanges of non-monetary assets, but future such exchanges would be accounted for under the standard, when effective.

**Overview**

We are a leading specialty retailer of action sports related apparel, footwear, equipment and accessories operating under the Zumiez brand name. As of January 29, 2005, we operated 140 stores primarily located in shopping malls, giving us a presence in 18 states. Our stores cater to young men and women between the ages of 12 and 24 who seek popular brands representing a lifestyle centered on activities that include skateboarding, surfing, snowboarding, BMX and motocross. We support the action sports lifestyle and promote our brand through a multi-faceted marketing approach that is designed to integrate our brand image with our customers' activities and interests. This approach, combined with our differentiated merchandising strategy, store design, comprehensive training programs and passionate employees, allows us to provide an experience for our customers that we believe is consistent with their attitudes, fashion tastes and identities and is otherwise unavailable in most malls.

Our stores bring the look and feel of an independent specialty shop to the mall by emphasizing the action sports lifestyle through a distinctive store environment and high-energy sales personnel. We seek to staff our stores with store associates who are knowledgeable users of our products, which we believe provides our customers with enhanced customer service and supplements our ability to identify and react quickly to emerging trends and fashions. We design our stores to appeal to teenagers and to serve as a destination for our customers. Most of our stores, which average approximately 2,600 square feet, feature couches and action sports oriented video game stations that are intended to encourage our customers to shop for longer periods of time and to interact with each other and our store associates. To increase customer traffic, we generally locate our stores near busy areas of the mall such as food courts, movie theaters, music or game stores and other popular teen retailers. We believe that our distinctive store concept and compelling store economics will provide continued opportunities for growth in both new and existing markets.

We believe that our customers desire merchandise and fashion that is rooted in the action sports lifestyle and reflects their individuality. We strive to keep our merchandising mix fresh by continuously introducing new brands and styles. Our focus on a diverse collection of brands allows us to quickly adjust to changing fashion trends. The brands we currently offer include Billabong, Burton, DC Shoe, Element, Hurley, Quiksilver, Roxy, RVCA and Volcom, among many others. We believe that our strategic mix of both apparel and hardgoods, including skateboards, snowboards, bindings, components and other equipment, allows us to strengthen the potential of the brands we sell and helps to affirm our credibility with our customers. In addition, we supplement our stores with a select offering of private label apparel and products as a value proposition that we believe complements our overall merchandise selection.

Over our 26-year history, we have developed a corporate culture based on a passion for the action sports lifestyle. Our management philosophy emphasizes an integrated combination of results measurement, training and incentive programs, all designed to drive sales productivity at the individual store associate level. We empower our store managers to make store-level business decisions and consistently reward their success. We seek to enhance the productivity of our employees and encourage their advancement by offering comprehensive in-store, regional and national training programs, which we refer to collectively as "Zumiez University." We have:

- increased our store count from 53 as of the end of fiscal 1999 to 140 as of the end of fiscal 2004;
- improved net sales per store from approximately \$882,000 in fiscal 1999 to approximately \$1.1 million in fiscal 2003, representing a compound annual growth rate of 6.4%;
- maintained net sales per square foot in excess of \$440 for our last four fiscal years ending with fiscal 2003;

- increased net sales from approximately \$44.5 million in fiscal 1999 to approximately \$117.9 million in fiscal 2003, representing a compound annual growth rate of 27.5%;
- increased operating profit from \$3.1 million in fiscal 1999 to \$7.5 million in fiscal 2003, representing a compound annual growth rate of 24.5%; and
- been profitable in every fiscal year of our 26-year history.

In fiscal 2002, the Brentwood Affiliates acquired an indirect minority interest in us through Zumiez Holdings. Since the investment by the Brentwood Affiliates, we have positioned ourselves for accelerated growth by enhancing our infrastructure and deepening our management team. We believe that these initiatives will improve our ability to continue to expand our business.

## Competitive Strengths

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

- *Attractive Lifestyle Retailing Concept.* We target a large and growing population of 12 to 24 year olds, many of whom we believe are attracted to the action sports lifestyle and desire to promote their personal independence and style through the apparel they wear and the equipment they use. We believe that action sports are a permanent and growing aspect of youth culture, reaching not only consumers that actually participate in action sports, but also those who seek brands and styles that fit a desired action sports image. We believe we have developed a brand image that our customers view as consistent with their attitudes, fashion tastes and identity that should allow us to benefit from our market's anticipated growth.
- *Differentiated Merchandising Strategy.* We have created a highly differentiated retailing concept by offering an extensive selection of current and relevant action sports brands encompassing apparel, equipment and accessories. The breadth of merchandise offered at our stores exceeds that offered by many other action sports specialty stores and includes some brands and products that are available within the mall only at our stores. The action sports lifestyle includes activities that are popular at different times throughout the year, providing us the opportunity to shift our merchandise selection seasonally. Many of our customers desire to update their wardrobes and equipment as fashion trends evolve or the action sports season dictates. We believe that our ability to quickly recognize changing brand and style preferences and transition our merchandise offerings allows us to continually provide a compelling offering to our customers.
- *Deep-rooted Corporate Culture.* Our culture and brand image enable us to successfully attract and retain high quality employees who are passionate and knowledgeable about the products we sell. We place great emphasis on customer service and satisfaction, and we have made this a defining feature of our corporate culture. To preserve our culture, our store managers are typically promoted from within and are given extensive responsibility for most aspects of store level management. We provide these managers with the knowledge and tools to succeed through our comprehensive training programs and the flexibility to manage their stores to meet localized customer demand.
- *Distinctive Store Experience.* We strive to provide a convenient shopping environment that is appealing and clearly communicates our distinct brand image. Our stores are designed to reflect an "organized chaos" that we believe is consistent with many teenagers' lifestyles. We seek to attract knowledgeable store associates who identify with the action sports lifestyle and are able to offer superior customer service, advice and product expertise. To further enhance our customers' experience, most of our stores feature areas with couches and action sports oriented video game stations that are intended to encourage our customers to shop for longer periods of time, to interact with each other and our store associates in a familiar and comfortable setting and to visit

our stores more frequently. We believe that our distinctive store environment enhances our image as a leading source for apparel and equipment for the action sports lifestyle.

- *Disciplined Operating Philosophy.* We have an experienced senior management team, with an average of approximately 15 years of experience in retail or related industries as of the end of fiscal 2004. Our management team has built a strong operating foundation based on sound retail principles that underlie our unique culture. Our philosophy emphasizes an integrated combination of results measurement, training and incentive programs, all designed to drive sales productivity down to the individual store associate level. Our comprehensive training programs are designed to provide our managers and store associates with enhanced product knowledge, selling skills and operational expertise. We believe that our merchandising team's immersion in the action sports lifestyle, supplemented with feedback from our customers, store associates and managers, allows us to consistently identify and react to emerging fashion trends. We believe that this, combined with our inventory planning and allocation processes and systems, helps us mitigate markdown risk.
- *High-Impact, Integrated Marketing Approach.* We seek to build relationships with our customers through a multi-faceted marketing approach that is designed to integrate our brand image with the action sports lifestyle. Our marketing efforts focus on reaching our customers in their environment and feature extensive grassroots marketing events, such as the Zumiez Couch Tour, which is a series of interactive sports, music and lifestyle events held at various locations throughout the United States. Our marketing efforts also incorporate local sporting and music event promotions, advertising in magazines popular with our target market, interactive contest sponsorships that actively involve our customers with our brands and products, and distribution of about eight million Zumiez stickers in the past calendar year. Events and activities such as these provide opportunities for our customers to develop a strong identity with our culture and brand. We believe that our immersion in the action sports lifestyle allows us to build credibility with our customers and gather valuable feedback on evolving customer preferences.

## Growth Strategy

We intend to expand our presence as a leading action sports lifestyle retailer by:

- *Opening New Store Locations.* We believe that the action sports lifestyle has national appeal that provides store expansion opportunities throughout the country. Since the end of fiscal 2002, we have opened 42 new stores, including 15 new stores in fiscal 2003 and 27 new stores in fiscal 2004. We have successfully opened stores in diverse markets throughout the United States, which we believe demonstrates the portability and growth potential of our concept. We plan to open approximately 35 stores in fiscal 2005, including stores in our existing markets and in new markets, to take advantage of what we believe to be a compelling economic store model. We plan to continue to increase the size of our average store by opening new store locations that average approximately 3,000 square feet. These larger locations will accommodate an expanded merchandise mix, while maintaining our unique in-store experience and culture.
- *Continuing to Generate Sales Growth through Improved Store Level Productivity.* We seek to maximize our comparable store sales and net sales per square foot by maintaining consistent store-level execution and offering our customers a broad and relevant selection of action sports brands and products. We also intend to continue to expand our brand awareness in an effort to maintain high levels of customer traffic.
- *Enhancing our Operating Efficiency.* As we continue to expand our business and open new stores, we plan to improve our operating results by taking advantage of purchasing economies of scale, leveraging our existing infrastructure and continually optimizing and improving our operations in areas such as inventory and supply chain management. We seek to better leverage our expenses,

particularly general corporate overhead and semi-fixed costs such as occupancy costs, through increases in both comparable store sales and total net sales.

- *Enhancing our Brand Awareness through Continued Marketing and Promotion.* We believe that a key component of our success is the brand exposure that we receive from our marketing events, promotions and activities that embody the action sports lifestyle. These are designed to assist us in increasing brand awareness in our existing markets and expanding into new markets by strengthening our connection with our target customer base. We believe that our marketing efforts have also been successful in generating and promoting interest in our product offerings. In addition, we use our Internet presence, designed to convey our passion for the action sports lifestyle, to increase our brand awareness. We plan to continue to expand our integrated marketing efforts by promoting more events and activities in our existing and new markets, including additional Zumiez Couch Tour destinations.

## The Action Sports Market

We believe that action sports are a permanent and growing aspect of youth culture, reaching not only consumers that actually participate in action sports, but also those who seek brands and styles that fit a desired action sports image. According to Board-Trac, a market research firm, retail sales of skateboard, snowboard and surf/bodyboard apparel, equipment and accessories in the United States were estimated to be approximately \$12.1 billion in 2003. We believe that events such as the ESPN X Games, the inclusion of snowboarding as a medal event in the Winter Olympics and the national recognition of leading board sport athletes have broadened general awareness of the action sports lifestyle. The following table, which is based upon data made available by SGMA International, an industry trade group, indicates the estimated number of U.S. participants in board sports, which we define as skateboarding, snowboarding and surfing, during 2003:

Board Sport	U.S. Participants
Skateboarding	11.1 million
Snowboarding	7.8 million
Surfing	2.1 million

We believe teens and young adults are the primary participants in action sports. This concentrated interest is particularly appealing for us, as teens have significant spending power. According to Teen Research Unlimited, a market research firm, spending by U.S. teens was projected to be \$169 billion in 2004 and has increased at an average of 5% per year over the past seven years. We believe that teens enjoy shopping in malls and purchasing clothing and fashion-related merchandise.

## Merchandising and Purchasing

*Merchandising.* Our goal is to be viewed by our customers, both young men and young women, as the definitive source of merchandise for the action sports lifestyle. We believe that the breadth of merchandise offered at our stores, which includes apparel, footwear, equipment and accessories, exceeds that offered by many other action sports specialty stores at a single location, and makes our stores a single-stop purchase destination for our target customers. Our apparel offerings include tops, bottoms, outerwear and accessories such as caps, belts and sunglasses. Our footwear offerings primarily consist of action sports related athletic shoes and sandals. Our equipment offerings, or hardgoods, include skateboards, snowboards and ancillary gear such as boots and bindings. We also offer a selection of other items, such as miscellaneous novelties and DVDs.

We seek to identify action sports oriented fashion trends as they develop and to respond in a timely manner with a relevant in-store product assortment. We strive to keep our merchandising mix fresh by continuously introducing new brands or styles in response to the evolving desires of our customers. We

also take advantage of the change in action sports seasons during the year to maintain an updated product selection. Our merchandise mix may vary by region, reflecting the specific action sports preferences and seasons in different parts of the country.

We believe that offering an extensive selection of current and relevant brands used and sometimes developed by professional action sports athletes is integral to our overall success. The brands we currently offer include: Billabong, Burton, DC Shoe, Element, Hurley, Quiksilver, Roxy, RVCA and Volcom, among many others. No single brand accounted for more than 7.2% and 4.4% of our net sales in fiscal 2004 and 2003, respectively. We believe that our strategic mix of both apparel and hardgoods, including skateboards, snowboards, bindings, components and other equipment, allows us to strengthen the potential of the brands we sell and affirms our credibility with our customers.

We believe that our ability to maintain an image consistent with the action sports lifestyle is important to our key vendors. Given our scale and market position, we believe that many of our key vendors view us as an important retail partner. This position helps ensure our ability to procure a relevant product assortment and quickly respond to the changing fashion interests of our customers. Additionally, we believe we are presented with a greater variety of products and styles by some of our vendors, as well as certain specially designed items that are only distributed to our stores.

We supplement our merchandise assortment with a select offering of private label products across many of our apparel product categories. Our private label products complement the branded products we sell, and allow us to cater to the more value-oriented customer. For fiscal 2004, 2003 and 2002, our private label merchandise represented approximately 12.8%, 12.6% and 12.0%, respectively, of our net sales.

*Purchasing.* Our merchandising staff consists of a general merchandising manager, planning staff and a staff of buyers and assistant buyers. Our purchasing approach focuses on quality, speed and cost in order to provide timely delivery of merchandise to our stores. We have developed a disciplined approach to buying and a dynamic inventory planning and allocation process to support our merchandise strategy. We utilize a broad vendor base that allows us to shift our merchandise purchases as required to react quickly to changing market conditions. We manage the purchasing and allocation process by reviewing branded merchandise lines from new and existing vendors, identifying emerging fashion trends and selecting branded merchandise styles in quantities, colors and sizes to meet inventory levels established by management. We also coordinate inventory levels in connection with our promotions and seasonality. Our management information systems provide us with current inventory levels at each store and for our company as a whole, as well as current selling history within each store by merchandise classification and by style. We purchase most of our branded merchandise from domestic vendors.

Our merchandising staff remains in tune with the action sports culture by participating in action sports, attending relevant events and concerts, watching action sports related programming and reading action sports publications. In order to identify evolving trends and fashion preferences, our staff spends considerable time analyzing sales data by category and brand down to the SKU level, gathering feedback from our stores and customers, shopping in key markets and soliciting input from our vendors. As part of our feedback collection process, our merchandise team receives merchandise requests from both customers and store associates and meets with our store managers two to three times per year to discuss current customer trends.

We purchase our private label merchandise from independent third parties with the expertise to source through foreign manufacturers in Asia. We have cultivated our private brand sources with a view towards high quality merchandise, production reliability and consistency of fit. We believe that our knowledge of fabric and production costs combined with a flexible sourcing base enables us to buy high-quality private label goods at favorable costs.

## Distribution and Fulfillment

Timely and efficient distribution of merchandise to our stores is an important component of our overall business strategy. We process all of our merchandise through our distribution center in Everett, Washington. At this facility, merchandise is inspected, entered into our computer system, allocated to stores, ticketed when necessary, and boxed for distribution to our stores or segregated in our e-commerce fulfillment area for delivery to our Internet customers. A significant percentage of our merchandise is currently pre-ticketed by our vendors, which allows us to ship merchandise more quickly, reduces labor costs and enhances our inventory management. We continue to work with our vendors to increase the percentage of pre-ticketed merchandise. Each store is typically shipped merchandise five times a week, providing our stores with a steady flow of new merchandise. We currently use United Parcel Service to ship merchandise to our stores. We believe our current distribution infrastructure is sufficient to accommodate our expected store growth and expanded product offerings over the next several years.

## Stores

As of January 29, 2005, we operated 140 stores with an average of approximately 2,600 square feet per store in 18 states. All of our stores are leased and substantially all are located in shopping malls of different types.

The following store list shows the number of stores we operated in each state as of January 29, 2005:

State	Number of Stores
Alaska	2
Arizona	9
California	23
Colorado	10
Idaho	5
Illinois	9
Minnesota	9
Montana	4
Nevada	3
New Jersey	1
New Mexico	4
New York	16
Oregon	10
Texas	1
Utah	10
Washington	21
Wisconsin	2
Wyoming	1

As of January 29, 2005, approximately 75% of our stores had been opened or remodeled within the previous five years, and all of our stores except one had been opened or remodeled within the previous ten years. The following table shows the number of stores (excluding temporary stores that we operate from time to time for special events) opened and closed in each of our last four fiscal years:

Fiscal Year	Stores Opened	Stores Closed	Total Number of Stores at End of Period
2001	17	1	80
2002	19	—	99
2003	15	1	113
2004	27	—	140

*Store design and environment.* We design our stores to create a distinctive and engaging shopping environment that we believe resonates with our customers and reflects an "organized chaos" that is consistent with many teenagers' lifestyles. Our stores feature an industrial look with concrete floors and open ceilings, dense merchandise displays, action sports focused posters and signage and popular music, all of which are consistent with the look and feel of an independent action sports specialty shop. Most of our stores have couches and action sports oriented video game stations that are intended to encourage our customers to shop for longer periods of time, to interact with each other and our store associates and to visit our stores more frequently. Our stores are constructed and finished to allow us to efficiently shift merchandise displays throughout the year as the action sports season dictates. To further enhance our customers' experience, we seek to attract enthusiastic store associates who are knowledgeable about our products and are able to offer superior customer service and expertise. We believe that our store atmosphere enhances our image as a leading provider of action sports lifestyle merchandise.

As of January 29, 2005, our stores averaged 2,600 square feet. We have been, and plan to continue, opening new stores that average 3,000 square feet, slightly larger than our historical average size. These larger stores are intended to enable us to offer an expanded merchandise selection while maintaining our distinctive store environment.

*Expansion Opportunities and Site Selection.* Since the end of fiscal 2002, we have opened 42 stores to enhance our position in existing markets and to enter into new markets, to build our brand awareness and to capitalize on our successful store model. We plan to open 35 new stores in fiscal 2005 and to continue an aggressive pace of new store openings in future years. Our new store openings are planned in both existing and new markets.

In selecting a location for a new store, we target high-traffic mall space with suitable demographics and favorable lease terms. We seek locations near busy areas of the mall such as food courts, movie theaters, music or game stores and other popular teen retailers. We generally locate our stores in malls in which other teen-oriented retailers have performed well. We also focus on evaluating the market and mall-specific competitive environment for potential new store locations. We seek to diversify our store locations regionally and by caliber of mall. We have currently identified a significant number of potential sites for new stores in malls with appropriate market characteristics.

We have successfully and consistently implemented our store concept across a variety of mall classifications and geographic locations. Our new stores opened during fiscal 2003 generated average net sales of approximately \$1.0 million during their first full year of operations. On average, our net investment to open these stores was approximately \$360,000, which includes capital expenditures, net of landlord contributions, and initial inventory, net of payables. However, our net investment to open new stores and net sales generated by new stores vary significantly and depend on a number of factors, including the geographic location and size of those stores. Accordingly, net sales and other operating results for stores that we open or have opened subsequent to the end of fiscal 2003, as well as our net investment to open those stores, may differ substantially from net sales and other operating results and our net investment for the stores we opened in fiscal 2003.

*Store Management, Operations and Training.* We believe that our success is dependent in part on our ability to attract, train, retain and motivate qualified employees at all levels of our organization. We have developed a corporate culture that we believe empowers the individual store managers to make store-level business decisions and consistently reward their success. We are committed to improving the skills and careers of our workforce and providing advancement opportunities for employees, as evidenced by a significant number of our store managers that began their careers with us as store associates.

Our store operations are currently organized into regions and districts. Each region is managed by a regional manager, responsible for approximately 50 stores. We employ one district sales manager per district, responsible for the sales and operations of approximately 10 stores. Each of our stores is typically staffed with one store manager, one or more assistant managers and two or more store associates, depending on seasonality. The number of store associates we employ generally increases during peak selling seasons, particularly the back-to-school and the winter holiday seasons, and will increase to the extent that we open new stores.

We provide our managers with the knowledge and tools to succeed through our comprehensive training programs and the flexibility to manage their stores to meet customer demands. While general guidelines for our merchandise assortments, store layouts and in-store visuals are provided by our home office, we give our store managers substantial discretion to tailor their stores to the individual market and empower them to make store-level business decisions. We design group training programs for our managers, such as our "Zumiez Managers Retreat," to improve both operational expertise and supervisory skills. Our comprehensive training programs are offered at the store, regional and national levels. Our programs allow managers from all geographic locations to interact with each other and exchange ideas to

better operate stores. Our regional, district and store managers are compensated in part based on the sales volume of the store or stores they manage.

Our store associates generally have an interest in the action sports lifestyle and are knowledgeable about our products. Through our training, evaluation and incentive programs, we seek to enhance the productivity of our store associates. Our store associates receive extensive training from their managers to improve their product expertise and selling skills. We evaluate our store associates weekly on measures such as sales per hour, items per transaction and dollars per transaction to ensure consistent productivity, to reward top performers, and to identify potential training opportunities. We provide sales incentives for store associates such as sales-based commissions in addition to hourly wages and our annual "Zumiez 100K" event, which recognizes outstanding sales performance in a resort setting that combines recreation and education. These and other incentive programs are designed to promote a competitive, yet fun, corporate culture that is consistent with the action sports lifestyle we seek to promote.

*Internet Operations.* We use our website primarily as an information source for our customers. Our website provides current information on our upcoming events and promotions, store locations and merchandise selection. We also sell products directly through our website, although Internet sales currently comprise, and are expected to continue to comprise, a small portion of our overall net sales. In fiscal 2004 and fiscal 2003, Internet sales represented less than 1% of our total net sales.

### **Marketing and Advertising**

We seek to reach our target customer audience through a multi-faceted marketing approach that is designed to integrate our brand image with the action sports lifestyle. Our marketing efforts focus on reaching our customers in their environment, and feature extensive grassroots marketing events, such as the Zumiez Couch Tour, which give our customers an opportunity to experience and participate in the action sports lifestyle. Our marketing efforts also incorporate local sporting and music event promotions, advertising in magazines popular with our target market such as Transworld Snowboarding and Transworld Skateboarding, interactive contest sponsorships that actively involve our customers with our brands and products, and the distribution of about eight million Zumiez stickers in the past calendar year. We believe that our immersion in the action sports lifestyle allows us to build credibility with our target audience and gather valuable feedback on evolving customer preferences.

Our grassroots marketing events are built around the demographics of our customer base and offer an opportunity for our customers to develop a strong identity with our brand and culture. For example, the Zumiez Couch Tour is a series of entertainment events that includes skateboarding demonstrations from top professionals, autograph sessions, competitions and live music, and has featured some of today's most popular teenage personalities in action sports and music. The Zumiez Couch Tour provides a high-impact platform where customers can interact with some of their favorite action sports athletes and vendors can showcase new products. Recently, our Zumiez Couch Tour stop at the Mall of America in Bloomington, Minnesota attracted over 20,000 attendees. We also offer promotions and contests such as the "Zumiez and Atticus Battle of the Bands," which provides amateur bands the opportunity to compete against one another for a chance to win Zumiez gift certificates and have their winning track produced on an Atticus CD sampler.

### **Management Information Systems**

Our management information systems provide integration of store, merchandising, distribution, financial and human resources functions. We use software licensed from ANT USA for merchandise planning and software licensed from Apropos Retail, which was recently acquired by CRS Retail Systems, Inc., that is used for SKU and classification inventory tracking, purchase order management, merchandise distribution, automated ticket making and sales audit functions. Our financial systems are licensed from ACC PAC and Best FAS and are used for general ledger, accounts payable, payroll,

budgeting, financial reporting and asset management. We believe that our information systems are scalable, flexible and have the capacity to accommodate our current growth plans.

Sales are updated daily in our merchandising reporting systems by polling sales information from each store's point-of-sale, or "POS," terminals. Our POS system consists of registers providing processing of retail transactions, price look-up, time and attendance and e-mail. Sales information, inventory tracking and payroll hours are uploaded to our central host system. The host system downloads price changes, performs system maintenance and provides software updates to the stores through automated nightly two-way electronic communication with each store. We evaluate information obtained through nightly polling to implement merchandising decisions, including product purchasing/reorders, markdowns and allocation of merchandise on a daily basis.

In addition to our home office staff, each of our regional and district managers can access relevant business information, including current and historical sales by store, district and region, transaction information and payroll data.

## **Competition**

The teenage and young adult retail apparel, hardgoods and accessories industry is highly competitive. We compete with other retailers for vendors, teenage and young adult customers, suitable store locations and qualified store associates and management personnel. In the softgoods markets, which includes apparel, accessories and footwear, we currently compete with other teenage-focused retailers such as Abercrombie & Fitch Co., Aeropostale, Inc., American Eagle Outfitters, Inc., Anchor Blue Clothing Company, Charlotte Russe Inc., Claire's Stores, Inc., Forever 21, Inc., Hollister Co., Hot Topic, Inc., Old Navy, Inc., Pacific Sunwear of California, Inc., The Buckle, Inc., The Wet Seal, Inc. and Urban Outfitters, Inc. In addition, in the softgoods markets we compete with independent specialty shops, department stores and direct marketers that sell similar lines of merchandise and target customers through catalogs and e-commerce. In the hardgoods markets, which includes skateboards, snowboards, bindings, components and other equipment, we compete directly or indirectly with the following categories of companies: other specialty retailers that compete with us across a significant portion of our merchandising categories, such as local snowboard and skate shops; large-format sporting goods stores and chains, such as Big 5 Sporting Goods Corporation, Dick's Sporting Goods, Inc., Sport Chalet, Inc. and The Sports Authority Inc., which operates stores under the brand names Sports Authority, Gart Sports, Oshman's and Sportmart; and Internet retailers.

Competition in our sector is based on, among other things, merchandise offerings, store location, price and the ability to identify with the customer. We believe that we compete favorably with many of our competitors based on our differentiated merchandising strategy, compelling store environment and deep-rooted culture. However, some of our competitors are larger and have substantially greater financial, marketing and other resources than we do. See "Risk Factors —We may be unable to compete favorably in the highly competitive retail industry, and if we lose customers to our competitors, our sales could decrease."

## **Properties**

In February 2005, we completed our move from the 49,000 square foot combined home office and distribution facility that we occupied since 1994 to a new, 87,000 square foot combined home office and distribution facility, both in Everett, Washington. We occupy the new facility under a lease expiring in July 2012. We have an option to extend the term of this lease for up to two additional five-year periods. All of our stores, encompassing approximately 372,000 total square feet as of the end of fiscal 2004, are occupied under operating leases. The store leases range for a term of five to ten years and we are generally responsible for payment of property taxes and utilities, common area maintenance and marketing fees.

## **Trademarks**

"Zumiez," "Free World," "O-Three" and "Limelight" are among our trademarks registered with the United States Patent and Trademark Office. We regard our trademarks as valuable and intend to maintain such marks and any related registrations. We are currently in the process of filing an application to register the "Empyre" and "Empyre Girl" marks. We are not aware of any claims of infringement or other challenges to our right to use our marks in the United States. We vigorously protect our trademarks. We also own numerous domain names which have been registered with Corporation for Assigned Names and Numbers.

## **Employees**

As of January 29, 2005, we employed approximately 426 full-time and approximately 1,076 part-time employees, of which approximately 147 were employed at our home office and approximately 1,355 at our store locations. However, the number of part-time employees fluctuates depending on our seasonal needs and, in fiscal 2004, varied from between approximately 1,076 and 1,927 part-time employees. None of our employees are represented by a labor union and we consider our relationship with our employees to be good.

## **Legal Proceedings**

From time to time, we become involved in litigation relating to claims arising from our ordinary course of business. We are not currently party to any legal proceedings that we believe could have a material adverse effect on our business.

## MANAGEMENT

### Our Directors and Executive Officers

The following table sets forth certain information about our directors and executive officers as of the date of this prospectus.

Name	Age	Position
Thomas D. Champion	56	Chairman of the Board
Richard M. Brooks	45	President, Chief Executive Officer and Director
Brenda I. Morris	39	Chief Financial Officer
Lynn K. Kilbourne	42	General Merchandising Manager
Thomas E. Davin	47	Director
William M. Barnum, Jr	50	Director

Thomas D. Champion, 56, was one of our co-founders and has served on our board of directors since our inception in 1978. Mr. Champion has held various senior management positions during this time, including serving as our Chairman since June 2000. From November 1970 until August 1978, he held various management positions with JC Penney Company. Mr. Champion holds a B.A. in Political Science from Seattle University. Mr. Champion serves as the Board Chair of the Alaska Wilderness League, a Washington, D.C. based environmental group, and the Treasurer of the Northwest Ecosystem Alliance, a Bellingham, Washington based environmental group.

Richard M. Brooks, 45, has served as our President and Chief Executive Officer since June 2000. From August 1993 through June 2000, he served as a Vice President and our Chief Financial Officer. From November 1989 until February 1992, Mr. Brooks was with Interchecks, Inc., a subsidiary of Bowater PLC, as a finance officer. Mr. Brooks was with Deloitte, Haskins & Sells, currently known as Deloitte & Touche, from July 1982 to March 1989. Mr. Brooks holds a B.A. in Business from the University of Puget Sound. Mr. Brooks has served on the University of Puget Sound Board of Trustees from May 2002 to the present where he has served on its Finance and Facilities Committee and its Audit Committee.

Brenda I. Morris, 39, has served as our Chief Financial Officer since April 2003. From November 1999 until April 2003, she was with K2 Corporation as the Vice President of Finance. Ms. Morris has also held a senior management position with UnionBay Sportswear. Ms. Morris holds a B.S. in Business from Pacific Lutheran University and an M.B.A. from Seattle University. Ms. Morris is a certified public accountant in Washington and a certified management accountant. Ms. Morris is a member of the Journal of Accountancy Review Board for the American Institute of Certified Public Accountants. Ms. Morris serves on the Board of Washington Business Week, a program of the Foundation for Private Enterprise Education serving high school students, where she has served on its Audit Committee and as its Treasurer.

Lynn K. Kilbourne, 42, has served as our General Merchandising Manager since September 2004. From July 1991 until May 2001, she was with Banana Republic, a subsidiary of Gap, Inc., in various senior management positions. In 2002 and 2003, Ms. Kilbourne worked as a retail industry consultant with Strategy Consulting. Ms. Kilbourne holds a B.A. in Economics and Political Science from Yale University and an M.B.A. from the Harvard University Graduate School of Business Administration.

Thomas E. Davin, 47, has served on our board of directors since November 2002 and is President and Chief Operating Officer of Panda Restaurant Group, Inc., a leading Chinese quick service restaurant chain with more than 700 restaurants. Prior to joining Panda Restaurant Group, Inc., Mr. Davin served as the Operating Partner of Brentwood Private Equity III, LLC, a middle-market private equity firm, or "Brentwood Private Equity III." Mr. Davin is a Director of Oakley Inc. (NYSE "OO") and serves as Chairman of Oakley's Nominating and Corporate Governance Committee and Chairman of Oakley's Audit Committee. From 1993 to 2000 Mr. Davin was a senior executive with Taco Bell Corporation, a division of

YUM! Brands, Inc. (NYSE "YUM"), and served as its Chief Operating Officer from 1997 to 2000. Mr. Davin earned an M.B.A., with distinction, from the Harvard University Graduate School of Business Administration. Mr. Davin is a graduate of Duke University and served as a U.S. Marine Corps officer from 1979 to 1985.

William M. Barnum, Jr., 50, is a General Partner at Brentwood Private Equity III, where he co-founded the firm's private equity effort. Prior to joining Brentwood Private Equity III in 1984, Mr. Barnum worked at Morgan Stanley & Co. in the investment banking division, where he served as Assistant to the President and also provided investment banking advisory services. He is a graduate of Stanford University, and a graduate of Stanford Law School and Stanford Graduate School of Business. Presently, Mr. Barnum is a director of Bay Travelgear, Inc., Exhale Enterprises Inc., Filson Holdings, Inc., FleetPride Corporation, Oriental Trading Company, Inc., Quiksilver Corporation and ThreeSixty Asia Ltd.

### **Board Structure and Composition**

Our board of directors currently consists of four members. Currently, the board of directors has determined that only Mr. Davin qualifies as an independent director under the rules of The Nasdaq Stock Market. Mr. Davin was previously affiliated with the Brentwood Affiliates, who are among our significant shareholders. We intend to appoint one additional independent director within 90 days, and at least two additional independent directors within one year, following this offering to comply with applicable SEC and The Nasdaq Stock Market independence requirements. It is our intention to be in full and timely compliance with all applicable rules of the SEC and The Nasdaq Stock Market with respect to the independence of our directors and we intend to avail ourselves of the transition periods provided under the applicable rules of the SEC and The Nasdaq Stock Market for issuers listing in conjunction with their initial public offering.

Effective upon the completion of this offering, our board of directors will be divided into three classes of directors, each serving staggered three-year terms as follows:

- Class I consisting of \_\_\_\_\_, whose initial term expires at the annual meeting of shareholders to be held in 2006;
- Class II consisting of \_\_\_\_\_, whose initial term expires at the annual meeting of shareholders to be held in 2007; and
- Class III consisting of \_\_\_\_\_ and \_\_\_\_\_, whose initial terms expire at the annual meeting of shareholders to be held in 2008.

Upon expiration of the term of a class of directors, directors for that class will be elected for a new three-year term at the annual meeting of shareholders in the year in which such term expires. Each director's term is subject to the election and qualification of his successor, or his earlier death, resignation or removal. The authorized number of directors may be changed by resolution duly adopted by at least a majority of our entire board of directors and, subject to certain exceptions, any vacancies on our board of directors may be filled only by the affirmative vote of a majority of the directors then in office. Any increase or decrease in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. This classification of our board of directors will make it more difficult for a third party to acquire control of our company.

Prior to the completion of this offering, Messrs. Barnum, Brooks, Campion and Davin had the right, in certain cases, to sit on our board of directors pursuant to the terms of our bylaws and a stockholders' agreement. These board representation rights terminate upon the completion of this offering.

## Board Committees

Prior to the completion of this offering, our board of directors will have established an audit committee and a compensation committee and, following the completion of this offering, will establish a governance and nominating committee. The composition of our board committees will comply, when required, with the applicable rules of the SEC and The Nasdaq Stock Market. Under these rules, our board committees must initially have one member who meets the applicable SEC and The Nasdaq Stock Market independence requirements, a majority of the members of each committee must meet these independence requirements within 90 days following this offering, and all committee members must meet these independence requirements within one year after this offering.

### *Audit Committee.*

Prior to the completion of this offering, we will have an audit committee that will have responsibility for, among other things:

- overseeing management's maintenance of our accounting policies and financial reporting and our disclosure practices;
- overseeing management's establishment and maintenance of our system of internal controls;
- overseeing management's establishment and maintenance of processes regarding our compliance with applicable laws, regulations and corporate policy;
- reviewing our annual and quarterly financial statements prior to their filing with the SEC and prior to the release of our results of operations; and
- reviewing the performance and qualifications of our independent accountants and making recommendations to the board of directors regarding the appointment or termination of the independent accountants and considering and approving any non-audit services proposed to be performed by the independent accountants.

The audit committee will have the power to investigate any matter brought to its attention within the scope of its duties and to retain counsel for this purpose where appropriate.

Mr. Davin will serve as the sole initial member of our audit committee and we plan to nominate a second independent member to our audit committee within 90 days following the completion of this offering and a third independent member within one year following the completion of this offering so that all of our audit committee members will be independent under applicable rules of the SEC and The Nasdaq Stock Market. Our board of directors has determined that Mr. Davin is an "audit committee financial expert" under applicable SEC rules and has the required financial sophistication pursuant to the rules of The Nasdaq Stock Market.

### *Governance and Nominating Committee.*

After the completion of this offering, we will establish a governance and nominating committee. The governance and nominating committee will have responsibility for, among other things:

- recommending persons to be selected by the board as nominees for election as directors and as chief executive officer;
- assessing our directors' and our board's performance;
- recommending director compensation and benefits policies; and
- considering and recommending to the board other actions relating to corporate governance.

Prior to the completion of this offering, we will have a compensation committee. The compensation committee will have responsibility for, among other things:

- reviewing key employee compensation policies, plans and programs;
- monitoring performance and compensation of our officers and other key employees; and
- preparing recommendations and periodic reports to the board of directors concerning these matters.

Mr. Barnum, who is not an independent director, and Mr. Davin, who is an independent director, will serve as initial members of our compensation committee. We expect to replace Mr. Barnum with an independent director within 90 days after this offering and to add a third independent director to our compensation committee within one year after this offering.

#### **Compensation Committee Interlocks and Insider Participation**

Prior to the completion of this offering and our establishment of a compensation committee, Messrs. Barnum and Davin participated in deliberations of our board of directors concerning executive officer compensation. Neither Mr. Barnum nor Mr. Davin, who will serve as the initial members of our compensation committee, serves as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

#### **Code of Business Conduct and Ethics**

Our board of directors has adopted a code of business conduct and ethics applicable to our directors, executive officers, including our chief financial officer and other of our senior financial officers, and employees, in accordance with applicable rules and regulations of the SEC and The Nasdaq Stock Market.

#### **Board Compensation**

For the fiscal year ended January 29, 2005, the individuals serving on our board of directors who were not our employees did not receive any compensation. After the completion of this offering, we intend to pay our non-employee directors an annual retainer of \$                      for their service on our board of directors and an additional annual retainer of \$                      for each committee on which they serve as a member. We intend to reimburse all directors for reasonable expenses incurred to attend meetings of our board of directors or committees. In addition, non-employee directors are eligible to receive equity awards under our 2005 Incentive Plan.

#### **Executive Compensation**

The following table sets forth the total compensation awarded, paid or earned for services rendered to us in all capacities during fiscal 2004 by our chief executive officer and our three other most highly compensated executive officers. These executives are referred to as the "named executive officers" elsewhere in this prospectus.

## Summary Compensation Table

Name and Principal Position	Annual Compensation			Long Term Compensation	
	Salary	Bonus	Other Annual Compensation	Securities Underlying Options	All Other Compensation
Thomas D. Campion, Co-Founder and Chairman	\$ 200,000	\$ 25,000	—	—	—
Richard M. Brooks, President and Chief Executive Officer	175,000	25,000	—	—	—
Brenda I. Morris, Chief Financial Officer	175,000	25,000	—	—	—
Lynn K. Kilbourne, General Merchandising Manager	54,619(1)	—	\$ 40,678(2)	—	—

(1) Ms. Kilbourne became our General Merchandising Manager in September of 2004. Her annual base salary is \$200,000.

(2) Consists of moving expense reimbursements.

## Stock Option Grants in Fiscal 2004

The following table sets forth information with respect to stock options granted to each of our named executive officers during fiscal 2004 and includes the potential realizable value, which is the exercise price before taxes associated with exercise, over the entire term of the options. This determination assumes options are exercised at the end of their terms, based on assumed annually compounded rates of stock appreciation of 5% and 10% and based on the exercise price per share. These assumed rates of appreciation comply with the rules of the SEC and do not represent our estimate of future common stock prices. Actual gains, if any, on stock option exercises will depend on the future performance of our common stock. We granted options to purchase a total of \_\_\_\_\_ shares of common stock during fiscal 2004.

Options granted in fiscal 2004 to the named executive officers were granted under our 2004 Option Plan, the material terms of which are further described below. All options granted to the named executive officers are options to purchase our common stock. All options were granted at or above fair market value as determined in good faith by our board of directors on the date of grant. There were no option exercises during fiscal 2004. The named executive officers did not exercise any options in fiscal 2004.

	Individual Grants				Potential Realizable Value at Assumed Annual Stock Price Appreciation Rate for Option Term	
	Number of Securities Underlying Options	Percentage of Total Options Granted in Fiscal 2004	Exercise Price Per Share	Expiration Date	5%	10%
Thomas D. Campion	—	—	—	—	—	
Richard M. Brooks	—	—	—	—	—	
Brenda I. Morris	—	—	—	—	—	
Lynn K. Kilbourne(1)	—	—	—	—	—	

(1) Twenty percent of the options vest at the one-year anniversary of the option grant and then 1/48<sup>th</sup> of the remaining options vest each month thereafter.

## Employment Agreements and Change of Control Provisions

On November 4, 2002, we entered into an Executive Agreement with Richard M. Brooks, pursuant to which he serves as our President and Chief Executive Officer. The agreement has no fixed term and terminates upon the death or disability of Mr. Brooks or upon written notice from either party. Under the agreement, Mr. Brooks receives an annual base salary of \$175,000 and he is eligible to be considered for an annual discretionary bonus of up to \$100,000 and future stock option grants. The agreement further provides that if we terminate Mr. Brooks' employment without cause or if he terminates his employment for good reason, he will continue to receive his base salary until he accepts employment with another employer, but in no event longer than 18 months after the termination of his employment. In addition, the agreement prohibits Mr. Brooks, during his employment with us and for the longest time period permitted by law thereafter, from disclosing confidential information; requires Mr. Brooks to transfer to us any inventions he develops during his employment; and prohibits Mr. Brooks from competing with us in geographic regions in the United States in which we conduct business or from hiring our employees for 18 months after the termination of his employment.

## Stock Based Plans

### *1993 Stock Option Plan*

Our board of directors adopted the 1993 Stock Option Plan (the "1993 Option Plan") on December 1, 1997 and our shareholders approved it on December 1, 1997. The 1993 Option Plan will remain in effect until all options granted under the plan have been exercised or terminated, but no additional option grants could be made under the 1993 Option Plan after July 30, 2004. The 1993 Option Plan provided for the grant of nonqualified stock options to executive officers and key employees.

*Share Reserve.* The aggregate number of shares of common stock that may be issued pursuant to awards granted under the 1993 Option Plan will not exceed \_\_\_\_\_ shares. As of January 29, 2005, options to purchase \_\_\_\_\_ shares of common stock were outstanding under the 1993 Option Plan and \_\_\_\_\_ shares of common stock had been issued under the 1993 Option Plan.

*Administration.* A committee of the board of directors administers the 1993 Option Plan. Subject to the terms of the 1993 Option Plan, the committee determined grant recipients, grant dates, the numbers of stock options to be granted and the terms and conditions of the stock options, including the period of their exercisability, vesting and the exercise price.

*Stock Options.* Nonqualified stock options were granted pursuant to stock option agreements. The committee determined the exercise prices for stock options, which were at least 100% of the fair market value of the shares of common stock underlying the stock options on the date such stock options were granted, and such stock options are not exercisable after the expiration of ten years from the date of grant. The committee determined the vesting period and term of stock options granted under the 1993 Option Plan. Upon the death of an optionee, any options exercisable on the date of death may be exercised by the optionee's estate or the optionee's beneficiary for a period of one year after the date of the optionee's death. Upon the termination of an optionee's employment relationship with us by reason of retirement or permanent disability, an optionee may, within 12 months from the date of termination, exercise his or her stock options to the extent they are exercisable during such 12-month period. Other than in the case of termination by death, disability or retirement, all options held by an optionee shall terminate upon the termination of the optionee's employment relationship with us. An optionee may not transfer a nonqualified stock option other than by will or the laws of descent and distribution.

*Adjustments to Capital Structure.* In the event of a dividend or other distribution, recapitalization, merger, consolidation, split-up, combination, exchange of shares or the like, the committee may adjust the number of shares that may be delivered under the 1993 Option Plan and the number and price of the shares covered by each outstanding stock option grant.

*Amendment and Termination.* The committee may amend the 1993 Option Plan or modify stock option awards in response to changes in securities or other laws or to comply with stock exchange rules at any time. The committee may also terminate or modify the plan at any time.

#### *2004 Stock Option Plan*

Our board of directors adopted the 2004 Option Plan on June 7, 2004 and our shareholders have approved it. Unless sooner terminated by the board of directors, the 2004 Option Plan will terminate on June 7, 2014, the tenth anniversary of the date that the plan was adopted by our board of directors. The 2004 Option Plan provides for the grant of incentive stock options and nonqualified stock options, which may be granted to our executive officers and key employees.

*Share Reserve.* The aggregate number of shares of common stock that may be issued pursuant to stock options granted under the 2004 Option Plan is \_\_\_\_\_ shares. Shares subject to stock option grants under the 2004 Option Plan that are forfeited or expire prior to the termination of the 2004 Option Plan will remain available for issuance under the 2004 Option Plan. As of January 29, 2005, options to purchase \_\_\_\_\_ shares of common stock were outstanding under the 2004 Option Plan and \_\_\_\_\_ additional shares of common stock were available for future grants under the 2004 Option Plan. As of January 29, 2005, no shares of common stock had been issued under the 2004 Option Plan.

*Administration.* A committee of the board of directors administers the 2004 Option Plan. Subject to the terms of the 2004 Option Plan, the committee determines recipients, grant dates, the numbers and types of stock options to be granted and the terms and conditions of the stock options, including the period of their exercisability and vesting. Subject to the limitations set forth below, the committee also determines the exercise price of stock options granted.

*Stock Options.* Nonqualified stock options, or "nonqualified options," and incentive stock options, or "incentive options," are granted pursuant to stock option agreements. The committee determines the exercise price for stock options. Subject to the limitations set forth below regarding persons owning more than ten percent of our stock ("ten percent shareholders"), the exercise price for incentive options will be at least 100% of the fair market value of the shares of common stock underlying the incentive stock option on the date such incentive option is granted and such incentive options will not be exercisable after the expiration of ten years from the date of grant. For ten percent shareholders, the exercise price for incentive options will be at least 110% of the fair market value of the shares of common stock underlying an incentive option on the date such incentive option is granted and such incentive option will not be exercisable after the expiration of five years from the date of grant. The committee determines the vesting period and term of stock options granted under the 2004 Option Plan.

Unless the terms of an optionee's stock option agreement provide otherwise, stock options granted under the 2004 Option Plan expire: 90 days after voluntary or involuntary termination of an optionee's employment (other than in the case of death, disability or discharge for misconduct that is willfully or wantonly harmful to us); upon discharge for misconduct that is willfully or wantonly harmful to us; or 12 months after an optionee's death or disability. In no event may a stock option be exercised after the expiration of its term, as set forth in the stock option agreement. Acceptable consideration for the purchase of common stock issued upon the exercise of a stock option will either be cash or, with our approval, common stock owned by the optionee.

Generally, an optionee may not transfer a nonqualified option other than by will or the laws of descent and distribution unless the nonqualified option agreement provides otherwise. Optionees may not transfer incentive options except by will or by the laws of descent and distribution and incentive options are exercisable during the lifetime of the optionee only by the optionee.

*Recapitalization.* The number of shares for which stock options may be granted under the 2004 Option Plan and the exercise price and the number of shares covered by an outstanding stock option will

be adjusted for increases and decreases in the number of our outstanding shares resulting from stock splits and other capital adjustments or the payment of stock dividends.

*Changes in Control.* In the event of a change in control of us, all outstanding stock options under the 2004 Option Plan may be assumed or substituted by any surviving or acquiring entity, and the optionee may exercise his or her vested stock options. If the surviving or acquiring entity elects not to assume or substitute for such outstanding stock options, all outstanding stock options that have not been exercised shall terminate upon the consummation of the change in control.

*Amendment and Termination.* Our board of directors may amend (subject to shareholder approval as required by applicable law), suspend or terminate the 2004 Option Plan at any time.

#### *2005 Equity Incentive Plan*

Our board of directors adopted the 2005 Incentive Plan on January 24, 2005 and our shareholders approved it on \_\_\_\_\_, 2005. The 2005 Incentive Plan will become effective upon the completion of this offering. Unless sooner terminated by the board of directors, the 2005 Incentive Plan will terminate on \_\_\_\_\_, 2015, the day before the tenth anniversary of the date that the plan was approved by our shareholders. The 2005 Incentive Plan provides for the grant of incentive stock options, nonqualified stock options, stock bonuses, restricted stock awards, restricted stock units and stock appreciation rights, which may be granted to our employees (including officers), directors and consultants.

*Share Reserve.* The aggregate number of shares of common stock that may be issued pursuant to awards granted under the 2005 Incentive Plan will not exceed \_\_\_\_\_ plus (1) the number of shares that are subject to awards under the 2005 Incentive Plan, the 1993 Option Plan or the 2004 Option Plan that have been forfeited or repurchased by us or that have otherwise expired or terminated, and (2) an annual increase on the first business day of each fiscal year, such that the total number of shares available for issuance under the 2005 Incentive Plan shall equal 15% of the total number of shares of common stock outstanding on such business day; provided, that with respect to such annual increase, our board of directors may designate a lesser number of additional shares or no additional shares during such fiscal year. In no event, however, will the aggregate number of shares available for award under our 2005 Incentive Plan exceed \_\_\_\_\_.

The following types of shares issued under the 2005 Incentive Plan may again become available for the grant of new awards under the 2005 Incentive Plan: restricted stock issued under the 2005 Incentive Plan that is forfeited or repurchased by us prior to it becoming fully vested; shares withheld for taxes; shares tendered to us to pay the exercise price of an option; and shares subject to awards issued under the 2005 Incentive Plan that have expired or otherwise terminated without having been exercised in full.

*Administration.* The board of directors will administer the 2005 Incentive Plan and may delegate this authority to administer the plan to a committee. Subject to the terms of the 2005 Incentive Plan, the plan administrator, which is our board of directors or its authorized committee, determines recipients, grant dates, the numbers and types of stock awards to be granted and the terms and conditions of the stock awards, including the period of their exercisability and vesting. Subject to the limitations set forth below, the plan administrator will also determine the exercise price of options granted, the purchase price for restricted stock and restricted stock units, and, if applicable, the strike price for stock appreciation rights.

*Stock Options.* Nonqualified options and incentive options are granted pursuant to stock option agreements. The plan administrator determines the exercise price for stock options. Subject to the limitations set forth below regarding persons owning more than ten percent of our stock or of any of our affiliates ("ten percent shareholders"), the exercise price for nonqualified options and incentive options will be at least 100% of the fair market value of the shares of common stock underlying the option on the date such option is granted. Incentive options will not be exercisable after the expiration of ten years from

the date of grant. For ten percent shareholders, the exercise price for incentive options will be at least 110% of the fair market value of the shares of common stock underlying an incentive option on the date such incentive option is granted and such incentive option will not be exercisable after the expiration of five years from the date of grant. The plan administrator determines the vesting period and term of stock options granted under the 2005 Incentive Plan.

Unless the terms of an optionee's stock option agreement provide otherwise, if an optionee's service relationship with us, or any of our affiliates, ceases due to disability or death or the optionee dies within a specified period after termination of service, the optionee, or his or her beneficiary, may exercise any vested options for a period of 12 months in the event of disability or 18 months in the event of death, after the date such service relationship ends or after death, as applicable. If an optionee's relationship with us, or any of our affiliates, ceases for any reason other than disability or death, the optionee may exercise any vested options for a period of three months from cessation of service, unless the terms of the stock option agreement provide for earlier or later termination. In no event, however, may an option be exercised after the expiration of its term, as set forth in the stock option agreement.

Acceptable consideration for the purchase of common stock issued upon the exercise of a stock option will either be cash, common stock owned by the optionee that has been held by the optionee for at least six months, a deferred payment arrangement, a cashless exercise or other legal consideration approved by the plan administrator. The plan administrator may grant stock options with provisions entitling the optionee to a further option in the event the optionee exercises the option evidenced by the option agreement, in whole or in part, by surrendering other shares of our common stock.

Generally, an optionee may not transfer a nonqualified option other than by will or the laws of descent and distribution unless the nonstatutory option agreement provides otherwise. Optionees may not transfer incentive options except by will or by the laws of descent and distribution and incentive options are exercisable during the lifetime of the optionee only by the optionee. Optionees may designate a beneficiary who may exercise the option following the optionee's death.

*Stock Bonus Awards.* Stock bonus awards are granted pursuant to stock award agreements. The consideration for stock bonus awards may be a recipient's performance of services for us or our affiliates. Stock bonus awards may be subject to a repurchase right in accordance with a vesting schedule determined by the plan administrator. Upon termination of a recipient's service with us, stock bonus awards that are unvested as of the date of such termination may be reacquired by us after such time as it would not result in negative accounting consequences. Stock bonus awards may be transferable only to the extent provided in a stock award agreement.

*Restricted Stock and Restricted Stock Units.* A restricted stock award or restricted stock unit award is the grant of shares of our common stock either currently (in the case of restricted stock) or at a future date (in the case of restricted stock units) at a price determined by the plan administrator. Restricted stock and restricted stock units are granted pursuant to stock award agreements. Upon termination of a recipient's service with us, shares of restricted stock that are unvested as of the date of such termination may be reacquired by us subject to the terms of the restricted stock award agreement. Restricted stock awards may be subject to a repurchase right in accordance with a vesting schedule determined by the board of directors. Restricted stock and restricted stock units may be transferable only to the extent provided in a stock award agreement.

*Stock Appreciation Rights.* Stock appreciation rights entitle a participant to receive a payment equal in value to the difference between the fair market value of a share of stock on the date of exercise of the stock appreciation right over the grant price of the stock appreciation right. Stock appreciation rights are granted pursuant to stock award agreements. The plan administrator may grant stock appreciation rights in connection with stock options or in a stand-alone grant. The plan administrator determines the term and grant price for a stock appreciation right. A stock appreciation right granted under the 2005 Incentive

Plan vests at the rate specified in the stock award agreement. With respect to stock appreciation rights that are granted in connection with stock options, such stock appreciation rights shall be exercisable only to the extent that the related stock option is exercisable and such stock appreciation rights shall expire no later than the date on which the related stock options expire. If a recipient's relationship with us, or any of our affiliates, ceases for any reason, any unvested stock appreciation rights will be forfeited and any vested stock appreciation rights will be automatically redeemed.

*Capitalization Adjustments.* In the event of a dividend or other distribution (whether in the form of cash, shares of common stock, other securities, or other property), recapitalization, stock split, reorganization, merger, consolidation, exchange of our common stock or our other securities, or other change in our corporate structure, the plan administrator may adjust the number of shares that may be delivered under the 2005 Incentive Plan and the number and price of the shares covered by each outstanding stock award.

*Changes in Control.* In the event of a change in control of us, all outstanding options and other awards under the 2005 Incentive Plan may be assumed, continued or substituted for by any surviving or acquiring entity. If the surviving or acquiring entity elects not to assume, continue or substitute for such awards, the vesting of such awards held by award holders whose service with us or any of our affiliates has not terminated will be accelerated and such awards will be fully vested and exercisable immediately prior to the consummation of such transaction, and the stock awards shall automatically terminate upon consummation of such transaction if not exercised prior to such event.

*Amendment and Termination.* The plan administrator may amend (subject to shareholder approval as required by applicable law), suspend or terminate the 2005 Incentive Plan at any time.

#### *2005 Employee Stock Purchase Plan*

Our board of directors adopted our Stock Purchase Plan on January 24, 2005 and our shareholders adopted it on \_\_\_\_\_, 2005. The Stock Purchase Plan will become effective upon the completion of this offering.

*Share Reserve.* The Stock Purchase Plan authorizes the issuance of \_\_\_\_\_ shares of common stock pursuant to purchase rights granted to certain of our employees or to employees of any of our subsidiaries that we designate as being eligible to participate.

*Administration.* The compensation committee of the board of directors will administer the Stock Purchase Plan. The Stock Purchase Plan provides a means by which employees may purchase our common stock. We will implement the Stock Purchase Plan by offering to our eligible employees the right to purchase shares of common stock. Under the Stock Purchase Plan, we will conduct consecutive six-month offerings with a new offering commencing January 1 and July 1 of each year. The offerings will continue until the Stock Purchase Plan is terminated or until the shares reserved for issuance under the plan have been issued.

Unless otherwise determined by the compensation committee, common stock may be purchased by the employees participating in the Stock Purchase Plan at a price per share equal to the lesser of (1) 85% of the fair market value of a share of our common stock on the date of commencement of the offering (or the first trading day after the offering if the offering does not commence on a trading day) or (2) 85% of the fair market value of a share of our common stock on the last trading day of the offering. Generally, all regular employees, including officers, who are customarily employed by us or by any of our designated affiliates for more than 20 hours per week and more than five months per calendar year may participate in the Stock Purchase Plan and may contribute (through payroll deductions) up to 15% of their earnings for the purchase of common stock under the Stock Purchase Plan, as determined by the compensation committee. If an employee's employment relationship with us, or any of our affiliates, ceases for any reason, the balance in the account of such participating employee will be paid to the employee or his or

her estate. Employees may not transfer or encumber either the payroll deductions credited to their account or any rights to purchase shares other than by will or the laws of descent and distribution.

*Limitations.* Eligible employees may be granted rights to participate under the Stock Purchase Plan only if, together with any other rights granted under other employee stock purchase plans, they do not permit such employee to purchase our common stock at an accrued rate exceeding \$25,000 of the fair market value of such stock for each calendar year in which such rights are outstanding. No employee shall be eligible for the grant of any rights under the Stock Purchase Plan if immediately after such rights are granted, such employee owns five percent or more of the total combined voting power or value of all of our classes of capital stock or of the capital stock of any subsidiary of ours.

*Capitalization Adjustments.* In the event of a reorganization, recapitalization, stock split, stock dividend, combination of shares, merger, consolidation, offerings of rights, or any other change in the structure of our common stock, the compensation committee may make such adjustments, if any, as it may deem appropriate in the number, kind and the price of shares available for purchase under the Stock Purchase Plan, and in the number of shares which an employee is entitled to purchase.

*Changes in Control.* In the event of a change in control, the outstanding rights to purchase our common stock granted under the Stock Purchase Plan may be assumed or an equivalent purchase right may be substituted by the successor entity. In the event that the successor entity refuses to assume or substitute for the purchase rights, or continue the purchase right, any offering then in progress shall be shortened by setting a new ending date for such offering, which date will be prior to the date of the proposed transaction. The compensation committee will notify each participant in the offering in writing prior to the new ending date for such offering that the end of the offering has been changed and that the participant's purchase rights will be exercised automatically on such new ending date for the offering.

*Amendment and Termination.* The compensation committee may at any time amend or terminate the Stock Purchase Plan.

### **Limitation on Liability and Indemnification**

Sections 23B.08.500 through 23B.08.600 of the Washington Business Corporation Act, or the "WBCA," authorize Washington corporations to indemnify and advance expenses to directors, officers, employees or agents of the corporation under certain circumstances against liabilities and expenses incurred in legal proceedings involving such individuals because of their being or having been a director, officer, employee or agent of the corporation. Section 23B.08.560 of the WBCA authorizes a corporation to agree to so indemnify and obligate itself to advance or reimburse expenses without regard to the limitations of Section 23B.08.510 through 23B.08.550 of the WBCA; provided, however, that no such indemnity shall be made for or on account of any:

- acts or omissions of the director, officer, employee or agent finally adjudged to be intentional misconduct or a knowing violation of law;
- conduct of the director, officer, employee or agent finally adjudged to be in violation of Section 23B.08.310 of the WBCA (which section relates to unlawful distributions); or
- transaction with respect to which it was finally adjudged that such director, officer, employee or agent personally received a benefit in money, property, or services to which the director, officer, employee or agent was not legally entitled.

Furthermore, Section 23B.08.320 of the WBCA authorizes a corporation to limit a director's liability to the corporation or its shareholders for monetary damages for acts or omissions as a director, except in certain circumstances involving (1) acts or omissions of a director that involve intentional misconduct or a knowing violation of law, (2) conduct violating Section 23B.08.310 of the WBCA (which section relates to

unlawful distributions) or (3) any transaction from which the director will personally receive a benefit in money, property or services to which the director is not legally entitled.

Our articles of incorporation and our bylaws provide that we shall indemnify our directors and officers to the fullest extent permitted by applicable law. Our bylaws also provide that we may indemnify our employees and agents to the fullest extent permitted by applicable law. Our articles of incorporation and our bylaws also require advances for expenses for such indemnified individuals who are parties to such a proceeding as provided by applicable law or by written agreements, which written agreement may allow any required determination as to the availability of indemnification to be made by any appropriate person or body consisting of a member or members of our board of directors, any other person or body appointed by the board of directors who is not a party to the particular claim, or independent legal counsel. Our articles of incorporation provide that a director shall not be personally liable to us or to any of our shareholders for monetary damages for conduct as a director pursuant to Section 23B.08.320 of the WBCA, subject to the limitations of that section. Our bylaws also provide that we may maintain, at our expense, insurance to protect us and an indemnified director, officer, employee or agent against any liability, whether or not we would have the power to indemnify such director, officer, employee or agent against the same liability under Sections 23B.08.510 or 23B.08.520 of the WBCA.

We also intend to enter into separate indemnification agreements with each of our directors and officers to effectuate the provisions discussed above and to purchase director and officer liability insurance. The effect of such provisions is to indemnify our directors and officers against all costs, expenses and liabilities incurred by them in connection with any action, suit or proceeding in which they are involved by reason of their affiliation with us, to the fullest extent permitted by law.

**Equity Sales and Related Transactions**

*Zumiez Holdings LLC*

In October and November 2002, we entered into a series of transactions with the Brentwood Affiliates and certain of our shareholders (these transactions are referred to as the "2002 Recapitalization"). As part of the 2002 Recapitalization, we entered into a contribution agreement, or the "Contribution Agreement," and certain other agreements, pursuant to which Zumiez Holdings LLC, a Delaware limited liability company, or "Zumiez Holdings," was formed and substantially all of our then-outstanding shares of capital stock were contributed to Zumiez Holdings. In connection with the 2002 Recapitalization, we paid \$143,000 in fees on behalf of Zumiez Holdings. See note 8 to our financial statements included elsewhere in this prospectus. The initial members of Zumiez Holdings were Brentwood-Zumiez Investors, LLC, an entity controlled by the Brentwood Affiliates, Thomas D. Campion, our Co-Founder and Chairman, Richard M. Brooks, our President and Chief Executive Officer, and John G. Haakenson, our Co-Founder. In addition, Thomas E. Davin and William M. Barnum, Jr., each of whom is currently a member of our Board of Directors, were associated with the Brentwood Affiliates at the time of the 2002 Recapitalization and Mr. Barnum is currently associated with the Brentwood Affiliates. Pursuant to the terms of the Zumiez Holdings limited liability company agreement, or the "Holdings LLC Agreement," Zumiez Holdings will be dissolved and its assets, which consist solely of shares of our common stock, will be distributed to its members immediately prior to the consummation of this offering. Immediately prior to this offering and based on shares outstanding as of January 29, 2005, Zumiez Holdings held approximately % of our outstanding shares of common stock. Information in this prospectus concerning ownership of our common stock by the Brentwood Affiliates and Messrs. Campion, Barnum, Brooks and Haakenson, including the information appearing under "Principal and Selling Shareholders," assumes that all of the shares of our common stock held by Zumiez Holdings have been distributed to the persons entitled to those shares upon its dissolution. The exact number of shares that will be distributed to those persons will depend upon the public offering price of our common stock in this offering. The information in this preliminary prospectus regarding the number of shares of common stock owned by those persons has been calculated based on an assumed public offering price of \$ per share, which is equal to the mid-point of the price range set forth on the cover of this preliminary prospectus, and will change unless the actual public offering price is \$ per share.

*Services Agreement*

In connection with the 2002 Recapitalization, we entered into a Corporate Development and Administrative Services Agreement, dated November 4, 2002, or the "Services Agreement," with Brentwood Private Equity III, pursuant to which we are obligated to pay Brentwood Private Equity III an annual consulting fee, the amount of which fee depends on our adjusted EBITDA, and to reimburse Brentwood Private Equity III for certain expenses. In 2002, 2003 and 2004 we paid Brentwood Private Equity III a consulting fee of \$31,000, \$200,000 and \$200,000, respectively, under the Services Agreement. We also anticipate paying Brentwood Private Equity III a pro-rated consulting fee in 2005 through the date of completion of this offering. We are also obligated under the Services Agreement to pay Brentwood Private Equity III an advisory fee based upon: (1) the aggregate consideration paid by us (A) in connection with an acquisition of all or substantially all of the capital stock, business or assets of another individual or business entity and (B) in connection with any joint venture or minority investment and (2) the amount of any equity interest or similar securities issued by us with the assistance of Brentwood Private Equity III. We are not obligated to pay Brentwood Private Equity III any additional advisory or other fees under the Services Agreement in connection with this offering and the Services Agreement will terminate upon the consummation of this offering.

### *Expense Agreement*

In connection with the 2002 Recapitalization, we entered into an Expense Agreement, dated November 4, 2002, or the "Expense Agreement," with Zumiez Holdings pursuant to which we are obligated to reimburse Zumiez Holdings, or such other parties as Zumiez Holdings may designate, for reasonable expenses incurred in connection with facilitating investments in us. The Services Agreement will terminate upon the consummation of this offering.

### *Redemption Agreements*

In October 2002, in connection with the 2002 Recapitalization, we entered into common stock redemption agreements with Thomas D. Campion, our Co-Founder and Chairman, and Richard M. Brooks, our President and Chief Executive Officer. Pursuant to the terms of our redemption agreement with Mr. Campion, we redeemed \_\_\_\_\_ shares of our common stock held by Mr. Campion for an aggregate purchase price of approximately \$7.7 million, which amount was paid by us through our delivery of a promissory note in the sum of approximately \$6.2 million and the cancellation of a promissory note in the amount of \$1.5 million executed by Mr. Campion in favor of us. Pursuant to the terms of our redemption agreement with Mr. Brooks, we redeemed \_\_\_\_\_ shares of our common stock held by Mr. Brooks for an aggregate purchase price of approximately \$829,000, which amount was paid by us through our delivery of a promissory note in the sum of approximately \$829,000. Each of the promissory notes issued in connection with the redemption agreements has been paid in full.

### *Loans to Executives*

In August 2001, we loaned Thomas D. Campion, our Co-Founder and Chairman, \$1.5 million for which he executed a promissory note that was due and payable in full by September 1, 2002 and which promissory note bore interest at a rate of 6.0% per annum. As described above under "Redemption Agreements," Mr. Campion paid the principal of this promissory note in full.

### *Issuance of Stock to Zumiez Holdings*

In November 2002, in connection with the 2002 Recapitalization, we issued \_\_\_\_\_ shares of our common stock to Zumiez Holdings for an aggregate purchase price of approximately \$7.1 million, which was paid in cash at the closing of the Contribution Agreement. The members of Zumiez Holdings at the time of such issuance were Brentwood-Zumiez Investors, LLC, an entity controlled by the Brentwood Affiliates, Thomas D. Campion, our Co-Founder and Chairman, Richard M. Brooks, our President and Chief Executive Officer, and John G. Haakenson, our Co-Founder. Thomas E. Davin and William M. Barnum, Jr., each of whom is currently a member of our board of directors, were associated with the Brentwood Affiliates at the time of the issuance and sale of our common stock to Zumiez Holdings, and Mr. Barnum is currently associated with the Brentwood Affiliates.

### *Contribution Agreement*

At the closing under the Contribution Agreement:

- The Brentwood Affiliates contributed approximately \$25.3 million to Zumiez Holdings, and Messrs. Campion, Brooks and Haakenson contributed \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ shares of our common stock, respectively, to Zumiez Holdings;
- Zumiez Holdings purchased approximately \_\_\_\_\_ shares of our common stock from us for approximately \$7.1 million and distributed approximately \$13.4 million and \$3.7 million in cash to Messrs. Campion and Haakenson, respectively; and

- after giving effect to the transactions described above, the Brentwood Affiliates received an approximately 43% membership interest in Zumiez Holdings and Messrs. Campion and Brooks received approximately 35% and 22% membership interests, respectively, in Zumiez Holdings.

Under the Contribution Agreement, we agreed to indemnify and hold harmless Zumiez Holdings, its officers, employees, agents, consultants, advisors and other representatives and its controlling persons and affiliates, which include Brentwood-Zumiez Investors, LLC, an entity controlled by the Brentwood Affiliates, Thomas D. Campion, our Co-Founder and Chairman, and Richard M. Brooks, our President and Chief Executive Officer, for certain losses and expenses. Thomas E. Davin and William M. Barnum, Jr., each of whom is currently a member of our board of directors, were associated with the Brentwood Affiliates at the time of the execution of the Contribution Agreement, and Mr. Barnum is currently associated with the Brentwood Affiliates. Except with respect to certain representations and warranties, including representations and warranties related to taxation, our indemnification obligations under the Contribution Agreement will have expired upon consummation of this offering.

#### **Director and Officer Indemnification**

Our articles of incorporation and our bylaws contain provisions limiting the liability of our directors and require that we indemnify our directors to the fullest extent permitted by law. In addition, we intend to enter into agreements to indemnify our directors and executive officers to the fullest extent permitted under Washington law. See "Management—Limitation on Liability and Indemnification."

#### **Registration Rights**

Some of our shareholders are entitled to registration rights. See "Description of Capital Stock—Registration Rights."

#### **Stock Option Grants**

We have granted options to purchase shares of our common stock to our executive officers and directors. See "Management."

## PRINCIPAL AND SELLING SHAREHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock held as of January 29, 2005, and as adjusted to reflect the sale of common stock in this offering for:

- each of our directors;
- each of our named executive officers;
- all of our directors and executive officers as a group;
- each person who we know beneficially owns 5% or more of our common stock; and
- each selling shareholder.

Information in the following table concerning ownership of our common stock by Brentwood-Zumiez Investors, LLC and Messrs. Campion, Brooks and Barnum assumes that all of the shares of our common stock held by Zumiez Holdings have been distributed to the persons and entities entitled to those shares under the terms of its limited liability company agreement. We anticipate that this distribution will occur prior to the closing of this offering. The exact number of shares that will be distributed to these persons and entities will depend upon the public offering price of our common stock in this offering. The information appearing below regarding the number of shares of common stock owned by these persons and entities has been calculated based upon an assumed public offering price of \$ \_\_\_\_\_ per share, which is equal to the mid-point of the price range shown on the cover of this preliminary prospectus, and will change unless the actual public offering price is equal to this assumed public offering price. See "Certain Relationships and Related Transactions—Equity Sales and Related Transactions."

Except as otherwise indicated by footnote, and subject to applicable community property laws, we believe that the beneficial owners of the common stock listed below have sole voting power and investment power with respect to their shares. Beneficial ownership is determined in accordance with the rules of the SEC.

The number of shares of common stock outstanding used in calculating the percentage for each listed person and entity includes common stock underlying options held by the person or entity that are exercisable within 60 days of January 29, 2005 or upon completion of this offering, but excludes common stock underlying options held by any other person or entity. Percentage of beneficial ownership is based on \_\_\_\_\_ shares of common stock outstanding as of January 29, 2005. The address for those individuals

for which an address is not otherwise indicated is c/o Zumiez Inc., 6300 Merrill Creek Parkway, Suite B, Everett, Washington 98203.

Executive Officers and Directors	Shares Beneficially Owned Prior to this Offering		Shares Being Offered(1)	Shares Beneficially Owned After this Offering(1)	
	Number	Percentage		Number	Percentage
Thomas D. Campion					
Richard M. Brooks					
Brenda I. Morris(2)					*
Lynn K. Kilbourne	—	—			
Thomas E. Davin	—	—			
William M. Barnum, Jr.(3)(4)					
All Executive Officers and Directors as a group (6 persons)					

**5% Shareholders:**

Brentwood-Zumiez Investors, LLC(4)

**Other Selling Shareholders:**

\* Represents beneficial ownership of less than 1%.

(1) Assumes that the underwriters' over-allotment option is not exercised. In the event that the underwriters' over-allotment option is exercised in full, then the number of shares being offered by each of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ will increase by \_\_\_\_\_ shares, \_\_\_\_\_ shares and \_\_\_\_\_ shares, respectively, and the number of shares beneficially owned by \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ after this offering will decrease to \_\_\_\_\_ shares, \_\_\_\_\_ shares and \_\_\_\_\_ shares, respectively, or \_\_\_\_\_%, \_\_\_\_\_% and \_\_\_\_\_%, respectively, of the shares to be outstanding immediately after this offering.

(2) Includes \_\_\_\_\_ shares issuable upon exercise of outstanding options exercisable within 60 days of January 29, 2005.

(3) Includes \_\_\_\_\_ shares held by Brentwood-Zumiez Investors, LLC, an entity controlled by the Brentwood Affiliates. William M. Barnum, Jr., one of our directors, is a managing member of Brentwood Private Equity III, LLC.

(4) The membership interests of Brentwood-Zumiez Investors, LLC are held by Brentwood Associates Private Equity III, L.P., Brentwood Associates Private Equity III-A, L.P., and BAPE III Executive Fund, L.P. (collectively, "Brentwood Funds"). Brentwood Private Equity III, LLC is the managing member of each of the Brentwood Funds. Mr. Barnum, one of our directors, is a managing member of Brentwood Private Equity III, LLC, and thus shares voting power and investment power over shares held by Brentwood-Zumiez Investors, LLC. Mr. Barnum disclaims beneficial ownership of the shares held or controlled by Brentwood-Zumiez Investors, LLC except to the extent of his pecuniary interest therein. The address for Brentwood-Zumiez Investors, LLC is 11150 Santa Monica Blvd., Suite 1200, Los Angeles, CA 90025.

## DESCRIPTION OF CAPITAL STOCK

### General

We are authorized to issue \_\_\_\_\_ shares of common stock, par value \$0.01 per share, and \_\_\_\_\_ shares of preferred stock, par value \$0.01 per share. Immediately after this offering, there will be \_\_\_\_\_ shares of common stock outstanding, or \_\_\_\_\_ shares if the underwriters' over-allotment is exercised in full, \_\_\_\_\_ shares of common stock will be issuable upon exercise of outstanding options and no shares of preferred stock will be issued and outstanding, based on shares and options outstanding as of January 29, 2005.

### Common Stock

The holders of our common stock are entitled to one vote per share on all matters submitted to a vote at a meeting of shareholders, except as otherwise required by law or by the terms of any preferred stock we may issue in the future. The holders of our common stock are generally entitled to vote on amendments to our articles of incorporation, except for the designation of a series of preferred stock out of our authorized preferred stock. There are no cumulative voting rights for the election of our directors, which means that the holders of a majority of the outstanding shares of our common stock will be entitled to elect all of our directors. Subject to preferences that may be applicable to any outstanding preferred stock, the holders of our common stock are entitled to receive such dividends, if any, as may be declared by our board of directors out of funds legally available for dividends. In the event of liquidation, dissolution or winding up of us, the holders of our common stock are entitled to share ratably in all assets remaining after payment of or provision for our liabilities, subject to prior rights of preferred stock, if any, then outstanding. Our common stock has no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of our common stock are, and the shares to be sold by us in this offering will be, fully paid and nonassessable.

### Preferred Stock

Pursuant to our articles of incorporation, our board of directors has the authority, without action by our shareholders, to issue up to \_\_\_\_\_ shares of preferred stock. The board of directors may issue this stock from time to time in one or more series and may fix the rights, preferences, privileges and restrictions of each series of preferred stock. Some of the rights and preferences that our board of directors may designate include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences and sinking fund terms. The board of directors may determine the number of shares constituting any series and the designation of such series. Any or all of the rights and preferences selected by our board of directors for any series of preferred stock may be greater than the rights of the common stock. The issuance of preferred stock could adversely affect, among other things, the voting power of holders of common stock and the likelihood that shareholders will receive dividend payments and payments upon our liquidation, dissolution or winding up. The issuance of preferred stock could also have the effect of delaying, deferring or preventing a change in control of us if, for example, our board of directors designated and issued a series of preferred stock in an amount that sufficiently increased the number of outstanding shares to overcome a vote by the holders of our common stock or with rights and preferences that included special voting rights to veto a change in control, merger or similar transaction.

### Registration Rights

On November 4, 2002, we entered into an Amended and Restated Stockholders' Agreement, or the "Stockholders' Agreement," which grants certain holders of our common stock rights with respect to registration of their shares under the Securities Act of 1933. Such registration will permit the resale of those shares in the public market. Under the Stockholders' Agreement, we granted Zumiez Holdings the

right to demand that we register its shares for sale in an initial public offering. Zumiez Holdings exercised that right in connection with this offering. We also granted all of these shareholders certain "piggyback" registration rights to register the shares of common stock owned by them under the Securities Act. The Stockholders' Agreement provides that whenever we propose to register shares of our common stock under the Securities Act (other than on a Form S-4 or Form S-8), then these shareholders, with certain exceptions, will have the right to register their shares of common stock as part of that registration. The registration rights under the Stockholders' Agreement are subject to the rights of the lead underwriters, if any, to reduce or exclude certain shares owned by these shareholders from the registration. The Stockholders' Agreement requires us to pay for all costs and expenses, other than underwriting discounts and commissions and fees and disbursements of counsel for these shareholders, incurred in connection with the registration of shares under the agreement. No shareholder will have any rights under the Stockholders' Agreement to include shares in a registration statement if those shares have (1) already been sold pursuant to a registration statement or pursuant to Rule 144 under the Securities Act, or (2) may be sold pursuant to Rule 144 under the Securities Act, if we have advised that shareholder that we are willing to instruct the transfer agent for our common stock to remove any restrictive legends necessary in connection with that sale.

Immediately after completion of this offering and based on shares outstanding as of January 29, 2005, the holders of approximately \_\_\_\_\_ shares of our outstanding common stock will be entitled to the registration rights described above. In addition, the Stockholders' Agreement provides that all shares of our capital stock acquired by any of those shareholders in the future will also be entitled to these registration rights.

#### **Antitakeover Effects of Washington Law and Certain Provisions of Our Articles of Incorporation and Our Bylaws**

*Washington RCW 23B.19.* Washington law imposes restrictions on certain transactions between a corporation and certain significant shareholders. Chapter 23B.19 of the WBCA prohibits a "target corporation," with certain exceptions, from engaging in certain "significant business transactions" with a person or group of persons that beneficially owns 10% or more of the voting securities of the target corporation (an "acquiring person") for a period of five years after the acquisition of the securities, unless the transaction of securities is approved by a majority of the members of the target corporation's board of directors prior to the time of acquisition. Such prohibited transactions include, among other things, a merger or consolidation with, disposition of assets to, or issuance or redemption of stock to or from, the acquiring person; termination of 5% or more of the employees of the target corporation as a result of the acquiring person's acquisition of 10% or more of the shares; or allowing the acquiring person to receive any disproportionate benefit as a shareholder.

After the five-year period, a "significant business transaction" may occur, as long as it complies with certain "fair price" provisions of the statute. A corporation may not "opt out" of this statute. This provision may have the effect of delaying, deterring or preventing a change in control of us.

*Issuance of preferred stock.* As noted above, our board of directors, without shareholder approval, has the authority under our articles of incorporation to issue preferred stock with rights superior to the rights of the holders of common stock. As a result, preferred stock could be issued quickly and easily, could adversely affect the rights of holders of common stock and could be issued with terms calculated to delay or prevent a change in control or to make removal of management more difficult.

*Election and removal of directors.* Our articles of incorporation provide for the division of our board of directors into three classes, as nearly as equal in number as possible, with the directors in each class serving for three-year terms, and one class being elected each year by our shareholders. In addition, our directors are removable only for cause and, subject to certain exceptions, any vacancies on the board of directors may be filled only by the affirmative vote of a majority of the directors then in office. Because

this system of electing, appointing, removing and replacing directors generally makes it more difficult for shareholders to replace a majority of the board of directors, it may discourage a third party from making a tender offer or otherwise attempting to gain control of us and may maintain the incumbency of the board of directors.

*Approval for certain business combinations.* Our articles of incorporation require that certain business combinations, including a merger, share exchange and the sale, lease, exchange, mortgage, pledge, transfer or other disposition or encumbrance of a substantial part of our assets other than in the usual and regular course of business, be approved by the holders of not less than  $66\frac{2}{3}\%$  of the voting power of all of the then-outstanding shares of the capital stock entitled to vote generally in the election of directors, voting together as a single class.

*Shareholder meetings.* Our articles of incorporation and our bylaws provide that only the board of directors or the chairman of the board of directors may call a special meeting of shareholders. The effect of these provisions is that a shareholder will have to wait until an annual meeting or a special meeting called by the board of directors or the chairman of the board of directors to bring a proposal for shareholder approval.

*Requirements for advance notification of shareholder nominations and proposals.* Our bylaws contain advance notice procedures with respect to shareholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee thereof.

*Amendment of our bylaws.* Our articles of incorporation and our bylaws provide that shareholders can amend our bylaws only upon the affirmative vote of the holders of at least  $66\frac{2}{3}\%$  of the voting power of all of the then-outstanding shares of the capital stock entitled to vote generally in the election of directors, voting together as a single class. Our board of directors can amend our bylaws without shareholder approval.

#### **Transfer Agent And Registrar**

The Transfer Agent and Registrar for our common stock is \_\_\_\_\_.

#### **Nasdaq National Market Quotation**

We have applied to have our shares of common stock quoted on the Nasdaq Stock Market's National Market under the trading symbol "ZUMZ."

## SHARES ELIGIBLE FOR FUTURE SALE

Immediately prior to this offering, there was no public market for our common stock. Future sales of substantial amounts of our common stock in the public market, or the perception that such sales may occur, could adversely affect prevailing market prices of our common stock. Furthermore, because only a limited number of our shares will be available for sale shortly after this offering because of contractual and legal restrictions on resale described below, sales of substantial amounts of common stock in the public market after these restrictions lapse, or the perception that such sales may occur, could adversely affect the prevailing market price and our ability to raise equity capital in the future.

Upon completion of this offering and based on shares outstanding as of January 29, 2005, we will have \_\_\_\_\_ outstanding shares of common stock, assuming no exercise of the underwriters' over-allotment option. All of the shares of common stock sold in this offering will be freely tradable on the date of this prospectus unless purchased by our "affiliates," as that term is defined in Rule 144 promulgated under the Securities Act. In addition, the following table illustrates the times at which shares will be eligible for sale in the public market:

<u>Number of Shares</u>	<u>Date Available for Sale</u>
	90 days after the date we become subject to the reporting requirements of the Securities Exchange Act of 1934, these shares will be saleable under Rule 144 (subject, in some cases, to volume limitations) or Rule 701 under the Securities Act.
	180 days after the date of this prospectus, the 180-day lock-up will be released and these shares are saleable under Rule 144 (subject, in some cases, to volume limitations), Rule 144(k) or Rule 701 under the Securities Act.

We anticipate that we will become subject to the reporting requirements of the Securities Exchange Act of 1934, or the "Securities Exchange Act," on or shortly before the date of this prospectus. The 180 day lock-up period described above may be extended by up to 18 days under certain circumstances and may also be waived as described below. No prediction can be made as to the effect, if any, that sales of shares or the availability of shares for sale in the public markets will have on the market price of our common stock prevailing from time to time. Nevertheless, sales of substantial amounts of our common stock in the public market after the lapse or waiver of the restrictions described in this section, or the perception that sales may occur, could adversely affect the prevailing market price and our ability to raise equity capital in the future at a time and price that we deem appropriate.

### Lock-Up Agreements

We, all of our directors and officers, the selling shareholders and all of our other shareholders have agreed that, without the prior written consent of Wachovia Capital Markets, LLC and Piper Jaffray & Co., we and they will not, among other things, offer or sell any shares of our common stock during the period beginning on and including the date of this prospectus through and including the date that is the 180<sup>th</sup> day after the date of this prospectus, except for sales of shares to the underwriters and subject to certain other exceptions. The 180-day lock-up period may be extended by an additional 18 days under certain circumstances described under "Underwriting." Wachovia Capital Markets, LLC and Piper Jaffray & Co. may, in their sole discretion and at any time or from time to time, without notice, release all or any portion of the shares subject to the lock-up agreements. See "Underwriting—Lock-up Agreements."

## Rule 144

In general, under Rule 144 as currently in effect, beginning 90 days after we become subject to the reporting requirements of the Securities Exchange Act, but subject to the lock-up agreements described above, if applicable, a person (or persons whose shares are aggregated) who has purchased our common stock from us or any "affiliate" of ours at least one year previously would be entitled to sell within any three-month period a number of shares that does not exceed the greater of 1% of the number of shares of common stock then outstanding or the average weekly trading volume of the common stock as reported through the Nasdaq National Market during the four calendar weeks preceding the filing of a Form 144 with respect to such sale. Sales under Rule 144 are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us. In addition, a person who is not deemed to have been our "affiliate" at any time during the 90 days preceding a sale and who has beneficially owned for at least two years the shares proposed to be sold would be entitled to sell such shares under Rule 144(k) without regard to the volume limitations and other requirements described above.

## Rule 701

Our employees, directors and officers who acquired our common stock prior to the date we become subject to the reporting requirements of the Securities Exchange Act under written compensatory benefit plans or written contracts relating to the compensation of those persons may rely on Rule 701 with respect to the resale of that stock. In general, Rule 701 permits resales of shares issued under compensatory benefit plans and contracts commencing 90 days after we became subject to the reporting requirements of the Securities Exchange Act in reliance upon Rule 144, but without compliance with certain restrictions, including the holding period requirements contained in Rule 144. Accordingly, subject to the lock-up agreements described above, if applicable, beginning 90 days after we become subject to the reporting requirements of the Securities Exchange Act, persons who are not our "affiliates" may resell those shares subject only to the manner of sale provisions of Rule 144 and persons who are our "affiliates" may resell those shares without compliance with Rule 144's minimum holding period requirements.

## Registration Rights

Immediately after completion of this offering and based on shares outstanding as of January 29, 2005, the holders of approximately \_\_\_\_\_ shares of our outstanding common stock will have the right, under the Stockholders' Agreement, to require that we include those shares in any registration statement we file under the Securities Act, subject to exceptions. Such registration will permit the resale of those shares in the public markets. In addition, all shares of capital stock which those stockholders may acquire in the future will also be entitled to similar registration rights. See "Description of Capital Stock—Registration Rights" for a description of such rights.

## Stock Plans

As of January 29, 2005, options to purchase \_\_\_\_\_ shares of common stock were issued and outstanding and \_\_\_\_\_ additional shares of our common stock were available for future awards under our stock option plans. In addition, upon completion of this offering, an aggregate of \_\_\_\_\_ additional shares of our common stock initially will be available for future awards under our 2005 Incentive Plan and Stock Purchase Plan, plus scheduled annual increases and other potential increases in the number of shares reserved for issuance under our 2005 Incentive Plan. See "Management—Stock Based Plans." We intend to file a registration statement under the Securities Act covering all of the shares of common stock reserved for issuance under our outstanding stock option and stock purchase plans. We expect this registration statement to be filed and to become effective as soon as practicable after this offering. Such registration will permit the resale of shares issued upon the exercise of those stock options or pursuant to those stock purchase plans in the public market without restriction under the Securities Act.

## UNDERWRITING

Subject to the terms and conditions of the underwriting agreement, we and the selling shareholders have agreed to sell to the underwriters named below, and the underwriters, for whom Wachovia Capital Markets, LLC and Piper Jaffray & Co. are acting as joint book-running managers and representatives, have severally agreed to purchase, the respective number of shares of common stock appearing opposite their names below:

Underwriter	Number of Shares
Wachovia Capital Markets, LLC	
Piper Jaffray & Co.	
William Blair & Company, L.L.C.	
Total	

The underwriters have agreed to purchase all of the shares shown in the above table if any of those shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the non-defaulting underwriters may be increased or the underwriting agreement may be terminated.

The shares of common stock are offered by the underwriters, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by counsel for the underwriters and other conditions. The underwriters reserve the right to withdraw, cancel or modify the offer and to reject orders in whole or in part.

The underwriters have informed us that they will not confirm sales to accounts over which they exercise discretionary authority in excess of 5% of the total number of shares offered by them.

**Commissions and Discounts.** The underwriters have advised us that they propose to offer the shares of common stock to the public at the public offering price appearing on the cover page of this prospectus and to certain dealers at that price less a concession of not more than \$ \_\_\_\_\_ per share, of which up to \$ \_\_\_\_\_ may be reallocated to other dealers. After the initial offering, the public offering price, concession and reallocation to dealers may be changed.

The following table shows the public offering price, underwriting discounts and commissions and proceeds, before expenses, to us and to the selling shareholders, both on a per share basis and in total, assuming either no exercise or full exercise by the underwriters of their over-allotment option.

	Total	
Per Share	Without Option	With Option
Public offering price		
Underwriting discounts and commissions		
Proceeds, before expenses, to us		
Proceeds, before expenses, to the selling shareholders		

We estimate that the expenses of this offering payable by us, not including underwriting discounts and commissions, will be approximately \$ \_\_\_\_\_ million. We have agreed to pay the expenses of the selling shareholders incurred in connection with this offering, other than underwriting discounts and commissions payable in respect of the shares sold by the selling shareholders and fees and disbursements of counsel for the selling shareholders.

**Over-allotment Option.** We and the selling shareholders have granted to the underwriters an option, exercisable during the 30-day period after the date of this prospectus, to purchase up to

and additional shares of common stock, respectively, at the public offering price per share less the underwriting discounts and commissions per share shown on the cover page of this prospectus. To the extent that the underwriters exercise this option, each underwriter will have a firm commitment, subject to conditions, to purchase approximately the same percentage of those additional shares that the number of shares of common stock to be purchased by that underwriter as shown in the above table represents as a percentage of the total number of shares shown in that table.

**Indemnity.** We and the selling shareholders have agreed to indemnify the underwriters against specified liabilities, including liabilities under the Securities Act of 1933, or to contribute to payments that the underwriters may be required to make in respect of those liabilities.

**Lock-up Agreements.** We, all of our directors and officers, the selling shareholders and all of our other shareholders, which directors, officers and shareholders will own a total of approximately % of our outstanding common stock (or % if the underwriters' over-allotment option is exercised in full) immediately upon completion of this offering, based on shares outstanding as of January 29, 2005, have agreed that, without the prior written consent of Wachovia Capital Markets, LLC and Piper Jaffray & Co., we and they will not, during the period beginning on and including the date of this prospectus through and including the date that is the 180th day after the date of this prospectus, directly or indirectly:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of any shares of our common stock or other capital stock or any securities convertible into or exercisable or exchangeable for our common stock or other capital stock;
- in the case of us, file or cause the filing of any registration statement under the Securities Act of 1933 with respect to any shares of our common stock or other capital stock or any securities convertible into or exercisable or exchangeable for our common stock or other capital stock (other than registration statements on Form S-8 relating to benefit plans described in clause (2), or securities issued in a transaction described in clause (4), of the immediately following paragraph); or
- enter into any swap or other agreement, arrangement or transaction that transfers to another, in whole or in part, directly or indirectly, any of the economic consequences of ownership of our common stock or other capital stock or any securities convertible into or exercisable or exchangeable for our common stock or other capital stock,

whether any transaction described in any of the foregoing bullet points is to be settled by delivery of our common stock or other capital stock, other securities, in cash or otherwise. Moreover, if:

- during the last 17 days of the 180-day restricted period referred to above we issue an earnings release or material news or a material event relating to us occurs, or
- prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day period,

the restrictions described in the immediately preceding sentence will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event, as the case may be, unless Wachovia Capital Markets, LLC and Piper Jaffray & Co. waive, in writing, that extension.

The restrictions described in the immediately preceding paragraph do not apply to:

- (1) the sale of shares to the underwriters;
- (2) the issuance by us of shares, or options to purchase shares, of our common stock pursuant to stock based plans described above under "Management—Stock Based Plans," as those plans are in effect on the date of this prospectus;

- (3) the issuance by us of shares of common stock upon the exercise of stock options outstanding on the date of this prospectus or issued after the date of this prospectus under stock based plans referred to in clause (2) above, as those stock options and plans are in effect on the date of this prospectus;
- (4) in the case of any director or officer or any shareholder that is a natural person, bona fide gifts for charitable or estate planning purposes;
- (5) in the case of any shareholder that is a partnership or limited liability company, transfers to any partner or member, as the case may be, of such partnership or limited liability company if, in any such case, such transfer is not for value; and
- (6) the issuance by us of shares of common stock or other capital stock or any securities convertible into or exchangeable or exercisable for common stock or other capital stock (A) in order to acquire assets or equity of one or more businesses by merger, asset purchase, stock purchase or otherwise or (B) in connection with a strategic transaction involving another company, so long as, in each case described in clause (A) above, the shares of common stock, other capital stock or other securities are issued to the stockholders or other equity owners of the applicable business and, in each case described in clause (B) above, the shares of common stock, other capital stock or other securities are issued directly to such company or to the stockholders or other equity owners of such company.

provided that, in the case of any transfer or issuance described in clause (4), (5) or (6) above, (A) the transferee, donee or recipient, as the case may be, executes and delivers to the representatives, not later than one business day prior to such transfer, gift or issuance, a written agreement wherein it agrees to be subject to the restrictions described in the immediately preceding paragraph, subject to the applicable exceptions described above in this paragraph.

Wachovia Capital Markets, LLC and Piper Jaffray & Co. may, in their sole discretion and at any time or from time to time, without notice, release all or any portion of the shares or other securities subject to the lock-up agreements.

**Quotation on the Nasdaq National Market.** We have filed for an application for our common stock to be quoted on the Nasdaq National Market under the symbol "ZUMZ."

**Stabilization.** The representatives have advised us that certain persons participating in this offering may engage in transactions, including stabilizing bids, syndicate covering transactions or the imposition of penalty bids, which may have the effect of stabilizing or maintaining the market price of our common stock at a level above that which might otherwise prevail in the open market.

- A "stabilizing bid" is a bid for or the purchase of the common stock on behalf of the underwriters for the purpose of fixing or maintaining the price of the common stock.
- A "syndicate covering transaction" is a bid for or the purchase of the common stock on behalf of the underwriters to reduce a short position incurred by the underwriters in connection with this offering.
- A "penalty bid" is an arrangement permitting the underwriters to reclaim the selling concession otherwise accruing to an underwriter or selling group member in connection with this offering if the common stock originally sold by that underwriter or selling group member is purchased by the underwriters in a syndicate covering transactions and has therefore not been effectively placed by that underwriter or selling group member.

The representatives have advised us that these transactions may be effected on the Nasdaq National Market or otherwise. Neither we nor any of the underwriters makes any representation that the underwriters will engage in any of the transactions described above and these transactions, if commenced,

may be discontinued without notice. Neither we nor any of the underwriters makes any representation or prediction as to the direction or magnitude of the effect that the transactions described above, if commenced, may have on the market price of our common stock.

**Directed Share Program.** At our request, the underwriters have reserved up to 5% of the shares of common stock being sold in this offering for sale to our friends, business associates and other related persons at the initial public offering price through a directed share program. The number of shares of our common stock available for sale to the general public in this offering will be reduced to the extent that these reserved shares are purchased by these persons. Any reserved shares not purchased by these persons will be offered by the underwriters to the general public on the same basis as the other shares in this offering.

**Pricing of this Offering.** Prior to this offering, there has been no public market for our common stock. Consequently, the initial public offering price for our common stock was determined by negotiations among us, the selling shareholders and the representatives of the underwriters. The factors considered in determining the initial public offering price included:

- prevailing market conditions;
- our results of operations and financial condition;
- financial and operating information and market valuations with respect to other companies that we and the representatives of the underwriters believe to be comparable or similar to us;
- the present state of our development; and
- our future prospects.

An active trading market for our common stock may not develop. It is possible that the market price of our common stock after this offering will be less than the initial public offering price. In addition, the estimated initial public offering price range appearing on the cover of this preliminary prospectus is subject to change as a result of market conditions or other factors.

## LEGAL MATTERS

Preston Gates & Ellis LLP, Seattle, Washington, will pass upon the validity of the common stock offered hereby. Sidley Austin Brown & Wood LLP, San Francisco, California, will act as counsel to the underwriters. Sidley Austin Brown & Wood LLP will rely, as to all matters of Washington law, on Preston Gates & Ellis LLP.

## EXPERTS

The financial statements as of December 31, 2002, and January 31, 2004, for the fiscal years ended December 31, 2001, December 31, 2002 and January 31, 2004 and for the one month ended February 1, 2003 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission, or SEC, a registration statement on Form S-1 under the Securities Act with respect to the common stock offered in this offering. This prospectus does not contain all of the information set forth in the registration statement. For further information with respect to Zumiez Inc. and the common stock offered in this offering, we refer you to the registration statement and to the attached exhibits and schedules. Statements made in this prospectus concerning the contents of any document referred to in this prospectus are not complete. With respect to

each such document filed as an exhibit to the registration statement, we refer you to the exhibit for a more complete description of the matters involved.

You may inspect our registration statement and the attached exhibits and schedules without charge at the public reference facilities maintained by the SEC at 450 Fifth Street, NW, Washington, D.C. 20549. You may obtain copies of all or any part of our registration statement from the SEC upon payment of prescribed fees. You may obtain information on the operation of the public reference room by calling the SEC at 1-800-SEC-0330.

Our SEC filings, including the registration statement and the exhibits filed with the registration statement, are also available from the SEC's website at [www.sec.gov](http://www.sec.gov), which contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

You can obtain a copy of any of our filings, at no cost, by writing to or telephoning us at:

Zumiez Inc.  
6300 Merrill Creek Parkway, Suite B  
Everett, WA 98203  
Attention: Investor Relations  
(425) 551-1500

# INDEX TO FINANCIAL STATEMENTS

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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Shareholders of  
Zumiez Inc.

In our opinion, the accompanying balance sheets and the related statements of operations, of changes in shareholders' equity and of cash flows present fairly, in all material respects, the financial position of Zumiez Inc. (the "Company") at January 31, 2004 and December 31, 2002, and the results of its operations and its cash flows for each of the years ended January 31, 2004, December 31, 2002, December 31, 2001 and the one month ended February 1, 2003 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As further described in note 1 to the financial statements, the Company changed its fiscal year end as of February 2, 2003.

/s/ PRICEWATERHOUSECOOPERS LLP

Seattle, Washington  
June 2, 2004

**ZUMIEZ INC.**  
**BALANCE SHEETS**  
(In thousands, except share amounts)

	December 31, 2002	January 31, 2004	October 30, 2004 (unaudited)	Pro forma October 30, 2004 (unaudited)
<b>Assets</b>				
Current assets				
Cash and cash equivalents	\$ 7,722	\$ 578	\$ 897	
Receivables	900	1,039	1,430	
Inventory	16,455	20,802	34,595	
Prepaid expenses and other	291	395	546	
Deferred tax assets	593	668	1,044	
Total current assets	25,961	23,482	38,512	
Leasehold improvements and equipment, net	16,647	18,076	24,014	
Total assets	\$ 42,608	\$ 41,558	\$ 62,526	
<b>Liabilities and Shareholders' Equity</b>				
Current liabilities				
Current portion of long-term debt	\$ 1,359	\$ 544	\$ —	
Revolving credit facility	—	300	6,125	
Notes payable to shareholders	7,094	—	—	
Book overdraft	—	4,464	3,982	
Trade accounts payable	12,337	9,273	18,876	
Accrued payroll and payroll taxes	2,167	1,609	2,161	
Income taxes payable	1,056	1,846	1,312	
Deferred rent and tenant allowances	1,192	1,596	4,224	
Other accrued liabilities	2,266	2,152	2,844	
Total current liabilities	27,471	21,784	39,524	
Long-term debt, less current portion	544	—	—	
Deferred tax liabilities	457	1,336	1,491	
Total liabilities	\$ 28,472	\$ 23,120	\$ 41,015	
Commitments and contingencies (Note 9)				
Shareholders' equity				
Preferred stock, par value \$.01 per share, 7,500 shares authorized; none issued and outstanding	—	—	—	
Common stock, par value \$.01 per share, 92,000 shares authorized; 43,710 shares issued and outstanding	44	44	44	
Employee stock options	—	—	54	
Retained earnings	14,235	18,541	21,561	
Receivable from parent	(143)	(147)	(148)	
Total shareholders' equity	14,136	18,438	21,511	
Total liabilities and shareholders' equity	\$ 42,608	\$ 41,558	\$ 62,526	

The accompanying notes are an integral part of these financial statements

**ZUMIEZ INC.**  
**STATEMENTS OF OPERATIONS**  
(In thousands, except share and per share amounts)

	Fiscal Year Ended December 31,		One Month Ended February 1, 2003	Fiscal Year Ended January 31, 2004	Nine Months Ended	
	2001	2002			November 1, 2003 (unaudited)	October 30, 2004 (unaudited)
Net sales	\$ 84,735	\$ 101,391	\$ 6,392	\$ 117,857	\$ 78,039	\$ 100,582
Cost of goods sold	57,534	71,017	4,575	81,320	54,824	69,165
Gross margin	27,201	30,374	1,817	36,537	23,215	31,417
Selling, general and administrative expenses	20,470	23,404	2,013	29,076	20,587	26,248
Operating profit (loss)	6,731	6,970	(196)	7,461	2,628	5,169
Other income (expense)	(3)	148	—	8	4	5
Interest expense	(322)	(317)	(12)	(293)	(245)	(218)
Earnings (loss) before income taxes	6,406	6,801	(208)	7,176	2,387	4,956
Provision (benefit) for income taxes	—	1,096	(39)	2,701	799	1,936
Net income (loss)	\$ 6,406	\$ 5,705	\$ (169)	\$ 4,475	\$ 1,588	\$ 3,020
Basic net income (loss) per share	\$ 163.52	\$ 127.79	\$ (3.87)	\$ 102.38	\$ 36.33	\$ 69.09
Diluted net income (loss) per share	\$ 130.23	\$ 108.65	\$ (3.87)	\$ 90.34	\$ 31.98	\$ 60.72
Weighted average shares outstanding						
Basic	39,175	44,642	43,710	43,710	43,710	43,710
Diluted	49,191	52,508	43,710	49,535	49,661	49,737

The accompanying notes are an integral part of these financial statements

**ZUMIEZ INC.**  
**STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY**  
(In thousands)

	Common Stock		Additional Paid-In Capital	Employee Stock Options	Retained Earnings	Receivable from Parent	Total
	Shares	Amount					
<b>Balance at December 31, 2000</b>	39	\$ 39	\$ 258	—	\$ 7,191	—	\$ 7,488
Dividends declared	—	—	—	—	(2,130)	—	(2,130)
Stock issued upon exercise of options	4	4	149	—	—	—	153
Net income	—	—	—	—	6,406	—	6,406
<b>Balance at December 31, 2001</b>	43	\$ 43	\$ 407	—	\$ 11,467	—	\$ 11,917
Dividends declared	—	—	—	—	(922)	—	(922)
Stock issued upon exercise of options	2	2	98	—	—	—	100
Stock redemption	(6)	(6)	(6,549)	—	(2,015)	—	(8,570)
Stock purchased by parent	5	5	6,044	—	—	(143)	5,906
Net income	—	—	—	—	5,705	—	5,705
<b>Balance at December 31, 2002</b>	44	\$ 44	\$ —	—	\$ 14,235	\$ (143)	\$ 14,136
Net loss	—	—	—	—	(169)	—	(169)
<b>Balance at February 1, 2003</b>	44	\$ 44	\$ —	—	\$ 14,066	\$ (143)	\$ 13,967
Cost incurred on behalf of parent	—	—	—	—	—	(4)	(4)
Net income	—	—	—	—	4,475	—	4,475
<b>Balance at January 31, 2004</b>	44	\$ 44	\$ —	—	\$ 18,541	\$ (147)	\$ 18,438
Stock based compensation (unaudited)	—	—	—	\$ 54	—	—	\$ 54
Cost incurred on behalf of parent (unaudited)	—	—	—	—	—	(1)	(1)
Net income (unaudited)	—	—	—	—	3,020	—	3,020
<b>Balance at October 30, 2004 (unaudited)</b>	44	\$ 44	\$ —	\$ 54	\$ 21,561	\$ (148)	\$ 21,511

The accompanying notes are an integral part of these financial statements

**ZUMIEZ INC.**  
**STATEMENTS OF CASH FLOWS**  
(In thousands)

	Fiscal Year Ended December 31,		One Month Ended February 1, 2003	Fiscal Year Ended January 31, 2004	Nine Months Ended	
	2001	2002			November 1, 2003 (unaudited)	October 30, 2004 (unaudited)
<b>Cash flows from operating activities</b>						
Net income (loss)	\$ 6,406	\$ 5,705	\$ (169)	\$ 4,475	\$ 1,588	\$ 3,020
Adjustments to reconcile net income (loss) to net cash provided by operating activities						
Depreciation	2,348	3,571	332	4,185	3,042	3,999
Deferred tax expense	—	(136)	83	804	(325)	(221)
Stock compensation expense	—	—	—	—	—	54
Loss on disposal of assets	32	13	—	33	31	3
Changes in operating assets and liabilities						
Receivables	(31)	(317)	133	(272)	(27)	(391)
Inventory	(3,403)	(4,194)	(94)	(1,957)	(11,462)	(12,723)
Prepaid expenses	14	(179)	(24)	(163)	(51)	(151)
Trade accounts payable	2,299	1,599	(2,937)	(2,423)	3,790	8,533
Accrued payroll and payroll taxes	151	270	(1,007)	449	126	552
Income taxes payable	—	1,056	(120)	910	15	(534)
Other accrued liabilities	929	118	(682)	564	224	691
Deferred rent	370	433	34	370	262	271
<b>Net cash provided by (used in) operating activities</b>	<b>\$ 9,115</b>	<b>\$ 7,939</b>	<b>\$ (4,451)</b>	<b>\$ 6,975</b>	<b>\$ (2,787)</b>	<b>\$ 3,103</b>
<b>Cash flows from investing activities</b>						
Additions to leasehold improvements and equipment	\$ (7,500)	\$ (7,186)	\$ (42)	\$ (5,937)	\$ (2,713)	\$ (7,583)
Advances (to) from shareholders	(1,534)	34	—	—	—	—
<b>Net cash used in investing activities</b>	<b>\$ (9,034)</b>	<b>\$ (7,152)</b>	<b>\$ (42)</b>	<b>\$ (5,937)</b>	<b>\$ (2,713)</b>	<b>\$ (7,583)</b>
<b>Cash flows from financing activities</b>						
Change in book overdraft	\$ —	\$ 2,293	\$ 2,774	\$ 1,690	\$ (94)	\$ (482)
Borrowings on revolving credit facility	24,153	20,440	1,845	25,620	23,020	38,796
Payments on revolving credit facility	(24,153)	(20,440)	—	(27,165)	(16,615)	(32,971)
Proceeds from issuance of long-term debt	3,713	—	—	—	—	—
Principal payments on long-term debt	(3,092)	(1,087)	(272)	(1,087)	(816)	(544)
Proceeds from exercise of stock options	153	100	—	—	—	—
Stock purchased by parent	—	5,906	—	—	—	—
Redemption of common stock	—	—	(7,094)	—	—	—
Dividends paid	(3,746)	(922)	—	—	—	—
<b>Net cash provided by (used in) financing activities</b>	<b>(2,972)</b>	<b>6,290</b>	<b>(2,747)</b>	<b>(942)</b>	<b>5,495</b>	<b>4,799</b>
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>\$ (2,891)</b>	<b>\$ 7,077</b>	<b>\$ (7,240)</b>	<b>\$ 96</b>	<b>\$ (5)</b>	<b>\$ 319</b>
<b>Cash and cash equivalents</b>						
Beginning of period	3,536	645	7,722	482	482	578
End of period	\$ 645	\$ 7,722	\$ 482	\$ 578	\$ 477	\$ 897
<b>Supplemental disclosure of cash flow information</b>						
Cash paid during the period for interest	\$ 324	\$ 302	\$ 12	\$ 265	\$ 220	\$ 127
Cash paid during the period for income taxes	—	176	—	1,172	1,172	2,752

The accompanying notes are an integral part of these financial statements

## NOTES TO FINANCIAL STATEMENTS

### 1. Nature and Ownership of Business and Basis of Presentation

**Nature of Business**—Zumiez Inc. (the "Company") is a leading specialty retailer of action sports related apparel, footwear, equipment and accessories operating under the Zumiez brand name. As of October 30, 2004, the Company operated 133 stores primarily located in shopping malls, with a presence in 18 states. The Company's stores cater to young men and women between the ages of 12 and 24 who seek popular brands representing a lifestyle centered on activities that include skateboarding, surfing, snowboarding, bicycle motocross (or "BMX") and motocross. The Company supports the action sports lifestyle and promotes its brand through a multi-faceted marketing approach that is designed to integrate its brand image with its customers' activities and interests. In addition, the Company operates a website which sells merchandise online and provides content and a community for its target customers. The Company, based in Everett, WA, was formed in August 1978 and operates within one reportable segment.

The Company is a majority owned subsidiary of Zumiez Holdings LLC (the "Parent"), a holding company with no operating activities. The financial position and operating results of the Parent are not included in the Company's financial statements. The Parent has three members.

**Change in Ownership**—Effective November 4, 2002, 95% of the shares of the Company were transferred to the Parent in exchange for cash, the redemption of a note receivable and the creation of two notes payable to two of the shareholders (the "Transaction"). In connection with the Transaction, the Company entered into common stock redemption agreements with two shareholders. Pursuant to the terms of the redemption agreements with these shareholders, the Company redeemed 5,741 shares of its common stock held by one shareholder for an aggregate purchase price of approximately \$7.7 million, which amount was paid by the Company through delivery of a note payable for approximately \$6.2 million and the cancellation of a \$1.5 million note receivable and the Company redeemed 615 shares of common stock held by the other shareholder for an aggregate purchase price of approximately \$829,000, which amount was paid by the Company through delivery of a note payable for approximately \$829,000. Each of these notes payable have been paid in full.

Also on November 4, 2002, approximately 43% of the Parent was sold to certain affiliates of Brentwood Private Equity III, LLC, a private equity firm (the "Brentwood Affiliates"), for approximately \$25.3 million, of which approximately \$17.1 million was distributed to two of the original shareholders of the Company. The Transaction did not result in a change in the operating control of the Company. While the Brentwood Affiliates have certain protective rights regarding its investment in the Parent, and therefore the Company, two shareholders continue to serve in the function of the primary operating roles of the Company Chairman and Chief Executive Officer. In fiscal 2002, 2003 and 2004 the Company paid Brentwood Private Equity III, LLC a management fee of \$31,000, \$200,000 and \$200,000, respectively, under a Corporate Development Administrative Services Agreement.

As part of the Transaction, the Company also authorized 7,500 shares of preferred stock, with a \$.01 par value. Subsequent to January 1, 2003 and prior to March 1, 2004, the Company had the right to require the Brentwood Affiliates to purchase at least \$5.0 million, but no more than \$10.0 million in the aggregate, of preferred stock. The Company did not exercise this right and no preferred stock was issued.

Also effective November 4, 2002, the Company terminated its Subchapter S tax election and elected to be taxed as a Subchapter C corporation under the Internal Revenue Code. As a result, the Company has been subject to federal and state income taxes beginning as of November 4, 2004. Prior to this date, the shareholders were taxed on the earnings of the Company on their personal income tax returns, in accordance with Subchapter S of the Internal Revenue Code. Therefore, no provision for income taxes or deferred taxes is recorded in these financial statements for operating results through November 3, 2002. Upon the conversion to a Subchapter C corporation, the Company recorded a net deferred tax asset of \$373,000.

**Fiscal Year**—Subsequent to December 31, 2002, the Company changed its fiscal year end from December 31 to a 52- or 53- week period ending on the Saturday closest to January 31. This fiscal calendar is widely used by the retail industry. As a result of the change in its fiscal year end, there was a one month conversion period ended February 1, 2003. Each fiscal year now consists of four 13-week quarters, with an extra week added to the fourth quarter every five or six years. "Fiscal 2004" will be the 52-week period ending January 29, 2005. "Fiscal 2003" was the 52-week period ended January 31, 2004. "Fiscal 2002" was the calendar year ended December 31, 2002. "Fiscal 2001" was the calendar year ended December 31, 2001.

**Interim Financial Data**—The accompanying consolidated balance sheet as of October 30, 2004 and financial statements for the nine months ended October 30, 2004 and November 1, 2003 are unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements. It is the opinion of management that the interim financial data includes all the adjustments, consisting of only normal recurring adjustments, necessary for the fair statement of the results for the interim periods. The results for the nine months ended October 30, 2004 are not necessarily indicative of the results to be expected for the fiscal year ending January 29, 2005.

**Basis of Presentation**—The financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America.

## 2. Summary of Significant Accounting Policies

**Comprehensive Income**—Comprehensive income represents all changes in equity during a period except those resulting from investments by and distributions to shareholders. There was no difference between net income and comprehensive income for fiscal 2001, 2002 and 2003 and the one month period ended February 1, 2003.

**Use of Estimates**—The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements as well as the reported amounts of revenues and expenses during the reporting period. These estimates can also affect supplemental information disclosed by the Company, including information about contingencies, risk, and financial condition. In preparing the financial statements, the Company makes routine estimates and judgments in determining the net realizable value of accounts receivable, inventory, fixed assets, and prepaid allowances. Some of the more significant estimates include the allowance for sales returns, the reserve for inventory valuation estimates and the expected useful lives of fixed assets. Actual results could differ from those estimates.

**Concentration of Risk**—The Company maintains its cash and cash equivalents in accounts with one major financial institution in the United States of America, in the form of demand deposits, certificates of deposits and money market accounts. Deposits in this bank may exceed the amounts of federal deposit insurance provided on such deposits. The Company has not experienced any losses on its deposits of cash and cash equivalents. The Company's accounts receivable are primarily derived from credit card purchases from customers and are typically settled within one to two days.

**Cash and Cash Equivalents**—The Company considers all highly liquid investments with maturity of three months or less when purchased to be cash equivalents.

**Restricted Cash**—For all the periods presented herein, restricted cash consisted of a certificate of deposit held for the lessor of the Company's former combined home office and distribution facility of \$32,000 and is included in prepaid expenses and other.

**Receivables**—Consist primarily of tenant allowances and credit card transactions that remain outstanding at the end of the period. The Company does not extend credit to its customers, except through third-party credit cards.

**Merchandise Inventories**—Merchandise inventories are valued at the lower of cost or market. Merchandise inventories may include items that have been written down to the Company's best estimate of their net realizable value. The Company's decisions to write-down its merchandise inventories are based on its current rate of sale, the age of the inventory and other factors. Actual final sales prices to customers may be higher or lower than the Company's estimated sales prices and could result in a fluctuation in gross profit. Historically, any additional write-downs have not been significant and the Company does not adjust the historical carrying value of merchandise inventories upwards based on actual sales experience.

**Leasehold Improvements and Equipment**—Leasehold improvements and equipment are stated at cost less accumulated depreciation. Amortization of leasehold improvements is computed on the straight-line method over the lesser of an asset's estimated useful life or the life of the related store's lease (generally 7-10 years), whichever is shorter. Depreciation on furniture, fixtures and equipment is computed on the straight-line method over five years. Maintenance and repairs are expensed as incurred. The cost and related accumulated depreciation or amortization of assets sold or otherwise disposed of is removed from the accounts and the related gain or loss is reported in the statement of operations.

**Valuation of Long-Lived Assets**—The Company has adopted SFAS 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," and reviews the carrying value of long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying value of such assets may not be recoverable. Measurement of the impairment loss is based on the fair value of the asset, or group of assets. Generally, fair value will be determined using accepted valuation techniques, such as the present value of expected future cash flows.

**Fair Value of Financial Instruments**—Statement of Financial Accounting Standards No. 107 ("SFAS 107"), "Disclosures about Fair Value of Financial Instruments," requires management to disclose the estimated fair value of certain assets and liabilities defined by SFAS 107 as financial instruments. Financial instruments are generally defined by SFAS 107 as cash, evidence of ownership interest in an entity, or a contractual obligation that both conveys to one entity a right to receive cash or other financial instruments from another entity and imposes on the other entity the obligation to deliver cash or other financial instruments to the first entity. At October 30, 2004 and all other previous periods presented herein, the carrying amounts of cash and cash equivalents, receivables, payables and other accrued liabilities approximated fair value because of the short maturity of these financial instruments. The carrying value of the long-term debt and the revolving credit facility approximate the fair value because these financial instruments have floating interest rates which reflect current market conditions.

**Deferred Rent and Tenant Allowances**—The Company occupies its retail stores and combined home office and distribution facility under operating leases generally with terms of seven to ten years. Some of these leases have early cancellation clauses, which permit the lease to be terminated if certain sales levels are not met in specific periods. Some leases contain renewal options for periods ranging from one to five years under substantially the same terms and conditions as the original leases. Most of the store leases require payment of a specified minimum rent, plus a contingent rent based on a percentage of the store's net sales in excess of a specified threshold. Most of the lease agreements have defined escalating rent provisions, which are straight-lined over the term of the related lease, including any lease renewals deemed to be probable. For certain locations, the Company receives cash tenant allowances and has reported these amounts as a deferred liability which is amortized to rent expense over the term of the lease. In addition, most of the leases require payment of real estate taxes, insurance and certain common area and maintenance costs in addition to the future minimum operating lease payments.

**Income Taxes**—The provision for income taxes includes both current and deferred tax expenses. Current tax expense is the amount associated with current operating results. The Company follows the liability method of accounting for income taxes, which requires recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary difference between the carrying amounts and the tax bases of the assets and liabilities. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized.

**Revenue Recognition**—Sales are recognized upon purchase by customers at the Company's retail store locations or upon shipment for orders placed through the Company's website as both title and risk of loss have transferred. The Company records the sale of gift cards as a current liability and recognizes revenue when a customer redeems a gift card. The Company reports shipping revenues and costs within sales and cost of goods sold, respectively. The Company accrues for estimated sales returns by customers based on historical sales return results. Sales return reserves were insignificant for all periods presented. The Company offers a return policy of generally 30 days.

The Company does not extend credit to customers, except through third-party credit cards. The majority of sales are through credit cards, and accounts receivable are composed primarily of amounts due from financial institutions related to credit card sales.

**Cost of Goods Sold**—Cost of goods sold consists of the cost of merchandise sold to customers, inbound shipping costs, distribution costs, buying and merchandising costs and store occupancy costs. This may not be comparable to the way in which the Company's competitors or other retailers compute their cost of goods sold.

**Selling, General and Administrative Expense**—Selling, general and administrative expenses consist primarily of store personnel wages and benefits, administrative staff and infrastructure expenses, store supplies, depreciation and facility expenses, and training and marketing costs. Credit card fees, insurance and other miscellaneous operating costs are also included in selling, general and administrative expenses. This may not be comparable to the way in which the Company's competitors or other retailers compute their selling, general and administrative expenses. The Company does receive insignificant amounts of cash consideration from vendors which have been reported as a reduction of expenses as the amounts are reimbursements of specific, incremental and identifiable costs of selling the vendors' products.

**Advertising**—The Company expenses advertising costs as incurred. Advertising expense was approximately \$375,000, \$322,000 and \$295,000 in fiscal 2001, 2002 and 2003, respectively, and \$24,000 for the one month period ended February 1, 2003.

**Net Income per Share**—Basic net income per common share is computed using the weighted average number of shares outstanding. Diluted net income per common share is computed using the weighted average number of shares outstanding adjusted for the incremental shares attributed to outstanding options to purchase common stock. Incremental shares of 10,016, 7,866 and 5,825, in fiscal 2001, 2002, and 2003, respectively, and 5,617 for the one month period ended February 1, 2003 were used in the calculation of diluted net income per common share.

**Stock Compensation**—The Company has stock-based employee compensation plans, which are described further in note 7 below. The Company accounts for stock-based employee compensation arrangements on the intrinsic value method in accordance with the provisions of Accounting Principles Board Opinion ("APB") No. 25, "Accounting for Stock Issued to Employees" and related amendments and interpretations. The Company complies with the disclosure provisions of Statement of Financial Accounting Standards No. 123 ("SFAS 123"), "Accounting for Stock-Based Compensation," which requires fair value recognition for employee stock-based compensation.

If the computed fair values of the awards had been amortized to expense over the vesting period of the awards, pro forma net income (loss) and net income (loss) per share would have been reduced to the pro forma amounts indicated in the following table (in thousands, except per share data):

	Fiscal Year Ended		One Month Ended February 1, 2003	Fiscal Year Ended January 31, 2004	Nine Months Ended	
	December 31, 2001	December 31, 2002			November 1, 2003 (unaudited)	October 30, 2004 (unaudited)
Net income (loss), as reported	\$ 6,406	\$ 5,705	\$ (169)	\$ 4,475	\$ 1,588	\$ 3,020
Add: Stock-based compensation expense (benefit), as reported	—	—	—	—	—	54
Deduct: Stock-based employee compensation expense determined under fair-value-based method, net of tax	(201)	(207)	(17)	(118)	(83)	(111)
Pro forma net income (loss)	6,205	5,498	(186)	4,357	1,505	2,963
Net income (loss) per share:						
Basic—as reported	\$ 163.52	\$ 127.79	\$ (3.87)	\$ 102.38	\$ 36.33	\$ 69.09
Basic—pro forma	\$ 158.39	\$ 123.16	\$ (4.26)	\$ 99.68	\$ 34.43	\$ 67.79
Diluted—as reported	\$ 130.23	\$ 108.65	\$ (3.87)	\$ 90.34	\$ 31.98	\$ 60.72
Diluted—pro forma	\$ 126.14	\$ 104.71	\$ (4.26)	\$ 87.96	\$ 30.31	\$ 59.57

**Merchandise Risk**—The Company's success is largely dependent upon its ability to gauge the fashion tastes of its customers and provide merchandise that satisfies customer demand. Any inability to provide appropriate merchandise in sufficient quantities in a timely manner could have a material adverse effect on the Company's business, operating results and financial condition.

**Reclassifications**—Certain amounts in the prior year financial statements have been reclassified to conform to the current year's financial statement presentation. The reclassifications had no effect on shareholders' equity or net income.

#### Recent accounting pronouncements

In November 2004, the FASB issued Statement of Financial Accounting Standards No. 151, "Inventory Costs—an Amendment of ARB No. 43, Chapter 4." This statement clarifies the accounting for abnormal amounts of idle facility expense, freight, handling costs, and spoilage, requiring these items be recognized as current-period charges. In addition, this statement requires that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. The provisions of this statement are effective for inventory costs incurred during fiscal years beginning after June 15, 2005 and will become effective for the Company beginning in fiscal 2006. The effect of adopting this statement is not expected to be significant to the Company's financial position and results of operations.

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 123R, "Share-Based Payment (Revised 2004)" ("FAS 123R"). This statement addresses the accounting for share-based payment transactions in which a company receives employee services in exchange for the company's equity instruments or liabilities that are based on the fair value of the company's equity securities or may be settled by the issuance of these securities. SFAS 123R eliminates the ability to account for share-based payments using APB 25, "Accounting for Stock Issued to Employees" and generally requires that such transactions be accounted for using a fair value method. The provisions of this statement are effective for fiscal periods beginning after June 15, 2005 and will become effective for the Company beginning with

the third quarter of fiscal 2005. The Company has not yet determined which transaction method it will use to adopt SFAS 123R. The full impact that the adoption of this statement will have on the Company's financial position and results of operations will be determined by share-based payments granted in future periods but will increase the compensation expense that would otherwise have been recognized in accordance with APB 25. In addition, outstanding unvested options will result in additional compensation expense that otherwise would only have been recognized on a pro-forma basis.

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 153, "Exchanges of Non-Monetary Assets." This statement refines the measurement of exchanges of non-monetary assets between entities. The provisions of this statement are effective for fiscal periods beginning after June 15, 2005 and will become effective for the Company beginning with the third quarter of fiscal 2005. Historically, the Company has not transacted significant exchanges of non-monetary assets, but future such exchanges would be accounted for under the standard, when effective.

### 3. Transition Period Comparative Data

As a result of the change in the Company's fiscal year end there was a one month transition period. The following table presents certain condensed financial information for the one month ended February 3, 2002 (unaudited) and the one month ended February 1, 2003 (audited), respectively.

	One Month Ended	
	February 3, 2002 (unaudited)	February 1, 2003
(In thousands)		
<b>Summarized Statements of Operations</b>		
Net sales	\$ 5,831	\$ 6,392
Cost of goods sold	3,961	4,575
Gross margin	1,870	1,817
Operating profit (loss)	210	(196)
Net income (loss)	\$ 201	\$ (169)
<b>Summarized Balance Sheets</b>		
<b>Assets</b>		
Total current assets	\$ 16,297	\$ 19,646
Total assets	29,532	36,003
<b>Liabilities and shareholders' equity</b>		
Total current liabilities	\$ 15,049	\$ 21,082
Total liabilities	16,679	22,036
Total shareholders' equity	12,853	13,967
Total liabilities and shareholders' equity	\$ 29,532	\$ 36,003

#### 4. Leasehold Improvements and Equipment

Leasehold improvements and equipment consist of the following:

	December 31, 2002	January 31, 2004
	(In thousands)	
Leasehold improvements	\$ 17,241	\$ 20,102
Store computer equipment	3,115	3,225
Store displays	7,734	9,923
Vehicles	53	53
	28,143	33,303
Less accumulated depreciation	(11,496)	(15,227)
	\$ 16,647	\$ 18,076

#### 5. Long-Term Debt

Long-term debt consists of the following:

	December 31, 2002	January 31, 2004
	(In thousands)	
Note payable to bank, payable in quarterly installments of \$272,000 plus interest at LIBOR (1.155% per annum at January 31, 2004) plus 2%, maturing July 1, 2004	\$ 1,903	\$ 544
Less current portion	(1,359)	(544)
	\$ 544	\$ —

The note payable to bank at January 31, 2004 was collateralized by substantially all the assets of the Company. Additionally, this note payable contained covenants that required the Company to maintain certain working capital ratios and placed certain restrictions on the declaration and payment of dividends. The note was paid in full per the terms of the agreement in fiscal 2004. During 2002, the Company received waivers for certain covenant violations, and the Company was in compliance with all covenants at January 31, 2004 and for the fiscal year then ended.

In May 2003 the Company entered into an agreement for a new revolving credit facility of \$20,000,000. The revolving credit facility has a \$7,500,000 sub-limit for the issuance of letters of credit with 180 day maximum maturity. The outstanding borrowings under the revolving credit facility were \$0 and \$300,000 at December 31, 2002 and January 31, 2004, respectively. The Company also had open letters of credit of \$213,000 and \$447,000 at December 31, 2002 and January 31, 2004, respectively. The revolving credit facility bears interest at floating rates based on the lower of the prime rate (4% at January 31, 2004) or LIBOR (1.155% at January 31, 2004) plus 2%.

In September 2004 the Company entered into a loan modification agreement to the existing revolving credit facility. The loan modification agreement reduced certain applicable interest rates and extended the maturity date of the revolving credit facility to July 1, 2006. The borrowing capacity can be increased to \$25.0 million if the Company requests and if the Company is in compliance with certain provisions. The outstanding borrowings under the revolving credit facility was \$6.1 million at October 30, 2004 (unaudited). The Company also had open letters of credit of \$841,000 at October 30, 2004

(unaudited). The revolving credit facility bears interest at floating rates based on the lower of the prime rate (4.75% at October 30, 2004) minus a prime margin ranging from 0.75% to 0.10% or the LIBOR rate (2.08% at October 30, 2004) plus a LIBOR margin ranging from 1.40% to 2.15%, in each case depending on the ratio of the Company's adjusted funded debt (as defined in the loan agreement, as amended) to EBITDAR (as defined in the loan agreement, as amended). The Company's obligations under the revolving credit facility are secured by almost all of its personal property, including, among other things, inventory, equipment and fixtures. The Company must reduce the amount of any outstanding advances under the revolving credit facility to no more than \$5.0 million for a period of at least 30 consecutive days each year. The Company pays an annual fee of between 0.1% and 0.2% of any unused amount under the revolving credit facility. The revolving credit facility also contains financial covenants that require the Company to meet specified financial ratios, including a debt to earnings ratio, an earnings to interest expense ratio and an inventory to debt ratio. The Company believes it was in compliance with all covenants at October 30, 2004.

## 6. Income Taxes

The components of the current deferred tax assets and net long-term deferred tax assets (liabilities) are:

	December 31, 2002	January 31, 2004
(In thousands)		
<b>Current deferred tax assets (liabilities)</b>		
Inventory	\$ 410	\$ 621
Employee benefits	108	124
Prepaid expenses	—	(77)
State income taxes	75	—
	<hr/>	<hr/>
Total current deferred tax assets	593	668
<b>Long-term deferred tax assets (liabilities)</b>		
Property and equipment	(895)	(1,927)
Deferred rent	438	591
	<hr/>	<hr/>
Total long-term deferred tax liabilities	(457)	(1,336)
	<hr/>	<hr/>
Net deferred tax asset (liability)	\$ 136	\$ (668)
	<hr/>	<hr/>

The components of the provision (benefit) for income taxes are:

	Fiscal Year Ended December 31, 2002	One Month Ended February 1, 2003	Fiscal Year Ended January 31, 2004
(In thousands)			
<b>Current</b>			
Federal	\$ 837	\$ (122)	\$ 1,526
State	395	—	371
Total current	1,232	(122)	1,897
<b>Deferred</b>			
Federal	(129)	77	740
State	(7)	6	64
Total deferred	(136)	83	804
Provision (benefit) for income taxes	\$ 1,096	\$ (39)	\$ 2,701

The reconciliation of the income tax provision at the U.S. federal statutory rate to the Company's effective income tax rate is as follows for the fiscal year ended:

	Fiscal Year Ended December 31, 2002	One Month Ended February 1, 2003	Fiscal Year Ended January 31, 2004
Expected U.S. federal income taxes at statutory rates	34.0%	34.0%	34.0%
State and local income taxes, net of federal effect	4.3%	—%	3.4%
Benefit of Subchapter S election and termination	(22.3)%	(0.9)%	—%
Permanent differences	—%	—%	0.2%
Other	0.1%	(14.3)%	—%
	16.1%	18.8%	37.6%

## 7. Stock Options

During fiscal 1997, the Company adopted the 1993 Stock Option Plan (the "Plan") to provide for the granting of nonqualified stock options to executive officers and key employees of the Company as determined by the 1993 Plan Committee (the "Committee").

The Company has authorized 14,238 shares of common stock for issuance under the Plan. The date of grant, option price, vesting period and other terms specific to options granted under the Plan are determined by the Committee. All stock options granted under the Plan vest over a fixed period of five to eight years and expire ten years from the date of grant. Prior to the nine months ended October, 30, 2004, the option price for all options granted was equal to the fair market value of the Company's common stock at the date of grant and no stock-based compensation expense was recognized during fiscal 2001, 2002, 2003 or the one month ended February 1, 2003.

During fiscal 2004, the Company adopted the 2004 Stock Option Plan (the "2004 Plan") to provide for the granting of incentive stock options and nonqualified stock options to executive officers and key employees of the Company as determined by the 2004 Plan Committee. The terms of the 2004 Plan are

generally the same as the plan adopted in fiscal 1997. During the nine months ended October 30, 2004, the Company issued stock options to certain employees with exercise prices below the fair market value of the Company's common stock at the date of grant. In accordance with the requirements of APB 25, the Company has recorded stock-based compensation for the difference between the exercise price of the stock options and the fair market value of the Company's stock at the grant date. During the nine months ended October 30, 2004 (unaudited), the Company recorded stock-based compensation of \$54,000 related to these options. Stock-based compensation expense is currently recognized over the vesting period of the awards, generally five to eight years. Excluding the impact of the adoption of FAS 123R, future compensation expense to be recognized through fiscal 2012 associated with these grants will be \$1,056,000.

All grants of stock options have been to employees of the Company. There were no stock option grants, exercises, forfeitures or cancellations during fiscal 2002 or the one month period ended February 1, 2003. The fair values of the options granted under the Plan and the 2004 Plan were estimated using the minimum-value method with the assumptions from the table below:

	Fiscal Year Ended		Nine Months Ended
	December 31, 2001	January 31, 2004	October 30, 2004 (unaudited)
Dividend yield	—%	—%	—%
Average risk-free interest rate:			
Expected lives—Ten years	5.10%	—%	—%
Expected lives—Eight years	—%	—%	3.84%
Expected lives—Five years	—%	3.30%	3.41%

The following table summarizes stock option activity:

	Fiscal Year Ended December 31, 2001		Fiscal Year Ended December 31, 2002		Fiscal Year Ended January 31, 2004		Nine Months Ended October 30, 2004 (unaudited)	
	Number of Options	Weighted- Average Exercise Price	Number of Options	Weighted- Average Exercise Price	Number of Options	Weighted- Average Exercise Price	Number of Options	Weighted- Average Exercise Price
Options outstanding at beginning of fiscal year	9,411	\$ 192	7,860	\$ 429	5,617	\$ 583	5,930	\$ 638
Options granted during the fiscal year	1,872	\$ 919	—	\$ —	521	\$ 1,348	1,547	\$ 2,000
Options exercised during the fiscal year	(3,423)	\$ 45	(2,243)	\$ 45	—	\$ —	—	\$ —
Options forfeited during the fiscal year	—	\$ —	—	\$ —	(208)	\$ (919)	(256)	\$ 832
Options outstanding at end of fiscal year	7,860	\$ 429	5,617	\$ 583	5,930	\$ 638	7,221	\$ 923
Weighted-average fair value of options granted		\$ 302				\$ 183		\$ 1,207

The following table summarizes information concerning outstanding and exercisable options at January 31, 2004:

Exercise Price	Options Outstanding		Options Exercisable
	Number of Options	Weighted-Average Remaining Contractual Life	Number of Options
\$ 120	1,249	3.9	937
562	2,496	5.3	1,248
919	1,664	7.6	416
1,348	521	9.3	—
	5,930		2,601

## 8. Related Party Transactions

During fiscal 2002, the Company paid \$143,000 in fees related to the Transaction that are receivable from the Parent. At January 31, 2004, due to additional such payments by the Company, the balance was \$147,000. This amount is reported in shareholders' equity.

During fiscal 2001, the Company advanced \$1,500,000 to a shareholder under a note receivable. At December 31, 2001, the outstanding balance of the note and accrued interest receivable was \$1,533,750, and while the interest was paid in cash in fiscal 2002, the note was redeemed as part of the Transaction.

In fiscal 2002, 2003 and 2004 the Company paid Brentwood Private Equity III, LLC a consulting fee of \$31,000, \$200,000 and \$200,000 (unaudited), respectively, under a Corporate Development and Administrative Services Agreement.

## 9. Commitments and Contingencies

**Leases**—The Company is committed under operating leases for all of its retail store locations. In addition to minimum future lease payments, all store leases provide for additional rental payments based on sales, as well as common area maintenance charges. For leases that have fixed escalation clauses, minimum rents are recognized on a straight-line basis over the term of the lease.

Rent expense, including common area maintenance and other occupancy costs, was \$8,733,000, \$11,754,000, \$13,871,000 and \$919,000 for fiscal 2001, 2002, 2003 and the one month period ended February 1, 2003, respectively.

Future minimum annual commitments (in thousands) on all leases at January 31, 2004 are as follows:

Fiscal 2005	\$ 8,603
Fiscal 2006	8,343
Fiscal 2007	8,163
Fiscal 2008	7,341
Fiscal 2009	6,567
Thereafter	22,021
	<u>\$ 61,038</u>

**Purchase Commitments**—The Company was committed under purchase orders to acquire merchandise from vendors for approximately \$25.0 million at October 30, 2004, unaudited. These

purchases are expected to be financed by cash flows from operations and the Company's revolving credit facility. The Company has an option to cancel such commitments with no notice prior to shipment.

**Litigation**—The Company is involved from time to time in litigation incidental to its business and, from time to time, the Company may make provisions for potential litigation losses. The Company follows SFAS 5, "Accounting for Contingencies" when assessing pending or potential litigation. Management believes, after considering a number of factors and the nature of the contingencies to which the Company is subject, that the outcome of these contingencies will not have a material adverse effect upon the results of operations or financial condition of the Company.

**Insurance Reserves**—The Company is responsible for medical insurance claims up to a specified aggregate amount. The Company maintains a reserve for estimated medical insurance claims based on historical claims experience and other estimated assumptions. The Company follows SFAS 5, "Accounting for Contingencies" when assessing pending or potential claims.

**Employment Agreement**—The Company has an employment agreement in place with a key employee. The agreement provides that if the Company terminates the employee's employment without cause or if he terminates his employment for good reason, the employee could be entitled to continue to receive his base salary up to a maximum commitment of \$262,000.

## 10. Retirement Savings Plan

The Zumiez Investment Plan is a qualified plan under Section 401(k) of the Internal Revenue Code. The Company's 401(k) matching and profit-sharing contributions are discretionary and are determined annually by the Company. The Company contributed \$100,000, \$50,000 and \$55,000 to the plan during fiscal 2001, 2002 and 2003, respectively.

## 11. Income (Loss) Per Share

Basic net income (loss) per share is based on the weighted average number of common shares outstanding. Diluted net income (loss) per share is based on the weighted average number of common shares and common share equivalents outstanding. Common share equivalents included in the computation represent shares issuable upon assumed exercise of outstanding stock options.

The following table sets forth the computation of basic and diluted net income (loss) per share (in thousands, except share and per share data):

	Fiscal Year Ended				Nine Months Ended	
	December 31, 2001	December 31, 2002	One Month Ended February 1, 2003	Fiscal Year Ended January 31, 2004	November 1, 2003 (unaudited)	October 30, 2004 (unaudited)
Net income (loss)	\$ 6,406	\$ 5,705	\$ (169)	\$ 4,475	\$ 1,588	\$ 3,020
Weighted average common shares for basic net income (loss) per share	39,175	44,642	43,710	43,710	43,710	43,710
Dilutive effect of stock options	10,016	7,866	—	5,825	5,951	6,027
Weighted average common shares for diluted net income (loss) per share	49,191	52,508	43,710	49,535	49,661	49,737
Basic net income (loss) per share	\$ 163.52	\$ 127.79	\$ (3.87)	\$ 102.38	\$ 36.33	\$ 69.09
Diluted net income (loss) per share	\$ 130.23	\$ 108.65	\$ (3.87)	\$ 90.34	\$ 31.98	\$ 60.72

For the one month ended February 1, 2003, the dilutive effect of 5,617 options were excluded from weighted average diluted shares outstanding because the effect was antidilutive.

## 12. Supplemental Cash Flow Information

Non cash investing and financing activities are as follows:

	December 31, 2002	January 31, 2004	October 30, 2004 (unaudited)
	(In thousands)		
Redemption of shareholder receivable for stock	\$ 1,500	\$ —	\$ —
Issuance of notes payable to shareholders for stock	7,070	—	—
Receivable from parent for transaction fees	143	4	1

## 13. Subsequent Event (unaudited)

The Company is contemplating an initial public offering (the "IPO") which is expected to become effective subsequent to year end. In connection with the IPO, the Parent will distribute the shares of the Company's common stock that it owns to the Parent's members, whereupon the Parent will dissolve.

The Company recently entered into a lease for a new combined home office and distribution facility under a noncancelable operating lease agreement that expires in July 2012.

Future minimum annual commitments (in thousands) on the new home office and distribution facility at October 30, 2004 are as follows:

Fiscal 2004	\$ 34
Fiscal 2005	404
Fiscal 2006	432
Fiscal 2007	466
Fiscal 2008	479
Fiscal 2009	492
Fiscal 2010-2012	982
	\$ 3,289



**Shares  
Common Stock**

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**PROSPECTUS  
, 2005**

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**Wachovia Securities**

**Piper Jaffray**

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**William Blair & Company**

Until \_\_\_\_\_, 2005 (the 25th day after the date of this prospectus), all dealers that effect transactions in our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligations to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

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**PART II**  
**INFORMATION NOT REQUIRED IN THE PROSPECTUS**

**Item 13. Other Expenses of Issuance and Distribution**

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the sale of common stock being registered. All amounts are estimates. We will pay all these expenses.

	<b>Amount to be Paid</b>
SEC Registration Fee	\$ 6,800
NASD Filing Fee	6,300
Nasdaq National Market Listing Fee	100,000
Printing Fees and Expenses	100,000
Legal Fees and Expenses	400,000
Accounting Fees and Expenses	600,000
Blue Sky Fees and Expenses	20,000
Transfer Agent and Registrar Fees	25,000
Miscellaneous	41,900
Total	\$ 1,300,000

**Item 14. Indemnification of Directors and Officers**

Sections 23B.08.500 through 23B.08.600 of the Washington Business Corporation Act (the "WBCA") authorize Washington corporations to indemnify and advance expenses to directors, officers, employees or agents of the corporation under certain circumstances against liabilities and expenses incurred in legal proceedings involving such individuals because of their being or having been a director, officer, employee or agent of the corporation. Section 23B.08.560 of the WBCA authorizes a corporation to agree to so indemnify and obligate itself to advance or reimburse expenses without regard to the limitations of Section 23B.08.510 through 23B.08.550 of the WBCA; provided, however, that no such indemnity shall be made for or on account of any:

- acts or omissions of the director, officer, employee or agent finally adjudged to be intentional misconduct or a knowing violation of law;
- conduct of the director, officer, employee or agent finally adjudged to be in violation of Section 23B.08.310 of the WBCA (which section relates to unlawful distributions); or
- transaction with respect to which it was finally adjudged that such director, officer, employee or agent personally received a benefit in money, property, or services to which the director, officer, employee or agent was not legally entitled.

Furthermore, Section 23B.08.320 of the WBCA authorizes a corporation to limit a director's liability to the corporation or its shareholders for monetary damages for acts or omissions as a director, except in certain circumstances involving (1) acts or omissions of a director that involve intentional misconduct or a knowing violation of law, (2) conduct violating Section 23B.08.310 of the WBCA (which section relates to unlawful distributions) or (3) any transaction from which the director will personally receive a benefit in money, property or services to which the director is not legally entitled.

Zumiez Inc.'s (the "Company") articles of incorporation and bylaws provide that the Company shall indemnify its directors and officers to the fullest extent permitted by applicable law. The bylaws also provide that the Company may indemnify its employees and agents to the fullest extent permitted by applicable law. The Company's articles of incorporation and bylaws also require advances for expenses for

such indemnified individuals who are parties to such a proceeding as provided by applicable law or by written agreement, which written agreement may allow any required determination as to the availability of indemnification to be made by any appropriate person or body consisting of a member or members of the Board of Directors, any other person or body appointed by the Board of Directors who is not a party to the particular claim, or independent legal counsel. The Company's articles of incorporation provide that a director shall not be personally liable to the Company or to any of its shareholders for monetary damages for conduct as a director pursuant to Section 23B.08.320 of the WBCA, subject to the limitations of that Section. The bylaws also provide that the Company may maintain, at its expense, insurance to protect itself and an indemnified director, officer, employee or agent against any liability, whether or not the Company would have the power to indemnify such director, officer, employee or agent against the same liability under Sections 23B.08.510 or 23B.08.520 of the WBCA.

#### **Item 15. Recent Sales of Unregistered Securities**

##### *Issuance of Securities to Zumiez Holdings*

In October and November 2002, we entered into a series of transactions with certain affiliates of Brentwood Private Equity III, LLC (the "Brentwood Affiliates") and certain of our shareholders (the "2002 Recapitalization"). In November 2002, in connection with the 2002 Recapitalization, we issued \_\_\_\_\_ shares of our common stock to Zumiez Holdings LLC, a Delaware limited liability company that was formed in connection with the 2002 Recapitalization ("Zumiez Holdings"), for an aggregate purchase price of approximately \$7.1 million. The issuance of our common stock to Zumiez Holdings in connection with the 2002 Recapitalization was exempt from registration under Section 4(2) of the Securities Act or Regulation D promulgated thereunder as a transaction by an issuer not involving a public offering. Zumiez Holdings was an accredited investor, as such term is defined in the Securities Act and the regulations promulgated thereunder, and represented its intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof. Appropriate legends were affixed to the share certificates issued in such transaction.

##### *Exercise of Stock Options*

In July 1993, as partial consideration for a loan from Rajnikant R. Shah and Akhil R. Shah (collectively, the "Optionees") to us, we granted the Optionees an option to purchase \_\_\_\_\_ shares of our common stock at an exercise price of \$ \_\_\_\_\_ per share. In July 2002, the Optionees exercised their option to purchase shares of our common stock and we issued an aggregate of \_\_\_\_\_ shares of our common stock to the Optionees for an aggregate purchase price of \$ \_\_\_\_\_. The issuance of our common stock to the Optionees was exempt from registration under Section 4(2) of the Securities Act as a transaction by an issuer not involving a public offering. The optionees represented their intention to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof. Appropriate legends were affixed to the share certificates issued in such transaction.

##### *Stock Option Grants*

Since February 2002, we have granted options to employees (including officers) to purchase an aggregate of \_\_\_\_\_ shares of our common stock at exercise prices of between \$ \_\_\_\_\_ and \$ \_\_\_\_\_ per share. All option grants during this period have been made in consideration for services rendered or to be rendered by the respective employees. The amount of options included in each grant to employees has been determined by our board of directors in consultation with management taking into consideration the employee's job description, tenure and level of service. During this same period, we have not issued any shares of our common stock upon exercise of such stock options. The stock option grants were exempt under Rule 701 under the Securities Act as exempt offers and sales of securities under a written compensatory benefit plan.

**Item 16. Exhibits and Financial Statement Schedules**

(a) The following exhibits are filed herewith:

<b>Exhibit Number</b>	<b>Exhibit Description</b>
1.1*	— Form of Underwriting Agreement.
3.1*	— Articles of Incorporation, to be effective upon completion of the offering.
3.2*	— Amended and Restated Bylaws, to be effective upon completion of the offering.
4.1*	— Form of Common Stock Certificate of Zumiez Inc.
5.1*	— Opinion of Preston Gates & Ellis LLP.
10.1	— Business Loan Agreement dated May 29, 2003 between Bank of America, N.A. and Zumiez Inc., as modified by Loan Modification Agreement dated September 30, 2004.
10.2	— Lease Agreement between Merrill Creek Holdings, LLC and Zumiez Inc. dated August 2, 2004.
10.3	— Executive Agreement, dated as of November 4, 2002 between Zumiez Inc. and Richard M. Brooks.
10.4†	— Carrier Agreement between United Parcel Service Inc. and Zumiez Inc. dated June 28, 2004.
10.5	— Zumiez Inc. 1993 Stock Option Plan.
10.6	— Zumiez Inc. 2004 Stock Option Plan.
10.7*	— Zumiez Inc. 2005 Equity Incentive Plan.
10.8*	— Zumiez Inc. 2005 Employee Stock Purchase Plan.
23.1	— Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.
23.2*	— Consent of Preston Gates & Ellis LLP (included in Exhibit 5.1).
24.1	— Power of Attorney (included on signature page of this Registration Statement).

\* To be filed by amendment.

† Certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request under 17 C.F.R. Sections 200.80(b)(4) and 230.406.

(b) Financial Statement Schedules

**Item 17. Undertakings**

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described in Item 14 or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of

the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant undertakes that:

(1) for purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be a part of this registration statement as of the time it was declared effective, and

(2) for the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.



## EXHIBIT INDEX

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*	To be filed by amendment.
†	Certain information in this exhibit has been omitted and filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request under 17 C.F.R. Sections 200.80(b)(4) and 230.406.

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**LOAN MODIFICATION  
AGREEMENT**

This Modification modifies the Business Loan Agreement dated May 29, 2003 (“Agreement”), regarding a revolving line of credit in the maximum principal amount of \$20,000,000.00 (the “Loan”), executed by **ZUMIEZ INC.** (“Borrower”) and **BANK OF AMERICA, N.A.** (“Bank”). Terms used in this Modification and defined in the Agreement shall have the meaning given to such terms in the Agreement. For mutual consideration, Borrower and Bank agree to amend the Agreement as follows:

1. Commitment. Section 1.1 of the Agreement is amended to read as follows:

1.1 Line of Credit Amount.

(a) *During the availability period described below, the Bank will provide a line of credit to the Borrower. The amount of the line of credit (the “Commitment”) is initially \$20,000,000.00. Upon receipt by the Bank of the Borrower’s written request, the Commitment may be increased to \$25,000,000.00 provided that:*

(i) *The Borrower is in compliance with all terms and conditions of this Agreement and of the other loan documents at the time the Borrower elects to increase the Commitment;*

(ii) *The Borrower has provided the Bank with a forecast indicating continued compliance with all terms and conditions of this Agreement for the remaining availability period; and*

(iii) *The Borrower has paid to the Bank a fee of \$2,500 for the increase.*

2. Expiration Date. Section 1.2 of the Agreement is amended to read as follows:

1.2 Availability Period. *The line of credit is available between the date of this Agreement until July 1, 2006, or such earlier date as the availability may terminate as provided in this Agreement (the “Expiration Date”). On or before July 1, 2005, the Bank shall, at its sole discretion, (a) provide the Borrower with a commitment to extend the Expiration Date an additional 12 months, (thereby changing the Expiration Date to July 1, 2007) or, alternatively, (b) notify the Borrower that the Bank is not prepared at that time to extend the Line of Credit beyond the Expiration Date. The Borrower may, on or before June 1, 2005, notify the Bank of its intent to terminate the agreement effective July 1, 2005.*

3. Interest Rates.

(a) Section 1.4(a) of the Agreement is amended to read as follows: *The interest rate is a rate per year equal to the Prime Rate plus (or minus, as indicated) the Prime Margin.*

(b) The second sentence of Section 1.5 of the Agreement is amended to read as follows: *The optional interest rates shall be the LIBOR Rate plus the LIBOR Margin as defined below, and shall be subject to the terms and conditions described later in this Agreement.*

(c) “Applicable Margin” as used in the Agreement shall mean both the LIBOR Margin and the Prime Margin.

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4. Applicable Margin. The pricing grid set forth in Section 1.6 of the Agreement is amended to read as follows:

Pricing Level	Adjusted Funded Debt to EBITDAR Ratio	Prime Margin	LIBOR Margin	B/A Rate	Nonusage Fee Margin
4	Greater than or equal to 4.00 to 1	-.10%	2.15%	2.00%	0.20%
3	Greater than or equal to 3.50 to 1; but less than 4.00 to 1	-.25%	1.90%	1.75%	0.15%
2	Greater than or equal to 3.00 to 1; but less than 3.50 to 1	-.50%	1.65%	1.50%	0.10%
1	Less than 3.00 to 1	-.75%	1.40%	1.25%	0.075%

5. Unused Commitment Fee. A new sentence is added to the end of Section 3.1(c) of the Agreement, to read as follows: *If the Commitment is increased at any time pursuant to Section 1.1(a) of the Agreement, such increase will be taken into account in calculating the unused commitment fee under this paragraph, beginning on the date such increase becomes effective.*

6. Adjusted Funded Debt to EBITDAR Ratio. Section 8.4(b) of the Agreement is amended to read as follows: *“Adjusted Funded Debt” means Funded Debt plus six times annual cash occupancy expense.*

7. Extension Fee. Borrower shall pay to Bank an extension fee of \$2,500 upon execution of this Modification.

8. Other Terms. Except as specifically amended by this Modification or any prior amendment, all other terms, conditions, and definitions of the Agreement, and all other documents, instruments, or agreements entered into with regard to the Loan, shall remain in full force and effect. Borrower warrants that the representations and warranties made by Borrower in the Agreement continue to be true and correct, except to the extent that such representations and warranties expressly relate to an earlier date.

DATED as of September 30, 2004.

**Bank:**

BANK OF AMERICA, N.A.

**Borrower**

ZUMIEZ INC.

By /s/ Curt G. Clausen

Curt G. Clausen, Senior Vice President

By /s/ Brenda I. Morris

Brenda I. Morris, Chief Financial Officer

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## BUSINESS LOAN AGREEMENT

This Agreement dated as of May 29, 2003, is between BANK OF AMERICA, N.A., a national banking association (the "Bank"), and ZUMIEZ INC., a Delaware corporation (the "Borrower").

**1. LINE OF CREDIT AMOUNT AND TERMS****1.1. Line of Credit Amount.**

(a) During the availability period described below, the Bank will provide a line of credit to the Borrower. The amount of the line of credit (the "Commitment") is initially \$20,000,000.00. On or after July 1, 2004, upon receipt by the Bank of the Borrower's written request, the Commitment may be increased to \$25,000,000.00 provided that:

(i) The Borrower is in compliance with all terms and conditions of this Agreement and of the other loan documents at the time the Borrower elects to increase the Commitment; and

(ii) The Borrower has provided the Bank with a forecast indicating continued compliance with all terms and conditions of this Agreement for the remaining availability period.

(b) This is a revolving line of credit. During the availability period, the Borrower may repay principal amounts and reborrow them.

(c) The Borrower agrees not to permit the principal balance outstanding to exceed the Commitment. If the Borrower exceeds this limit, the Borrower will immediately pay the excess to the Bank upon the Bank's demand.

1.2. **Availability Period.** The line of credit is available between the date of this Agreement until July 1, 2005, or such earlier date as the availability may terminate as provided in this Agreement (the "Expiration Date"). On or before July 1, 2004, the Bank shall, at its sole discretion, (a) provide the Borrower with a commitment to extend the Expiration Date an additional 12 months, (thereby changing the Expiration Date to July 1, 2006) or, alternatively, (b) notify the Borrower that the Bank is not prepared at that time to extend the Line of Credit beyond the Expiration Date.

**1.3. Repayment Terms.**

(a) The Borrower will pay interest on June 1, 2003, and then on the first calendar day of each month thereafter until payment in full of any principal outstanding under the Line of Credit. Any interest period for an optional interest rate (as described below) shall expire no later than the Expiration Date.

(b) The Borrower will repay in full all principal and any unpaid interest of other charges outstanding under the Line of Credit no later than the Expiration Date.

**1.4. Interest Rate.**

(a) The interest rate is a rate per year equal to the Prime Rate.

(b) The Prime Rate is the rate of interest publicly announced from time to time by the Bank as its Prime Rate. The Prime Rate is set by the Bank based on various factors, including the Bank's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans. The Bank may price loans to its customers at, above, or below the Prime Rate. Any change in the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of a change in the Bank's Prime Rate.

1.5. **Optional Interest Rates.** Instead of the interest rate based on the rate stated in Section 1.4(a), the Borrower may elect the optional interest rates listed below for the Line of Credit during interest periods specified in Section 2.2(a). The optional interest rates shall be the LIBOR Rate plus the Applicable Margin as defined below, and shall be subject to the terms and conditions described later in

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this Agreement. Any principal amount bearing interest at an optional rate under this Agreement is referred to as a "Portion."

1.6. **Applicable Margin.** The Applicable Margin, B/A Rate, and Nonusage Fee Margin shall be the following amounts per annum, based upon the "Adjusted Funded Debt to EBITDAR Ratio" (as defined in Section 8.4 of this Agreement), as set forth in the most recent compliance certificate (or, if no compliance certificate is required, the Borrower's most recent financial statements) received by the Bank as required in the Covenants section; provided,

however, that, until the Bank receives the first compliance certificate and financial statement, such amounts shall be those indicated for pricing level 2 set forth below:

Pricing Level	Adjusted Funded Debt to EBIDTAR Rate	Applicable Margin	B/A Rate	Nonusage Fee Margin
4	Greater than or equal to 4.00 to 1	2.25 %	2.10 %	0.20%
3	Greater than or equal to 3.50 to 1; but less than 4.00 to 1	2.00 %	1.85 %	0.15%
2	Greater than or equal to 3.00 to 1; but less than 3.50 to 1	1.75 %	1.60 %	0.10%
1	Less than 3.00 to 1	1.50 %	1.35 %	0.10%

The Applicable Margin, B/A Rate, and Nonusage Fee Margin shall be in effect from the first day of the month following the date the most recent compliance certificate and financial statement is received by the Bank, until the date the next compliance certificate and financial statement is received; provided, however, that if the Borrower fails to timely deliver the next compliance certificate or financial statement, the Line of Credit shall accrue interest at the Prime Rate (and the optional interest rate shall not be available) from the date such compliance certificate or financial statement was due until the date such compliance certificate or financial statement is received by the Bank.

1.7. Acceptances. The Line of Credit may be used for financing acceptance transactions for a minimum tenor of 30 days and a maximum tenor of 180 days, and not to extend beyond the Expiration Date. In calculating the principal amount outstanding under the Commitment, the calculation shall include the face amount of any acceptances outstanding. The Borrower agrees:

- (a) Each acceptance shall be in an amount not less than \$250,000.
- (b) Any sum owed to the Bank under an acceptance may, at the option of the Bank, be added to the principal amount outstanding under this Agreement. The amount will bear interest and be due as described elsewhere in this Agreement.
- (c) If there is a default under this Agreement, to immediately prepay and make the Bank whole for any outstanding acceptances.
- (d) The issuance of any acceptance is subject to the Bank's express approval and must be in form and content satisfactory to the Bank.
- (e) To sign the Bank's standard form agreement for acceptances, and to pay any issuance and/or other fees that the Bank notifies the Borrower will be charged for issuing and processing acceptances for the Borrower. The discount calculated for each acceptance shall be calculated using the B/A Rate set forth in Section 1.6.

(f) To allow the Bank to automatically charge the Designated Account (as defined below) for applicable fees, discounts, and other charges.

1.8. Letters of Credit.

(a) During the availability period, at the request of the Borrower, the Bank will issue commercial letters of credit with a maximum maturity of 180 days, and not to extend more than 180 days beyond the Expiration Date. Each commercial letter of credit will require drafts payable at sight.

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(b) The amount of the letters of credit outstanding at any one time (including the drawn and unreimbursed amounts of the letters of credit) may not exceed \$7,500,000.

(c) In calculating the principal amount outstanding under the Commitment, the calculation shall include the amount of any letters of credit outstanding, including amounts drawn on any letters of credit and not yet reimbursed.

(d) The Borrower agrees:

(i) Any sum drawn under a letter of credit may, at the option of the Bank, be added to the principal amount outstanding under this Agreement. The amount will bear interest and be due as described elsewhere in this Agreement.

(ii) If there is a default under this Agreement, to prepay and make the Bank whole for any outstanding letters of credit, immediately upon the written request of the Bank.

(iii) The issuance of any letter of credit and any amendment to a letter of credit is subject to the Bank's written approval and must be in form and content satisfactory to the Bank and in favor of a beneficiary acceptable to the Bank.

(iv) To sign the Bank's form Application and Agreement for Commercial Letter of Credit or Application and Agreement for Standby Letter of Credit, as applicable.

(v) To pay any issuance and/or other fees that the Bank notifies the Borrower will be charged for issuing and processing letters of credit for the Borrower.

(vi) To allow the Bank to automatically charge the Designated Account (as defined below) for applicable fees, discounts, and other charges.

(e) Letters of credit outstanding for the account of the Borrower as of the date of this Agreement shall be deemed to be outstanding under this Agreement, and shall be subject to all the terms and conditions stated in this Agreement.

## 2. OPTIONAL INTEREST RATES

2.1. Optional Rates. Each optional interest rate is a rate per year. Interest will be paid on the first day of each month during the interest period. At the end of any interest period, the interest rate will revert to the rate stated in Section 1.4(a) above, unless the Borrower has designated another optional interest rate for the Portion. No Portion will be converted to a different interest rate during the applicable interest period. Upon the occurrence of an event of default under this Agreement, after written notice of default has been given to the Borrower, the Bank may suspend the availability of optional interest rates for interest periods commencing after the default occurs, with such suspension to continue until such default is cured.

2.2. LIBOR Rate. The election of LIBOR Rates shall be subject to the following terms and requirements:

(a) The interest period during which the LIBOR Rate will be in effect will be one, two, or three months. The first day of the interest period must be a day other than a Saturday or a Sunday on which the Bank is open for business in New York and London and dealing in offshore dollars (a "LIBOR Banking Day"). The last day of the interest period and the actual number of days during the interest period will be determined by the Bank using the practices of the London inter-bank market.

(b) Each LIBOR Rate Portion will be for an amount not less than \$250,000.

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(c) The "LIBOR Rate" means the interest rate determined by the following formula rounded upward to the nearest 1/100 of one percent. (All amounts in the calculation will be determined by the Bank as of the first day of the interest period.)

$$\text{LIBOR Rate} = \frac{\text{London Inter-Bank Offered Rate}}{(1.00 - \text{Reserve Percentage})}$$

Where,

(i) "London Inter-Bank Offered Rate" means the average per annum interest rate at which U.S. dollar deposits would be offered for the applicable interest period by major banks in the London inter-bank market, as shown on the Telerate Page 3750 (or any successor page) at approximately 11:00 a.m., London time, two (2) London Banking Days before the commencement of the interest period. If such rate does not appear on the Telerate Page 3750 (or any successor page), the rate for that interest period will be determined by such alternate method as reasonably selected by the Bank. A "London Banking Day" is a day on which the Bank's London Banking Center is open for business and dealing in offshore dollars.

(ii) "Reserve Percentage" means the total of the maximum reserve percentages for determining the reserves to be maintained by member banks of the Federal Reserve System for Eurocurrency Liabilities, as defined in Federal Reserve Board Regulation D, rounded upward to the nearest 1/100 of one percent. The percentage will be expressed as a decimal, and will include, but not be limited to marginal, emergency, supplemental, special, and other reserve percentages.

(d) The Borrower shall irrevocably request a LIBOR Rate Portion no later than 12:00 noon, Pacific time, on the LIBOR Banking Day preceding the day on which the London Inter-Bank Offered Rate will be set, as specified above. For example, if there are no intervening holidays or weekend days in any of the relevant locations, the request must be made at least three days before the LIBOR Rate takes effect.

(e) The Bank will have no obligation to accept an election for a LIBOR Rate Portion if any of the following described events has occurred and is continuing:

(i) Dollar deposits in the principal amount, and for periods equal to the interest period, of a LIBOR Rate Portion are not available in the London inter-bank market; or

(ii) the LIBOR Rate does not accurately reflect the cost of a LIBOR Rate Portion.

(f) Each prepayment of a LIBOR Rate Portion, whether voluntary, by reason of acceleration or otherwise, will be accompanied by the amount of accrued interest on the amount prepaid and a prepayment fee as described below. A "prepayment" is a payment of an amount on a date earlier than the scheduled payment date for such amount as required by this Agreement.

(g) The prepayment fee shall be in an amount sufficient to compensate the Bank for any loss, cost or expense incurred by it as a result of the prepayment, including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Portion or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by the Bank in connection with the foregoing. For purposes of this paragraph, the Bank shall be deemed to have funded each Portion by a matching deposit or other borrowing in the applicable interbank market, whether or not such Portion was in fact so funded.

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## 3. FEES AND EXPENSES

3.1. Fees.

(a) Loan Fee. The Borrower agrees to pay a loan fee in the amount of \$20,000, to which shall be applied any acceptance fee paid by the Borrower to the Bank upon acceptance of the Bank's commitment for the Line of Credit. This fee is due on the date of this Agreement.

(b) Increase Fee. The Borrower shall pay an increase fee of \$5,000 if and when it exercises its option to increase the Commitment to \$25,000,000.

(c) Unused Commitment Fee. The Borrower agrees to pay a fee on any difference between the Commitment and the amount of credit it actually uses, determined by the average of the daily amount of credit outstanding during the specified period. The fee will be calculated at a percentage per year equal to the "Nonusage Fee Margin" determined in accordance with Section 1.6. The calculation of credit outstanding shall include the outstanding acceptances and the undrawn amount of letters of credit. This fee is due on the last day of each calendar quarter until the Expiration Date.

(d) Late Fee. To the extent permitted by law, the Borrower agrees to pay a late fee in an amount not to exceed four percent (4%) of any payment that is more than fifteen (15) days late. The imposition and payment of a late fee shall not constitute a waiver of the Bank's rights with respect to the default.

3.2. Expenses. The Borrower agrees to immediately repay the Bank for expenses, that include, but are not limited to, filing and search fees, appraisal fees, and documentation fees.

3.3. Reimbursement Costs.

(a) The Borrower agrees to reimburse the Bank for any expenses it incurs in the preparation of this Agreement and any agreement or instrument required by this Agreement. Expenses include, but are not limited to, reasonable attorneys' fees, including any allocated costs of the Bank's in-house counsel to the extent permitted by applicable law.

(b) The Borrower agrees to reimburse the Bank for the cost of periodic field examinations of the Borrower's books, records and collateral, and appraisals of the collateral, not more frequently than annually unless the Borrower is in default under this Agreement. The actions described in this paragraph may be performed by employees of the Bank or by independent appraisers.

#### 4. COLLATERAL

The Borrower's obligations to the Bank under this Agreement will be secured by personal property the Borrower now owns or will own in the future as listed below (as defined under the Uniform Commercial Code). The collateral is further defined in a security agreement executed by the Borrower. In addition, all personal property collateral securing this Agreement shall also secure all renewals, modifications and extensions of the Line of Credit. All personal property collateral securing any other present or future obligations of the Borrower to the Bank shall also secure this Agreement.

- (a) Equipment and Fixtures.
- (b) Inventory.
- (c) Accounts.
- (d) General Intangibles.
- (e) Proceeds of the foregoing.

#### 5. DISBURSEMENTS, PAYMENTS AND COSTS

5.1. Disbursements and Payments.

(a) Each payment by the Borrower will be made in immediately available funds by direct debit to a deposit account as specified below or by mail to the address shown on the Borrower's statement or at one of the Bank's banking centers in the United States.

(b) Each disbursement by the Bank and each payment by the Borrower will be evidenced by records kept by the Bank.

5.2. Telephone and Telefax Authorization.

(a) The Bank may honor telephone or telefax instructions for advances or repayments or for the designation of optional interest rates and telefax requests for the issuance of letters of credit given, or purported to be given, by any one of the individuals authorized to sign loan agreements on behalf of the Borrower, or any other individual designated by any one of such authorized signers.

(b) Advances will be deposited in and repayments will be withdrawn from account number 67549808 owned by the Borrower, or such other of the Borrower's accounts with the Bank as designated in writing by the Borrower.

(c) The Borrower will indemnify and hold the Bank harmless from all liability, loss, and costs in connection with any act resulting from telephone or telefax instructions the Bank reasonably believes are made by any individual authorized by the Borrower to give such instructions. This paragraph will survive this Agreement's termination, and will benefit the Bank and its officers, employees, and agents.

5.3. Direct Debit (Pre-Billing).

(a) The Borrower agrees that the Bank will debit deposit account number 67549808 owned by the Borrower, or such other of the Borrower's accounts with the Bank as designated in writing by the Borrower (the "Designated Account") on the date each payment of principal and interest and any fees from the Borrower becomes due (the "Due Date").

(b) Prior to each Due Date, the Bank will mail to the Borrower a statement of the amounts that will be due on that Due Date (the "Billed Amount"). The bill will be mailed a specified number of calendar days prior to the Due Date, which number of days will be mutually agreed from time to time by the Bank and the Borrower. The calculations in the bill will be made on the assumption that no new extensions of credit or payments will be made between the date of the billing statement and the Due Date, and that there will be no changes in the applicable interest rate.

(c) The Bank will debit the Designated Account for the Billed Amount, regardless of the actual amount due on that date (the "Accrued Amount"). If the Billed Amount debited to the Designated Account differs from the Accrued Amount, the discrepancy will be treated as follows:

(i) If the Billed Amount is less than the Accrued Amount, the Billed Amount for the following Due Date will be increased by the amount of the discrepancy. The Borrower will not be in default by reason of any such discrepancy.

(ii) If the Billed Amount is more than the Accrued Amount, the Billed Amount for the following Due Date will be decreased by the amount of the discrepancy.

Regardless of any such discrepancy, interest will continue to accrue based on the actual amount of principal outstanding without compounding. The Bank will not pay the Borrower interest on any overpayment.

(d) The Borrower will maintain sufficient funds in the Designated Account to cover each debit. If there are insufficient funds in the Designated Account on the date the Bank enters any debit authorized by this Agreement, the Bank may reverse the debit.

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5.4. **Banking Days.** Unless otherwise provided in this Agreement, a banking day is a day other than a Saturday, Sunday or other day on which commercial banks are authorized to close, or are in fact closed, in the state where the Bank's lending office is located, and, if such day relates to amounts bearing interest at an offshore rate (if any), means any such day on which dealings in dollar deposits are conducted among banks in the offshore dollar interbank market. All payments and disbursements which would be due on a day which is not a banking day will be due on the next banking day. All payments received on a day which is not a banking day will be applied to the Line of Credit on the next banking day.

5.5. **Interest Calculation.** Except as otherwise stated in this Agreement, all interest and fees if any, will be computed on the basis of a 360-day year and the actual number of days elapsed. This results in more interest or a higher fee than if a 365-day year is used. Installments of principal which are not paid when due under this Agreement shall continue to bear interest until paid.

5.6. **Default Rate.** Upon the occurrence of any default under this Agreement, all amounts outstanding under this Agreement, including any interest, fees, or costs which are not paid when due, will at the option of the Bank bear interest at a rate which is 3.0% higher than the rate of interest otherwise provided under this Agreement. This may result in compounding of interest. This will not constitute a waiver of any default.

## 6. CONDITIONS

The Bank must receive the following items, in form and content acceptable to the Bank, before it is required to extend any credit to the Borrower under this Agreement:

6.1. **Conditions to First Extension of Credit.** Before the first extension of credit:

(a) **Authorizations.** Evidence that the execution, delivery and performance by Borrower of this Agreement and any instrument or agreement required under this Agreement has been duly authorized.

(b) **Governing Documents.** Copies of the Borrower's certificate of incorporation, articles of incorporation, and bylaws, or equivalent organizational documents.

(c) **Perfection and Evidence of Priority.** Financing statements, together with evidence that the security interests and liens in favor of the Bank are valid, enforceable, and prior to all others' rights and interests, except those the Bank consents to in writing. All title documents for motor vehicles which are part of the collateral must show the Bank's interest.

(d) **Payment of Fees.** Payment of all accrued and unpaid expenses incurred by the Bank as required by Section 3.3.

(e) **Other Items.** Any other items that the Bank reasonably requires.

6.2. **Conditions to Subsequent Extensions of Credit.** The Bank's obligation to make subsequent advances under the Line of Credit is subject to the following conditions:

(a) **Representations and Warranties.** The representations and warranties made by the Borrower in Article 7 and in any certificate, document, or financial statement furnished at any time shall continue to be true and correct, except to the extent that such representations and warranties expressly relate to an earlier date.

(b) **No Default.** No event of default, or event which, upon notice or lapse of time or both would constitute an event of default under this Agreement, shall have occurred and be continuing, or shall exist after giving effect to the advance to be made.

## 7. REPRESENTATIONS AND WARRANTIES

When the Borrower signs this Agreement, and until the Bank is repaid in full, the Borrower makes the following representations and warranties. Each request for an extension of credit constitutes a renewal of these representations and warranties as of the date of the request:

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- 7.1. Formation. The Borrower is duly formed and existing under the laws of the state of Delaware.
- 7.2. Authorization. This Agreement, and any instrument or agreement required hereunder, are within the Borrower's powers, have been duly authorized, and do not conflict with any of its organizational papers.
- 7.3. Enforceable Agreement. This Agreement is a legal, valid and binding agreement of the Borrower, enforceable against the Borrower in accordance with its terms, and any instrument or agreement required hereunder, when executed and delivered, will be similarly legal, valid, binding and enforceable.
- 7.4. Good Standing. In each state in which the Borrower does business, it is properly licensed, in good standing, and, where required, in compliance with fictitious name statutes.
- 7.5. No Conflicts. This Agreement does not conflict with any law, agreement, or obligation by which the Borrower is bound.
- 7.6. Financial Information. All financial and other information that has been or will be supplied to the Bank is sufficiently complete to give the Bank accurate knowledge of the Borrower's financial condition, including all material contingent liabilities. Since the date of the most recent financial statement provided to the Bank, there has been no material adverse change in the business condition (financial or otherwise), operations, or properties of the Borrower.
- 7.7. Lawsuits. There is no lawsuit, tax claim or other dispute pending or threatened against the Borrower which, if lost, would impair the Borrower's financial condition or ability to repay the Line of Credit, except as have been disclosed in writing to the Bank.
- 7.8. Collateral. All collateral required in this Agreement is owned by the grantor of the security interest free of any material title defects or any material liens or interests of others, except those which have been approved by the Bank in writing.
- 7.9. Permits, Franchises. The Borrower possesses all permits, memberships, franchises, contracts and licenses required and all trademark rights, trade name rights, patent rights and fictitious name rights necessary to enable it to conduct the business in which it is now engaged.
- 7.10. Other Obligations. The Borrower is not in default on any material obligation for borrowed money, any material purchase money obligation or any other material lease, commitment, contract, instrument or obligation, except as have been disclosed in writing to the Bank.
- 7.11. Tax Matters. The Borrower has no knowledge of any pending assessments or adjustments of its income tax for any year and all taxes due have been paid, except as have been disclosed in writing to the Bank.
- 7.12. No Event of Default. There is no event which is, or with notice or lapse of time or both would be, a default under this Agreement.
- 7.13. Insurance. The Borrower has obtained, and maintained in effect, the insurance coverage required in Section 8.17 of this Agreement.
- 7.14. Employee Benefit Plan. The Borrower is in compliance in all material respects with the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and the regulations and published interpretations thereunder. The Borrower has not engaged in any acts or omissions, which would make the Borrower materially liable to any Plan, to any of its participants, or to the Internal Revenue Service, under ERISA. Capitalized terms in this paragraph shall have the meanings defined within ERISA.
- 7.15. UCC Information. The Borrower was originally incorporated under the laws of the State of Delaware, and remains a Delaware corporation. The Borrower's "organizational identification number" for purposes of the UCC is 3543890. The Borrower's place of business (or, if the Borrower has more than one place of business, its chief executive office) is located at the address listed under the Borrower's signature on this Agreement.

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## 8. COVENANTS

The Borrower agrees, so long as credit is available under this Agreement and until the Bank is repaid in full:

- 8.1. Use of Proceeds. To use the proceeds of the Line of Credit only for inventory financing and general corporate purposes.
- 8.2. Financial Information. To provide the following financial information and statements in form and content acceptable to the Bank, and such additional information as requested by the Bank from time to time:
- (a) Within 120 days of the fiscal year end, the annual financial statements of the Borrower. These financial statements must be audited (with an opinion satisfactory to the Bank) by a Certified Public Accountant acceptable to the Bank. The statements shall be prepared on a consolidated basis.
- (b) Within 60 days of the period's end (including the last period in each fiscal year), quarterly financial statements of the Borrower, certified and dated by an authorized financial officer. These financial statements may be company-prepared. The statements shall be prepared on a consolidated basis.
- (c) Within the period(s) provided in (a) and (b) above, a compliance certificate of the Borrower signed by an authorized financial officer of the Borrower setting forth (i) the information and computations (in sufficient detail) to establish that the Borrower is in compliance with all financial covenants at the end of the period covered by the financial statements then being furnished and (ii) whether there existed as of the date of such financial statements and whether there exists as of the date of the certificate, any default under this Agreement and, if any such default exists, specifying the nature thereof and the action the Borrower is taking and proposes to take with respect thereto.

(d) Promptly, upon sending or receipt, copies of any management letters and correspondence relating to management letters, sent or received by the Borrower to or from the Borrower's auditor.

(e) Within 60 days of the end of each fiscal year, a forecast balance sheet and profit and loss statement for the current year.

(f) Such additional financial information regarding the Borrower with respect to the Line of Credit as the Bank shall reasonably request, upon 30-days' notice.

8.3. Out of Debt Period. To reduce the amount of advances outstanding under the Line of Credit to not more than \$5,000,000 for a period of at least 30 consecutive days in each Line-Year. "Line-Year" means the period between the date of this Agreement and July 1, 2004, and each subsequent one-year period (if any). For purposes of this paragraph, "advances" does not include undrawn amounts of outstanding letters of credit but does include outstanding acceptances.

8.4. Adjusted Funded Debt to EBITDAR Ratio. To maintain on a consolidated basis an Adjusted Funded Debt to EBITDAR Ratio not exceeding 4.25 to 1 at the end of fiscal quarters 1 and 3 of each fiscal year, not exceeding 4.50 to 1 at the end of fiscal quarter 2, and not exceeding 3.75 to 1 at each fiscal year end. This ratio will be calculated at the end of each fiscal quarter, using the results of the twelve-month period ending with that fiscal quarter.

(a) "Adjusted Funded Debt to EBITDAR Ratio" means the rate of Adjusted Funded Debt to EBITDAR.

(b) "Adjusted Funded Debt" means Funded Debt plus six times cash occupancy expense.

(c) "Funded Debt" means all outstanding liabilities for borrowed money and other interest-bearing liabilities, including current and long term debt, less the non-current portion of Subordinated Liabilities.

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(d) "EBITDAR" means the sum of the following: (i) net income; (ii) all interest expense; (iii) all income tax expense; (iv) total depreciation expense; (v) total amortization expense; (vi) any non-cash changes incurred in connection with stock options granted to employees; (vii) all fees, costs or expenses incurred in connection with the consummation of the investment by Brentwood Associates in the Borrower; and (viii) occupancy expense.

(e) "Subordinated Liabilities" means liabilities subordinated to the Borrower's obligations to the Bank in a manner acceptable to the Bank in its sole discretion.

8.5. Fixed Charge Coverage Ratio. To maintain on a consolidated basis a Fixed Charge Coverage Ratio of at least 1.25 to 1. This ratio will be calculated at the end of each fiscal quarter, using the results of the twelve-month period ending with that fiscal quarter. "Fixed Charge Coverage Ratio" means the ratio of (i) EBITDAR (as defined in Section 8.4(d)), to (ii) cash interest expense plus cash occupancy expense.

8.6. Inventory Coverage Ratio. To maintain on a consolidated basis an Inventory Coverage Ratio of at least 0.85 to 1 at the end of fiscal quarter 2 of each fiscal year, and of at least 1.0 to 1 as of every other fiscal quarter and fiscal year end. This ratio will be calculated at the end of each fiscal quarter. "Inventory Coverage Ratio" means (i) 60% of inventory (valued at the lower of cost or market value) in which Bank holds a perfected first-lien security interest (but subject, where applicable, to statutory landlord lien rights); divided by (ii) Funded Debt (as defined in Section 8.4(c)) plus outstanding letters of credit and acceptances.

8.7. Landlord Waivers. Obtain and deliver to the Bank on a commercially reasonable best-efforts basis landlord waivers, in form satisfactory to the Bank, from each landlord of leased property for which the Borrower enters into a new lease or renews an existing lease, for premises upon which inventory, equipment, or fixtures of the Borrower are located, within 30 days of execution of such new lease or lease amendment.

8.8. Other Debts. Not to have outstanding or incur any direct or contingent liabilities or lease obligations (other than those to the Bank), or become liable for the liabilities of others, without the Bank's written consent. This does not prohibit:

(a) Acquiring goods, supplies, or merchandise on normal trade credit.

(b) Endorsing negotiable instruments received in the usual course of business.

(c) Obtaining surety bonds in the usual course of business.

(d) Liabilities, lines of credit and leases in existence on the date of this Agreement disclosed in writing to the Bank.

(e) Leases for new stores and related construction costs.

8.9. Other Liens. Not to create, assume, or allow any security interest or material lien (including judicial liens) on property the Borrower now or later owns, except:

(a) Liens and security interests in favor of the Bank.

(b) Liens for taxes not yet due.

(c) Liens outstanding on the date of this Agreement disclosed in writing to the Bank.

(d) Statutory liens during the construction or renovation of any store, so long as such lien is discharged prior to the completion of execution proceedings on the property subject to the lien.

8.10. Maintenance of Assets.

(a) Not to sell, assign, lease, transfer or otherwise dispose of any part of the Borrower's business or the Borrower's assets except in the ordinary course of the Borrower's business.

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(b) Not to sell, assign, lease, transfer or otherwise dispose of any assets for less than fair market value, or enter into any agreement to do so, except in the ordinary course of the Borrower's business.

(c) Not to enter into any sale and leaseback agreement covering any of its fixed assets.

(d) To maintain and preserve all rights, privileges, and franchises the Borrower now has.

(e) To make any repairs, renewals, or replacements to keep the Borrower's properties in good working condition.

8.11. Investments. Not to have any existing, or make any new, financial investments in any individual or entity, or make any capital contributions or other transfers of assets to any individual or entity, except for:

(a) Existing investments disclosed to the Bank in writing.

(b) Investments in the Borrower's current subsidiaries.

(c) Investments in any of the following:

(i) certificates of deposit;

(ii) U.S. treasury bills and other obligations of the federal government;

(iii) readily marketable securities (including commercial paper, but excluding restricted stock and stock subject to the provisions of Rule 144 of the Securities and Exchange Commission).

(d) Other investments not exceeding \$200,000 in the aggregate.

8.12. Loans. Not to make any loans, advances or other extensions of credit to any individual or entity, except for:

(a) Existing extensions of credit disclosed to the Bank in writing.

(b) Extensions of credit to the Borrower's current subsidiaries.

(c) Extensions of credit in the nature of accounts receivable or notes receivable arising from the sale or lease of goods or services in the ordinary course of business to non-affiliated entities.

(d) Loans to employees of the Borrower not exceeding \$50,000 per loan and \$200,000 in the aggregate.

8.13. Change of Management. Not to make any substantial change in the individuals acting as Chairman or Chief Executive Officer of the Borrower.

8.14. Change of Ownership. Not to cause, permit, or suffer any Change in Control. "Change in Control" means the acquisition by any person or entity ("a party"), or any two or more parties acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission) of outstanding shares of voting stock of the Borrower representing more than 50% of voting control of the Borrower, which party or parties currently have beneficial ownership of 50% or less of the outstanding voting shares of voting stock of the Borrower. Change in Control shall not include an acquisition or transfer of shares, or the beneficial ownership of shares, by or to a party that owns a beneficial interest in the outstanding voting stock of the Borrower as of the date of this Agreement.

8.15. Additional Negative Covenants. Not to, without the Bank's written consent:

(a) Enter into any consolidation, merger, or other combination, or become a partner in a partnership, a member of a joint venture, or a member of a limited liability company.

(b) Acquire or purchase a business or its assets for an amount greater than \$200,000 in the aggregate for all such acquisitions.

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(c) Engage in any business activities substantially different from the Borrower's present business.

(d) Liquidate or dissolve the Borrower's business.

(e) Voluntarily suspend its business for more than one day in any one-year period.

8.16. Notices to Bank. To promptly notify the Bank in writing of:

- (a) Any lawsuit over \$500,000 against the Borrower.
- (b) Any substantial dispute between any governmental authority and the Borrower.
- (c) Any event of default under this Agreement, or any event which, with notice or lapse of time or both, would constitute an event of default.
- (d) Any material adverse change in the Borrower's business condition (financial or otherwise), operations, or properties, or ability to repay the Line of Credit.
- (e) Any change in the Borrower's name, legal structure, place of business, or chief executive office if the Borrower has more than one place of business.
- (f) Any actual contingent liabilities of the Borrower, and any such contingent liabilities which are reasonably foreseeable, where such liabilities are in excess of \$1,000,000 in the aggregate.

8.17. Insurance.

- (a) General Business Insurance. To maintain insurance as is usual for the business it is in.
- (b) Insurance Covering Collateral. To maintain all risk property damage insurance policies covering the tangible property comprising the collateral. Each insurance policy must be in an amount not less than the amount of the Commitment. The insurance must be issued by an insurance company acceptable to the Bank and must include a lender's loss payable endorsement in favor of the Bank in a form acceptable to the Bank.
- (c) Business Interruption Insurance. To maintain a business interruption insurance policy for at least \$5,000,000 in coverage amount, with an insurer acceptable to the Bank, and with the Bank named as an additional loss payee.
- (d) Evidence of Insurance. Upon the request of the Bank, to deliver to the Bank a copy of each insurance policy, or, if permitted by the Bank, a certificate of insurance listing all insurance in force.

8.18. Compliance with Laws. To materially comply with the laws (including any fictitious name statute), regulations, and orders of any government body with authority over the Borrower's business.

8.19. ERISA Plans. Promptly during each year, to pay and cause any subsidiaries to pay contributions adequate to meet at least the minimum funding standards under ERISA with respect to each and every Plan; file each annual report required to be filed pursuant to ERISA in connection with each Plan for each year; and notify the Bank within ten (10) days of the occurrence of any Reportable Event that might constitute grounds for termination of any capital Plan by the Pension Benefit Guaranty Corporation or for the appointment by the appropriate United States District Court of a trustee to administer any Plan. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time. Capitalized terms in this paragraph shall have the meanings defined within ERISA.

8.20. Books and Records. To maintain adequate books and records.

8.21. Audits. To allow the Bank and its agents to inspect the Borrower's properties and examine, audit, and make copies of books and records not more frequently than annually unless the Borrower is in default under this Agreement. If any of the Borrower's properties, books or records are in the possession of a third party, the Borrower authorizes that third party to permit the Bank or its agents to

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have access to perform inspections or audits and to respond to the Bank's requests for information concerning such properties, books and records.

8.22. Perfection of Liens. To help the Bank perfect and protect its security interests and liens, and reimburse it for related costs it incurs to protect its security interests and liens.

8.23. Cooperation. To take any action reasonably requested by the Bank to carry out the intent of this Agreement.

## 9. **DEFAULT AND REMEDIES**

If any of the following events of default occurs, the Bank may do one or more of the following: declare the Borrower in default, stop making any additional credit available to the Borrower, and require the Borrower to repay its entire debt immediately and without prior notice. In addition, if any event of default occurs, the Bank shall have all rights, powers and remedies available under any instruments and agreements required by or executed in connection with this Agreement, as well as all rights and remedies available at law or in equity. If an event of default occurs under Section 9.5, with respect to the Borrower, then the entire debt outstanding under this Agreement will automatically be due immediately.

9.1. Failure to Pay. The Borrower fails to make a payment under this Agreement when due and such failure continues for five days after written notice from the Bank.

9.2. Other Bank Agreements. The Borrower or any of the Borrower's related entities or affiliates fails to meet the conditions of, or fails to perform any obligation under any other agreement the Borrower or any of the Borrower's related entities or affiliates has with the Bank or any affiliate of the Bank. If the breach is of a nature that it is capable of being remedied, the breach will not be considered an event of default under this Agreement for a period of 30 days after the date on which the Bank gives written notice of the breach to the Borrower.

9.3. Cross-default. Any default occurs under any agreement in connection with any credit the Borrower or any of the Borrower's related entities or affiliates has obtained from anyone else or which the Borrower or any of the Borrower's related entities or affiliates has guaranteed, if the default consists

of failing to make a payment when due or gives the other lender the right to accelerate the obligation, and the default remains uncured after 30 days.

9.4. False Information. The Borrower has given the Bank materially false or misleading information or representations.

9.5. Bankruptcy. The Borrower files a bankruptcy petition, a bankruptcy petition is filed against the Borrower, or the Borrower makes a general assignment for the benefit of creditors.

9.6. Receivers. A receiver or similar official is appointed for a substantial portion of the Borrower's business, or the business is terminated, or the Borrower is liquidated or dissolved.

9.7. Lien Priority. The Bank fails to have an enforceable first lien (except for any prior liens to which the Bank has consented in writing) on or security interest in any property given as security for this Agreement.

9.8. Judgments. Any final judgments or final arbitration awards are entered against the Borrower, or the Borrower enters into any settlement agreements with respect to any litigation or arbitration, in an aggregate amount of \$500,000 or more in excess of any insurance coverage, unless satisfied or discharged within 30 days.

9.9. Government Action. Any government authority takes action that materially adversely affects the Borrower's financial condition or ability to repay the Line of Credit.

9.10. Default under Related Documents. Any default occurs under any guaranty, subordination agreement, security agreement, or other document required by or delivered in connection with this Agreement or any such document is no longer in effect.

9.11. ERISA Plans. Any one or more of the following events occurs with respect to a Plan of the Borrower subject to Title IV of ERISA, provided such event or events could reasonably be expected,

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in the judgment of the Bank, to subject the Borrower to any tax, penalty or liability (or any combination of the foregoing) which, in the aggregate, could have a material adverse effect on the financial condition of the Borrower:

(a) A reportable event shall occur under Section 4043(c) of ERISA with respect to a Plan.

(b) Any Plan termination (or commencement of proceedings to terminate a Plan) or the full or partial withdrawal from a Plan by the Borrower or any ERISA Affiliate.

9.12. Other Breach Under Agreement. The Borrower fails to meet the conditions of, or fails to perform any obligation under, any term of this Agreement not specifically referred to in this Article. This includes any failure or anticipated failure by the Borrower to comply with any financial covenants set forth in this Agreement, whether such failure is evidenced by financial statements delivered to the Bank or is otherwise known to the Borrower or the Bank. If the breach is of a nature that it is capable of being remedied, the breach will not be considered an event of default under this Agreement for a period of 30 days after the date on which the Bank gives written notice of the breach to the Borrower; provided however, that the Bank will not be obligated to extend any additional credit to the Borrower during that period.

## 10. ENFORCING THIS AGREEMENT; MISCELLANEOUS

10.1. GAAP. Except as otherwise stated in this Agreement, all financial information provided to the Bank and all financial covenants will be made under generally accepted accounting principles, consistently applied.

10.2. Washington Law. This Agreement is governed by Washington law.

10.3. Successors and Assigns. This Agreement is binding on the Borrower's and the Bank's successors and assignees. The Borrower agrees that it may not assign this Agreement without the Bank's prior consent. The Bank may sell participations in or assign this loan, and may exchange financial information about the Borrower with actual or potential participants or assignees. If a participation is sold or the loan is assigned, the purchaser will have the right of set-off against the Borrower.

10.4. Arbitration.

(a) This paragraph concerns the resolution of any controversies or claims between the parties, whether arising in contract, tort or by statute, including but not limited to controversies or claims that arise out of or relate to: (i) this agreement (including any renewals, extensions or modifications); or (ii) any document related to this agreement (collectively a "Claim"). For the purposes of this arbitration provision only, the term "parties" shall include any parent corporation, subsidiary or affiliate of the Bank involved in the servicing, management or administration of any obligation described or evidenced by this agreement.

(b) At the request of any party to this agreement, any Claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "Act"). The Act will apply even though this agreement provides that it is governed by the law of a specified state.

(c) Arbitration proceedings will be determined in accordance with the Act, the applicable rules and procedures for the arbitration of disputes of Judicial Arbitration and Mediation Service, also known as JAMS/Endispute, or any successor thereof ("JAMS"), and the terms of this paragraph. In the event of any inconsistency, the terms of this paragraph shall control.

(d) The arbitration shall be administered by JAMS and conducted, unless otherwise required by law, in any U.S. state where real or tangible personal property collateral for the Line of Credit is located or if there is no such collateral, in the state specified in the governing law

arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and enforced.

(e) The arbitrator(s) will have the authority to decide whether any Claim is barred by the statute of limitations and, if so, to dismiss the arbitration on that basis. For purposes of the application of the statute of limitations, the service on JAMS under applicable JAMS rules of a notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s). The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this agreement.

(f) This paragraph does not limit the right of any party to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or non-judicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights, or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies.

(g) The filing of a court action is not intended to constitute a waiver of the right of any party, including the suing party, thereafter to require submittal of the Claim to arbitration.

10.5. Severability; Waivers. If any part of this Agreement is not enforceable, the rest of the Agreement may be enforced. The Bank retains all rights, even if it makes a loan after default. If the Bank waives a default, it may enforce a later default. Any consent or waiver under this Agreement must be in writing.

10.6. Attorneys' Fees. The Borrower shall reimburse the Bank for any reasonable costs and attorneys' fees incurred by the Bank in connection with the enforcement or preservation of any rights or remedies under this Agreement and any other documents executed in connection with this Agreement, and in connection with any amendment, waiver, "workout" or restructuring under this Agreement. In the event of a lawsuit or arbitration proceeding, the prevailing party is entitled to recover costs and reasonable attorneys' fees incurred in connection with the lawsuit or arbitration proceeding, as determined by the court or arbitrator. In the event that any case is commenced by or against the Borrower under the Bankruptcy Code (Title 11, U.S. Code) or any similar or successor statute, the Bank is entitled to recover costs and reasonable attorneys' fees incurred by the Bank related to the preservation, protection, or enforcement of any rights of the Bank in such a case. As used in this paragraph, "attorneys' fees" includes the allocated costs of the Bank's in-house counsel.

10.7. One Agreement. This Agreement and any related security or other agreements required by this Agreement, collectively:

- (a) represent the sum of the understandings and agreements between the Bank and the Borrower concerning the Line of Credit;
- (b) replace any prior oral or written agreements between the Bank and the Borrower concerning the Line of Credit; and
- (c) are intended by the Bank and the Borrower as the final, complete and exclusive statement of the terms agreed to by them.

In the event of any conflict between this Agreement and any other agreements required by this Agreement, this Agreement will prevail. Any reference in any related document to a "promissory note" or a "note" executed by the Borrower and dated as of the date of this Agreement shall be deemed to refer to this Agreement, as now in effect or as hereafter amended, renewed, or restated.

10.8. Indemnification. The Borrower will indemnify and hold the Bank harmless from any loss, liability, damages, judgment, and costs of any kind relating to or arising directly or indirectly out of (a) this Agreement or any document required hereunder, (b) any credit extended or committed by the Bank to the Borrower hereunder, and (c) any litigation or proceeding related to or arising out of this Agreement, any

such document, or any such credit. This indemnity includes but is not limited to reasonable attorneys' fees (including the allocated cost of in-house counsel). This indemnity extends to the Bank, its parent, subsidiaries and all of their directors, officers, employees, agents, successors, attorneys, and assigns. This indemnity will survive repayment of the Borrower's obligations to the Bank. All sums due to the Bank hereunder shall be obligations of the Borrower, due and payable immediately without demand.

10.9. Notices. Unless otherwise provided in this Agreement or in another agreement between the Bank and the Borrower, all notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Agreement, or sent by facsimile to the fax numbers listed on the signature page, or to such other addresses as the Bank and the Borrower may specify from time to time in writing. Notices and other communications shall be effective (i) if mailed, upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid, (ii) if telecopied, when transmitted, or (iii) if hand-delivered, by courier or otherwise (including telegram, lettergram or mailgram), when delivered.

10.10. Headings. Article and paragraph headings are for reference only and shall not affect the interpretation or meaning of any provisions of this Agreement.

10.11. Prior Agreement Superseded. This Agreement supersedes the Business Loan Agreement entered into as of July 20, 2001, between the Bank and the Borrower, including all amendments thereto; and any credit outstanding thereunder shall be deemed to be outstanding under this Agreement.

10.12. Counterparts. This Agreement may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same agreement.

**WASHINGTON NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

This Agreement is executed as of the date stated at the top of the first page.

**Bank:**

BANK OF AMERICA, N.A.

By /s/ Curt G. Clausen  
Curt G. Clausen, Senior Vice President

Address where notices to the Bank  
are to be sent:

1602 Hewitt Ave.  
Everett, WA 98201-3500  
Attention: Curt Clausen  
Telephone: (425) 259-7777  
Telefacsimile: (425) 259-7660

**Borrower:**

ZUMIEZ INC.

By /s/ Brenda I. Morris  
Brenda I. Morris, Chief Financial Officer

Address where notices to the Borrower  
are to be sent:

1420 - 80th St. S.W. Suite A  
Everett, WA 98203  
Attention: Brenda I. Morris  
Telephone: (425) 551-1500  
Telefacsimile: (425) 551-1595

**MERRILL CREEK CENTER  
LEASE AGREEMENT**

BETWEEN

**MERRILL CREEK HOLDINGS, LLC,**

**LANDLORD**

AND

**ZUMIEZ, INC.,**

**TENANT**

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**MERRILL CREEK CENTER  
LEASE AGREEMENT**

Landlord hereby leases to Tenant and Tenant hereby leases and accepts from Landlord the premises hereinafter described in the terms and conditions set forth in this Lease Agreement, hereinafter called "this Lease".

**BASIC LEASE PROVISIONS**

- A. Lease Date: August 2, 2004
- B. Landlord: Merrill Creek Center, LLC
- C. Tenant: Zumiez, Inc., a Delaware Corporation
- D. Development: The project on property particularly described and depicted on the Site Plan marked **Exhibit "B"** (the "**Development**"), located at 6300 Merrill Creek Parkway, Everett, Snohomish County, Washington 98203
- E. Premises: The area shown by hatch-marks on **Exhibit "B,"** containing 87,350 rentable square feet ("RSF"), subject to a mutually-agreed on final measurement.
- F. Use of Premises: Solely for use as a Distribution Center and Office Facility and Direct Channel Distribution and for no other purpose.
- G. Initial Term: Eighty-Nine (89) months, with two (2) five-year Options
- H. Minimum Monthly Rent:

Lease Months	Minimum Monthly Rent (NNN)
1-5	\$ 0.00
6-24	\$ 33,648.00
25-36	\$ 38,346.00
37-48	\$ 39,400.00
49-60	\$ 40,484.00
61-72	\$ 41,598.00
73-84	\$ 42,742.00
85-89	\$ 43,917.00
90-101 (if First Option is exercised by Tenant) <sup>f</sup>	\$ 45,125.00
102-113	\$ 46,366.00
114-125	\$ 47,641.00
126-137	\$ 48,951.00
138-149	\$ 50,297.00
150-209 (if Second Option is Exercised by Tenant)	Fair Market Rent (See Section 4.1(c))

- I. Initial Security Deposit: N/A
- J. Landlord's Address for Notices: Merrill Creek Holdings, LLC  
600 University Street, Suite 2800  
Seattle, Washington 98101  
Attention: Brent Lower

- K. Tenant's Current Address for Notices: 1420 80<sup>th</sup> St SW Suite A  
Everett, WA 98203  
Attention: Brenda Morris

Tenant's Address for Notices On and After the Commencement Date: The Premises

- L. Landlord's Broker: Colliers International
- M. Tenant's Broker: GVA Kidder Mathews

**ARTICLE 1**

**PREMISES**

1.1 Construction; Suitability. The improvements to the Premises leased to Tenant shall be constructed pursuant to Exhibit "A" attached hereto. Landlord shall have no other obligation to perform any construction or other work to the interior or exterior of the Premises, which work is not set forth on Exhibit "A". Except as expressly provided herein, Tenant acknowledges that neither Landlord, nor any agent or representative of Landlord, has made any representation or warranty with respect to the suitability of the Premises for the use set forth in the Basic Lease Provisions, and that Tenant has entered into this Lease based solely upon its own investigation and inspection of the Development, the Site and the Premises. Landlord does not represent, and Tenant does not rely on the fact that any specific tenant or tenants will occupy space in the Development during the term of this Lease. Landlord reserves and excepts from the Premises the roof and exterior walls of the building or buildings of which the Premises are a part.

1.2 Location. The parties acknowledge that Exhibit "B" describes the current perimeter of the Development before the dedication or grant of easements for highways, streets, and public ways. Exhibit "B" sets forth a general layout of the Development, and shall not be deemed a representation by Landlord that the Development shall always be constructed as indicated thereon or that any tenants or occupants designated by name or nature of business thereon shall conduct business in the Development during the term of this Lease; and, subject to compliance with all applicable laws and governmental requirements and provided that there is reasonable access to the Premises, Landlord may in its sole discretion increase, decrease or change the location, and dimensions of the buildings within the Development outside the Premises, driving lanes, driveways, walkways, parking places and other improvements shown on Exhibit "B," and Landlord reserves the right to make additions and alterations to all buildings constructed in the Development, and to change the name of the Development from time to time, provided that such changes, additions and alterations do not unreasonably interfere with pedestrian and vehicular access to the Premises (including without limitation access between the parking area and the main entrance to the Premises) or the utility of garbage pickup areas and shipping, receiving, and loading dock areas. The parties shall signify their approval of Exhibit "B" by signing or initialing Exhibit "B," and such Exhibit is hereby made a part of this Lease. References to "this Lease" include all exhibits and matters incorporated by reference as part of this Lease.

1.3 Landlord's Warranties. Landlord represents and warrants to Tenant that Landlord's Work (if any, and as defined in Exhibit "A") will be performed in a good and workmanlike manner. Landlord further represents and warrants to Tenant that upon substantial completion of the Premises, Landlord's Work (if any, and as defined in Exhibit "A") will be in compliance with all governmental rules, orders, regulations and requirement then in effect. Landlord's liability under the foregoing warranties shall be limited to the repair and/or replacement, as the case may be, of defective materials and workmanship and/or affecting compliance with such rules and requirements, and, in no event, shall Landlord be liable for special or consequential damages.

1.4 Right of First Offer. Provided that Tenant has not been in material default under the terms and conditions of this Lease, Tenant shall have, during the first five (5) years of the initial Term, a right of first offer to lease additional space in the Development (the "ROFO Space"). Tenant's right of first offer shall be subject and subordinate to all leases, options and rights of other third parties in existence as of the date of mutual execution hereof. If at any time during the first five (5) years of the Initial Term of this Lease, Landlord shall receive a bona fide offer from any third party to lease all or any part of the ROFO Space, which offer Landlord shall desire to accept, then Landlord shall promptly notify Tenant of the existence of such offer by e-mail and by mail and shall provide Tenant with a summary of all relevant

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economic terms of the third party offer. Tenant may, within ten (10) business days thereafter, elect by written notice to Landlord to lease the ROFO Space on the same terms and conditions as those as provided in the bona fide offer. If Tenant fails to respond within such 10-business day period, Landlord shall use reasonable efforts to contact, orally or in writing, Tenant to confirm such non-election. Failure of Tenant to exercise the foregoing right within the prescribed time period above shall constitute a waiver of Tenant's right as to that offer with respect to the ROFO Space mentioned in Landlord's notice and Landlord shall have the right to lease the ROFO Space in Landlord's sole discretion. In the event the bonafide third party offer does not materialize into a lease or upon termination of the third party tenant's lease, the ROFO will be reinstated. If Tenant duly elects to exercise its right of first offer as aforesaid, Landlord shall prepare, and Tenant shall promptly execute, an amendment to this Lease to memorialize such election, provided, however, that failure of Tenant to execute such amendment shall not affect the binding nature of Tenant's election to exercise the right of first offer as aforesaid. All rights of Tenant under the provisions of this right of first offer shall terminate and be of no further force or effect even after Tenant's due and timely exercise of the right of first offer, if after such exercise, but prior to the occupancy of the ROFO Space, Tenant is in material default hereunder. The right described in this paragraph is personal to originally-named Tenant or to an assignee or transferee permitted outright pursuant to this Lease without Landlord's consent and may not be exercised or be assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant, and is not assignable separate and apart from this Lease.

1.5 Parking. Tenant and its employees, customers, suppliers and invitees shall have the right to use, for no additional rent, the 250 parking spaces depicted on Exhibit B attached hereto. Furthermore, Tenant shall have the right to use 2.5 spaces of additional parking for each 1,000 RSF of additional Premises leased by Tenant at the Development. Landlord shall have the right to relocate any of such parking spaces to areas reasonably convenient to the Premises.

1.6 Exhibits. The following drawings and special provisions are attached as exhibits and made a part of this Lease:

Exhibit "A" - Construction and Acceptance of Premises  
Exhibit "B" - Site Plan  
Exhibit "C" - Rules and Regulations  
Exhibit "D" - Delivery of Premises  
Exhibit "E" - Sign Criteria

## ARTICLE 2

### BUSINESS RIGHTS AND RESTRICTIONS

2.1 Use. The Premises shall be used solely for the specific use set forth in the Basic Lease Provisions and for no other purpose or use whatsoever.

2.2 Restrictions. Tenant shall not, without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion: (a) conduct any auction or bankruptcy sales; (b) conduct any fire sale except as a result of a fire on the Premises; (c) conduct any close-out sale except at the expiration of the Lease term or occasional warehouse sales to the public (but not more than thrice annually); (d) sell any so-called "surplus", "Army and Navy", or "secondhand" goods, as those terms are generally used at this time and from time to time hereafter; (e) permit anything to be done on the Premises which will in any way obstruct, interfere with or infringe on the rights of other occupants or invitees of the Development; (f) cause, maintain or permit any nuisance on the Premises or cause or permit any waste to be committed on the Premises; (g) install or erect any satellite dish or other roof- or building-

mounted equipment without Landlords prior written consent, which shall not be unreasonably withheld; or (h) bring or keep on the Premises any item or thing or permit any act thereon which is prohibited by any law, statute, ordinance or governmental regulation now in force or hereinafter enacted or promulgated, or which is prohibited by any Standard form of fire insurance policy.

## ARTICLE 3

### TERM

3.1 Duration; Early Possession. The initial term of this Lease shall commence on February 1, 2005 (the "**Lease Commencement Date**"). If the Lease Commencement Date occurs on a day other than the first day of a calendar month, the term of this Lease shall commence on said Lease Commencement Date and shall continue from the first day of the calendar month next following the Lease Commencement Date for the period of years set forth in the Basic Lease Provisions. Tenant agrees to execute a certificate confirming the date of the Lease Commencement Date, in the form of the certificate attached hereto as **Exhibit D**, which certificate shall be initialed by Landlord and attached to, and incorporated in, this Lease. Commencing on the date Landlord tenders delivery of possession to

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Tenant (the "**Possession Date**"), Tenant and Landlord shall comply with each and every term, covenant, condition and provision of this Lease, excepting only those provisions pertaining to Tenant's obligation to pay Fixed Minimum Rent, which obligation shall commence in accordance with Article 4 below. In connection therewith, Tenant acknowledges and agrees that certain obligations under various articles hereof shall commence prior to the Lease Commencement Date (i.e., payment of certain charges, construction obligations, hold harmless, liability insurance, etc.), and the parties agree to be bound by these articles prior to the Lease Commencement Date.

3.2 Options to Extend. Subject to the provisions of this Lease and provided that on the date of exercise of the option by Tenant and on the scheduled date of commencement of the Extended Term (as defined below): (i) Tenant shall not then be in default under the terms of this Lease; (ii) the original Tenant shall be in direct occupancy of the Premises; and (iii) this Lease shall be in full force and effect; then, the term of this Lease may be extended by Tenant for up to two (2) additional periods of five (5) years each (each, an "**Extended Term**"), upon the same terms and conditions as contained in this Lease upon compliance with the notice provisions set forth herein. Tenant shall exercise its option, if at all, only with respect to the immediately succeeding Extended Term, by delivering written notice of its election thereof to Landlord, sent certified mail, return receipt requested (the "**Option Notice**"), not more than 360 days nor less than 180 days prior to the expiration of the then-effective Term. The options to extend the term of this Lease is only exercisable by the original named Tenant or to an assignee or transferee permitted outright pursuant to this Lease without Landlord's consent.

### 3.3 Intentionally Omitted.

3.3.1

## ARTICLE 4

### RENT

4.1 Payment. Tenant shall pay to Landlord without prior demand, deduction, set-off, counter claim or offset, for all periods during the Lease term, all sums provided in this **Paragraph 4.1** and all other additional sums as provided in this Lease, at the address set forth in the Basic Lease Provisions, payable in lawful money of the United States of America on the first day of each month, with a grace period of 3 days, except that the fixed minimum rent due for the first month (or first partial month) shall be prepaid on the date of execution of the Lease by Tenant. All sums of money required to be paid pursuant to the terms of this Lease are hereby defined as "**rent**", including all sums as provided in **Paragraphs 4, 5, 6, 7, 8, and 9** and provided elsewhere in this Lease, whether or not the same are designated as such. Landlord's acceptance of Tenant's bank check or other funds shall not be deemed a waiver of Landlord's right to thereafter demand and receive timely payment in immediately available funds.

(a) Fixed Minimum Rent. Tenant shall pay to Landlord, on a triple net basis, fixed minimum rent at the initial monthly rate provided in the Basic Lease Provisions.

(b) Late Fee. If Tenant shall fail to pay when due (within grace period), any installment of fixed minimum rent or any other sums due under this Lease, a late charge equal to two percent (2%) of the overdue amount shall be payable by Tenant to reimburse Landlord for costs relating to collecting and accounting for said late payment(s).

(c) Fixed Minimum Rent during Second Extended Term. Fixed Minimum Rent during the Second Extended Term shall be Fair Market Rental Value, provided that in no event shall Fixed Minimum Rent be decreased.

(1) The term "Fair Market Rental Value" shall be the rental rate that comparable Premises for the same term of the Extended Term would command on the open market at the time of commencement of the Extended Term determined in the manner set forth in this Section. For purposes hereof, the term "comparable Premises" shall mean premises similar in size and location to the Premises with similar improvements and amenities including any improvements installed upon Tenant's initial occupancy of Premises being leased to a tenant with similar creditworthiness as Tenant.

(2) If Landlord and Tenant cannot agree upon the Fair Market Rental Value of the Premises within twenty (20) days after Landlord's receipt of Tenant's notice exercising the second Extended Term option, then Landlord and Tenant shall agree within ten (10) days thereafter on one real estate appraiser (who shall be a Member of the American Institute of Real Estate Appraisers or equivalent) who will determine the Fair Market Rental Value of the Premises. If Landlord and Tenant cannot mutually agree upon an appraiser within said ten (10) day period, then one M.A.I. qualified appraiser shall be appointed by Tenant and one M.A.I. qualified appraiser shall be appointed by Landlord within ten (10) days of notice by one party to the other of such disagreement. The two appraisers shall

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determine the Fair Market Rental Value of the Premises within twenty (20) days of their appointment; provided, however, if either party fails to appoint an appraiser within such ten (10) day period, then the determination of the appraiser first appointed shall be final, conclusive and binding upon both parties. The appraisers appointed shall proceed to determine Fair Market Rental Value within twenty (20) days following such appointment. The conclusion shall be final, conclusive and binding upon both Landlord and Tenant. If said appraisers should fail to agree, but the difference in their conclusions as to Fair Market Rental Value is ten percent (10%) or less of the lower of the two appraisals, the Fair Market Rental Value shall be deemed the average of the two.

(3) If the two appraisers should fail to agree on the Fair Market Rental Value, and the difference between the two appraisals exceeds ten percent (10%), then the two appraisers thus appointed shall appoint a third M.A.I. qualified appraiser, and in case of their failure to agree on a third appraiser within ten (10) days after their individual determination of the Fair Market Rental Value, either party may apply to the Presiding Judge of the Superior Court for Snohomish County, Washington, requesting said Judge to appoint the third M.A.I. qualified appraiser. The third appraiser so appointed shall promptly determine the Fair Market Rental Value of the Premises and the average of the appraisals of the two closest appraisers shall be final, conclusive and binding upon both parties. The fees and expenses of said third appraiser or the one appraiser Landlord and Tenant agree upon, shall be borne equally by Landlord and Tenant. Landlord and Tenant shall pay the fees and expenses of their respective appraiser if the parties fail to agree on a single appraiser. All M.A.I. appraisers appointed or selected pursuant to this subsection shall have at least ten (10) years experience appraising commercial properties in the Everett/Merrill Creek submarket.

4.2 First Partial Month. If the first day of the Lease term occurs on a day other than the first day of a calendar month; fixed minimum rent for such partial month ending on the last day of the calendar month in which the Lease term commences shall be prorated based on a 30-day month, and as so prorated shall be paid on the date of execution of the Lease.

4.3 Lease Year. The term “**Lease Year**” shall mean each period of twelve (12) or less consecutive months which ends on December 31 of each calendar year during the Lease term or any Extended Term, and the period from the last December 31 during the Lease term or any Extended Term to and including the last day of the Lease term or any Extended Term during the next calendar year. The first and last Lease Years may be less than twelve (12) months.

## ARTICLE 5

### COMMON AREA

5.1 Definition. The “**Common Area**” is that area within the Development which is neither occupied by buildings (excluding roof overhangs and canopies, columns supporting roof overhangs and canopies, and subsurface foundations) nor devoted permanently to the exclusive use of a particular tenant, except that areas containing pylon signs and buildings or subsurface utilities which are used with respect to the operation of the Common Area shall be deemed to be a part of the Common Area. The Common Area includes each area designated as a building area on Exhibit “B” until such time as it is improved with a building.

5.2 Reserved.

5.3 Use. During the Lease term Tenant, its subtenants, concessionaires, licensees, invitees, customers, and employees shall have the nonexclusive right to use the Common Area with Landlord, other owners of portions of the Development, other tenants, and their respective subtenants, concessionaires, licensees, invitees, customers, and employees, subject to the provisions of this Lease. Tenant shall also have the right to use the western 3 exterior covered docks on an exclusive basis. Tenant shall have the right to use the two adjacent exterior covered docks provided the adjacent space is vacant. Tenant shall not have access to the two adjacent exterior docks once the adjacent space is leased and Landlord may, at it's election, install a fence limiting access between Tenant's exclusive docks and the adjacent docks.

5.4 Maintenance and Operation. “**Common Area Expenses**” shall include, but not be limited to, the reasonable and customary costs and expenses without markup of operating, managing, lighting, repairing, replacing (when repairing will be uneconomic), painting, and maintaining the Common Area and the Development in good and sanitary order, condition, and repair, including without limitation, the costs and expenses, accounted for based on GAAP, of the following: (1) managing; (2) cleaning and removing rubbish and dirt; (3) labor costs for personnel performing services in connection with the operation, repair and maintenance of the Common Area or Development and the payroll taxes and benefits related thereto; (4) all utility services utilized in connection with the Common Area and Development which are not separately metered to the tenants, including but not limited to heating, ventilation, and air conditioning, electricity, gas, water charges, sewer charges, hook-up fees, and cost of

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installing, maintaining and repairing the Development's intrabuilding network cabling, repair and/or installation of any fire protection systems, security alarm systems, lighting systems, electrical systems and any other utility systems; (5) maintaining, repairing, replacing, and re-marking paved and unpaved surfaces, curbs, signs, landscaping, lighting and electrical facilities, drainage, elevators, meters, breakers, security systems, life safety systems, irrigation systems, fences and gates, wiring, and repairs, modifications, additions and replacements to the foregoing whether or not necessitated by any present or future law, statute, regulation, or directive of any governmental agency, and other similar items; (6) all premiums on, deductibles, retentions, and claims not covered by, worker's compensation, casualty, public liability, property damage, loss of rent, fire and extended coverage, and other insurance on the Common Area and Development obtained by Landlord pursuant to Article 9, or otherwise (Tenant is to pay its pro-rata share of the costs in connection with such insurance); (7) rental of or cost of tools, machinery, and equipment used in connection with managing and maintaining the Common Area; (8) all real property and personal property taxes and assessments levied or assessed against the Development or the Common Area, including without limitation, transport fees, trip fees, metro-rail fees or assessments, school fees, fees assessed by air quality management districts or any governmental agency regulating air pollution or commercial rental taxes; (9) the cost of all janitors, gardeners, security personnel and equipment performing services on the Common Area; (10) any regulatory fee or surcharge or similar imposition imposed by governmental requirements based upon or measured by the number of parking spaces or the areas devoted to parking in the Common Area; (11) the cost of other capital improvements to the Common Area, amortized over their useful life based on GAAP, to the extent that the improvement provides increased utility and functionality to the Tenant or operations and maintenance of the Common areas; and (12) Notwithstanding the foregoing, following shall be excluded from Common Area Expenses: costs incurred due to Landlord's negligence; promotional and advertising expenses; real estate commissions, legal fees, depreciation and amortization, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation and amortization would otherwise have been included in the charge for such third party's services and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life.

5.5 Records. Landlord shall keep accurate records showing in reasonable detail all expenses incurred for such maintenance. These records shall, upon at least five (5) business days' request, be made available during business hours at the offices of Landlord for inspection by Tenant. Any such inspection by Tenant shall take place within one (1) year following the date of the annual reconciliation statement (as defined in Paragraph 5.6 below) setting forth such expenses.

5.6 Tenant's Contribution. From and after the Commencement Date of this Lease, and during the entire Lease term and any Extended Term(s), Tenant shall pay to Landlord with Fixed Minimum Rent on the first day of each month (subject to 3 day grace period), Tenant's pro rata share of the amount of all Common Area Expenses based on, at Landlord's election, either: (a) the amount of such expenses actually incurred during the billing period; or (b) equal periodic installments which have been estimated in advance by Landlord for a particular period. Landlord may revise such estimates upward or downward at any time without prior notice to Tenant. If Landlord elects to bill Tenant based upon estimates, Landlord shall, within sixty (60) days after the end of the calendar year, or as soon thereafter as possible, forward to Tenant a written statement (the "**annual reconciliation statement**") which adjusts the estimated expenses to reflect the actual expenses incurred for such year. If the annual reconciliation statement shows the actual expenses to have exceeded the estimated expenses, then Tenant's share of such additional amount shall be paid by Tenant to Landlord within thirty (30) days of receipt of the annual reconciliation statement; if the annual reconciliation statement shows the actual expenses to have been less than the estimated expenses, Landlord shall credit Tenant's share against the sums next due hereunder from Tenant to Landlord (or against any outstanding sums then due). Tenant's pro rata share shall be equal to the ratio which Tenant's rentable ground floor area bears to the total rentable ground floor area which has the benefit of, or participates in, the expense(s) or service(s) for which Tenant is being charged.

5.7 Operation and Control. Landlord shall have control and non-exclusive possession of the entire Common Area and may from time to time adopt rules and regulations pertaining to the use thereof. Landlord shall, except as otherwise provided herein, operate and maintain the Common Area during the Lease term. Landlord reserves the right to use the Common Area, so long as reasonable pedestrian and vehicular access to the Premises continue to be provided and provided that pedestrian and vehicular access to the Premises (including without limitation access between the parking area and the main entrance to the Premises) and the utility of garbage pickup areas and shipping, receiving, and loading dock areas are not thereby unreasonably interfered with, for such promotions, exhibitions and similar uses as Landlord reasonably deems in the best interests of the Development and its tenants. Landlord may temporarily close parts of the Common Area for such periods of time as may be necessary for (i) temporary use as a work area in connection with the construction of buildings or other improvements within the Development or contiguous property; (ii) repairs or alterations in or to the Common Area to any utility facilities; (iii) preventing the public from obtaining prescriptive rights in or to the Common Area; (iv) emergency or added safety reasons; or (v) performing such other acts as in Landlord's

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reasonable judgment are appropriate for the proper operation or maintenance of the Development. Landlord shall have the sole and exclusive control of the Common Area. Landlord's rights shall include, but not be limited to, the right to (vii) restrain the use of the Common Area by unauthorized persons; (viii) utilize from time to time any portion of the Common Area for promotional, entertainment and related matters; (ix) reserved; (x) temporarily close any portion of the Common Area for repairs, improvements or alterations, to discourage non-customer use, to prevent dedication or an easement by prescription, or for any other reason deemed sufficient in Landlord's judgment; and (xi) change the shape and size of the Common Area, add, eliminate or change the location of improvements to the Common Area, including, without limitation, buildings, lighting, parking areas, roadways and curb cuts, and construct buildings on the Common Area. Landlord may determine the nature, size and extent of the Common Area; as well as make changes to the Common Area from time to time which in Landlord's opinion are deemed desirable for the Development. The manner in which the Common Area shall be operated and maintained and the expenditures therefor shall be in Landlord's sole discretion. Landlord reserves the right to appoint a substitute operator, including but not limited to, any tenant in the Development, to carry out any or all of Landlord's rights and duties with respect to the Common Area as provided in this Lease; and Landlord may enter into a contract either by a separate document or in a Lease agreement with such operator on such terms and conditions and for such period as Landlord shall deem proper.

5.8 Obstructions. No fence, wall, structure, division, rail or obstruction shall be placed, kept, permitted or maintained upon the Common Area or any part thereof by Tenant. Tenant shall not conduct any business activities of any kind whatsoever in or upon the Common Area without Landlord's prior written consent. Tenant shall not use the Common Area for solicitations, demonstrations or any other activities that would interfere with the conduct of business in the Development, or which might tend to create civil disorder or commotion.

## ARTICLE 6

### TAXES

6.1 Personal Property Taxes. Tenant shall pay before delinquency all license fees, public charges, taxes and assessments on the furniture, fixtures, equipment, inventory and other personal property of or being used by Tenant in the Premises, whether or not owned by Tenant.

6.2 Real Property Taxes.

(a) Definition; Payment. Tenant shall pay to Landlord as additional rent, in the manner set forth in Paragraph 5.6, any and all real property taxes, excises, license and permit fees, utility levies and charges, and other governmental charges and assessments, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, and installments thereof (including any business and occupation tax imposed on Landlord or the Development, and any tax imposed on the rents collected therefrom or on the income generated thereby, whether or not substituted in whole or in part for real property taxes, as well as assessments and any license fee imposed by a local governmental body on the collection of rent), which shall be levied or assessed against all or any portion of the Premises, or imposed on Landlord for any period during the term of this Lease, including the costs of any appeals or protests thereof (provided that any tax reductions effected by any such appeal or protest shall be offset against taxes otherwise assessed pursuant to this paragraph). Said real property taxes and assessments attributable to the years that this Lease commences and terminates shall, if necessary, be prorated and apportioned between Landlord and Tenant to coincide with the commencement and expiration of the Lease term. Landlord agrees to appeal the current tax assessment and provide Tenant copies of documentation and Tenant shall benefit by any reduction in real estate taxes and NNN charges in accordance with this Section.

(b) Proration. Tenant's share shall be based upon the ratio of the square footage of the Premises to the total square footage of the Development unless a portion of the Development is assessed separately in which case Tenant's share shall be based upon the ratio of the square footage of the Premises to the total square footage which is included in the applicable tax bill.

(c) Separate Tax Bill. If the Premises are separately billed pursuant to a segregation, Tenant shall pay such property taxes as additional rent, at Landlord's election, either (i) at least 30 days prior to delinquency, directly to the tax collector, or (ii) together with Tenant's Pro Rata Share of monthly Common Area expenses, to Landlord, or (iii) twice each year within ten (10) days after delivery of Landlord's written statement which shall be accompanied by a copy of the tax bill, to Landlord. Each party shall furnish the other upon written request, evidence of payment of such taxes and assessments.

(d) Tenant's Use. Notwithstanding any other provisions of this Paragraph 6.2, in the event that Tenant's use of the Premises or any action undertaken by Tenant causes an increase in real property taxes assessed against the Development or the Premises as a result of any tax reassessment or

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reappraisal, Tenant shall be solely liable for, and shall pay, in addition to all other sums payable under this Paragraph 6.2 or elsewhere in the Lease, the entire amount of the increase in real property taxes over the amount of real property taxes for the Development or the Premises had such reassessment or reappraisal not occurred. Tenant shall not be required to pay increases in taxes caused by other tenants' uses of portions of the Development.

6.3 Business Taxes. Tenant shall pay (a) all special taxes and assessments or license fees now or hereafter levied, assessed or imposed by law or ordinance, by reason of the use of the Premises, and (b) any business and occupation tax and any tax, assessment, levy or charge assessed on the rent paid under this Lease.

6.4 Substitute and Additional Taxes. If, at any time during the Term, the methods of taxation prevailing on the execution date hereof shall be altered so that in lieu of, or as a supplement to, or a substitute for, the whole or any part of the Taxes now levied, assessed or imposed on the Premises or the Development, there shall be levied, assessed or imposed a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise, on the rents received therefrom, or a tax, assessment, levy (including but not limited to any municipal, state, or federal levy), imposition or charge measured by or based in whole or in part upon the Premises and imposed upon Landlord, or a license fee measured by the rent payable under this Lease or by expenditures made by Tenant on Landlord's behalf in connection with this Lease, then all such taxes, assessments, levies, impositions, charges of the part thereof so measured or based, shall be deemed to be included within the term "Taxes" as defined in Article 6 hereof, and Tenant shall pay and discharge the same in the manner provided for the payment of Taxes herein, it being the intention of the parties hereto that the rent to be paid hereunder shall be paid to Landlord absolutely net, without deduction of any kind or nature whatsoever.

6.5 Commercial Rent Tax. Tenant shall pay to Landlord, in addition to and together with any and all installments of fixed minimum rent, additional rent and other charges payable pursuant to this Lease, the excise, transaction, sales, privilege, or other tax (other than net income and/or estate taxes) now or in the future imposed by the city, county, state or any other government or governmental agency upon Landlord and attributable to or measured by the fixed minimum rent, common area expenses, additional rent or other charges or prorations payable by Tenant pursuant to this Lease.

## ARTICLE 7

### UTILITIES

In addition to all other sums Tenant is required to pay pursuant to this Lease, Tenant shall be solely responsible for and shall pay as additional rent prior to delinquency all charges for electricity, telephone, water, gas (if any), heat and any other utilities used or consumed on the Premises from and after the date Tenant first takes possession of the Premises. If the Premises are separately metered by the utility service company Tenant agrees to pay all charges therefor attributable to the Lease term directly to the appropriate utility service company before delinquency, whether the statement or invoice therefor is delivered to Tenant during, or after expiration of, the Lease term. If the Premises are separately metered by the Landlord, Tenant agrees to pay all charges therefore attributable to the Lease term directly to Landlord before delinquency, whether the statement or invoice therefore is delivered to Tenant during, or after expiration of, the Lease term. Tenant shall pay to Landlord before delinquency its pro-rata share of the costs of any utility services that are not separately metered. Tenant's pro-rata share shall be equal to the ratio which Tenant's rentable ground floor area bears to the total rentable ground floor area which has the benefit of, or receives, the expense or utility service for which Tenant is being charged. Nothing contained in this Lease shall limit Landlord in any way from granting or using easements on, across, over, and under the Development for the purpose of providing utility services for Tenant or others. In no event shall Landlord be responsible for any loss, cost, liability or expense of any person or entity resulting from any interruption of utility services to Tenant and/or the Premises, nor shall rent be offset as a result of any such interruption, unless any such utility interruption is due to the Landlord's gross negligence or intentional misconduct and continues for forty-eight (48) hours or more after Tenant provides written notice thereof to Landlord.

## ARTICLE 8

### REPAIRS AND ALTERATIONS

8.1 Landlord's Repairs. The Basic Building Systems (e.g. plumbing, electrical, mechanical, etc.) will be in functional working order upon Lease Commencement Date. Landlord shall keep in good condition and repair the structure, foundation, bearing walls, roof system, exterior utility lines serving the Building at Tenant's cost which shall be amortized over the reasonably estimated useful life thereof if a capital expense and prorated and paid by Tenant in accordance with Paragraph 5.6. Unless Landlord has elected to require Tenant to maintain the HVAC system, Landlord shall maintain the HVAC system of the Premises, at Tenant's cost (which shall be paid solely by Tenant in the event that the repair or replacement

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relates solely to the Premises or is necessitated by Tenant's actions, or if not, which shall be prorated and paid by Tenant in accordance with Paragraph 5.6), except that Landlord shall not be required to make any such repairs or replacements occasioned by the act or negligence of Tenant, its agents, employees, invitees, licensees, representatives or contractors. In addition to the foregoing, Landlord may, at its election, employ qualified companies to provide regular inspection, maintenance and repair of the walls, roof, utility lines, fire sprinklers and HVAC system, the costs of which shall be included in Common Area Expenses pursuant to Paragraph 5.4, and paid by Tenant in accordance with Paragraph 5.6. For purposes of this particular proration, the floor area of any buildings not included in such service contracts shall be excluded from the denominator. Nothing contained in this Paragraph 8.1 shall limit Landlord's right to reimbursement from Tenant for maintenance, repair costs and replacement costs provided elsewhere in this Lease.

8.2 Tenant's Repairs. Except as expressly provided in **Paragraph 8.1**, Tenant shall, at its sole cost, keep in first-class appearance, in a condition at least equal to that which existed when Tenant initially began operating at the Premises, and in good order, condition, cleanliness and repair the interior of the Premises and every part thereof, including without limitation, the interior surfaces of walls, floors, ceilings, and the interior surfaces of all doors, door frames, door checks, entrances, windows, window frames, and plate glass. Landlord shall repair, maintain, and replace, at Tenant's expense, swamp coolers, all plumbing and sewage facilities within the Premises, including free flow up to the main sewer line, fixtures, ventilation, and electrical systems serving the Premises, sprinkler systems, exterior walls, exterior windows, doors, door frames, and any mechanical systems or equipment installed for the sole use by Tenant. All equipment, facilities or fixtures shall, at Tenant's sole expense, be kept, repaired, maintained, replaced or added to as provided by this paragraph at all times in accordance with all governmental requirements; except that Tenant shall not be required to make any such repairs or replacements occasioned by the act or negligence of Landlord, its agents, employees, invitees, licensees, representatives or contractors. In the event that Tenant fails to comply with the obligations set forth in this **Paragraph 8.2**, Landlord may, but shall not be obligated to, perform any such obligation on behalf of, and for the account of Tenant, and Tenant shall reimburse Landlord for all costs and expenses paid or incurred on behalf of Tenant in connection with performing the obligations set forth herein. Tenant expressly waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

### 8.3 Alterations.

(a) Tenant's Alterations. Tenant shall not make any alterations, installations or improvements (collectively, "**Tenant Changes**") in, to, or about the interior or exterior of the Premises without obtaining the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. Tenant's request for Landlord's consent to perform any Tenant Changes which affect structural components, the electrical or HVAC system or cause penetration through the roof or walls of the building, must be accompanied by plans and specifications (to be prepared by Tenant at Tenant's sole cost) for the proposed Tenant Change in detail reasonably satisfactory to Landlord, together with notice of the identity of the licensed contractor which Tenant has or will engage to perform such work, plus reimbursement of Landlord's third party costs associated with reviewing such plans and specifications. Landlord shall grant or withhold its approval of such plans and specifications within fifteen (15) business days after Tenant makes request therefor in the manner provided herein; provided, however, if Landlord needs to consult with an outside consultant or expert with respect thereto, Landlord's consent shall be granted or denied within a reasonable time after the expiration of such 15-day period. All such work shall be accomplished at Tenant's sole risk, and Tenant shall indemnify, defend and hold harmless Landlord from and against any and all loss, cost, liability and expense (including consequential damages) relating to or arising from the Tenant Changes. All permanent, nonmovable Tenant Changes shall become a part of the realty upon installation thereof.

(b) Approval Not Required. Notwithstanding **Paragraph 8.3(a)**, with respect to carpeting and painting and other Tenant Changes which (i) are non-structural in nature (i.e., do not involve changes to the structural elements of the building or the Development); (ii) do not involve changes to the building's systems, including without limitation, the roof, electrical, plumbing, and HVAC systems (the Tenant Changes described in clauses (i) and (ii) hereof are collectively called "**Non-Structural Changes**"); and (iii) in the aggregate would not cost in excess of \$10,000.00 when added together with the cost of all other Non-Structural Changes made during the prior 3 month period, Tenant need not obtain Landlord's prior written consent, but must notify Landlord in writing within ten (10) days prior to the commencement of such Non-Structural Changes.

8.4 General Conditions. Tenant shall at all times comply with the following requirements when performing any work pursuant to **Paragraphs 8.2 and 8.3**:

(a) Contractors. Tenant shall use the contractors and mechanics then appearing on Landlord's approved list, which shall include at least three independent, qualified contractors, if the Tenant Changes involve changes to the building's systems and/or structural elements. With respect to

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Non-Structural Changes, Tenant shall use such contractors and mechanics which Landlord approves of in writing prior to their use, which approval shall not be unreasonably withheld. All contractors used by Tenant shall be licensed contractors who are experienced in the type of work to be performed.

(b) Compliance With Laws. All Tenant Changes shall at all times comply with all laws, rules, orders and regulations of governmental authorities having jurisdiction thereof and all insurance requirements of this Lease, shall comply with the rules and regulations for the Development now or hereafter in existence, and shall comply with the plans and specifications approved by Landlord.

(c) Tenant's Responsibility. All Tenant Changes shall be made and completed at Tenant's sole cost and expense, and the Development and the Premises shall be kept lien-free at all times by Tenant.

(d) Compliance with Americans With Disabilities Act. Tenant shall comply with all provisions of the Americans With Disabilities Act of 1990 and all regulations promulgated to implement the provisions of such act (collectively, the "ADA"). In this regard, in connection with any improvement or alteration to the Premises done by Tenant, Tenant shall insure that the Premises are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. New ADA requirements requiring structural changes to the Common Areas will be the responsibility of the Landlord, and new ADA requirements requiring structural changes to the Premises will be the responsibility of the Tenant.

## ARTICLE 9

### INSURANCE

9.1 Use Rate. Tenant shall not carry any stock of goods or do anything in or about the Premises which will cause an increase in insurance rates on the building in which the Premises are located. In no event shall Tenant perform any activities which would invalidate any insurance coverage on the Development or the Premises. Tenant shall pay on demand any increase in premiums that may be charged as a result of Tenant's use or activities, but this provision shall not be deemed to limit in any respect Tenant's obligations under **Article 14**. In no event shall the limits of insurance required to be maintained by Landlord or Tenant pursuant to this Lease be deemed to limit the liability of either party hereunder.

9.2 Liability Insurance. Tenant shall, during the Lease term, at its sole expense, maintain in full force a policy or policies of Commercial general liability (CGL) insurance including contractual, on an occurrence basis, with coverage at least as broad as the most commonly available ISO Commercial General Liability policy CG 00 01, at least Two Million Dollars (\$2,000,000) per occurrence limit, Two Million Dollars (\$2,000,000) general aggregate limit. Tenant shall also maintain Commercial Automobile coverage, One Million Dollars (\$1,000,000) combined single limit/per accident, covering injury (or death) and property damage arising out of the ownership, maintenance, or use of any private passenger or commercial vehicles and of any other equipment

required to be licensed for road use. Such limits may be achieved through the use of umbrella liability insurance otherwise meeting the requirements of this paragraph.

9.3 Worker's Compensation Insurance. Tenant shall at all times maintain worker's compensation insurance in compliance with federal, state and local law, including Employer's Liability coverage (contingent liability/stop gap) in the amount of \$1,000,000 each accident; \$1,000,000 bodily injury by disease policy limit; and \$1,000,000 bodily injury each employee.

9.4 Property Insurance/Business Income.

(a) Landlord's Insurance. Landlord shall pay for and shall maintain in full force and effect during the term of this Lease a standard form of extended coverage endorsement and standard form of lender's loss payable endorsement issued to the holder or holders of Landlord's mortgage or deed of trust, in an amount equal to 90% of the replacement cost of the Development, including the Premises (which coverage may include, at Landlord's sole option, special extended coverage, earthquake and sprinkler leakage coverage, boiler and machinery, and Business Income and Extra Expense with loss of rents coverage equal to fixed minimum rent for up to eighteen months. Tenant shall pay Tenant's pro rata share for the costs incurred by Landlord, for such insurance in accordance with the payment provisions set forth in Paragraph 5.6 above.

(b) Tenant's Insurance. Tenant shall pay for and shall maintain in full force and effect during the term of this Lease Property insurance covering its leasehold improvements to the Premises, furniture, fixtures, equipment, inventory and other personal property located on the Premises in an amount of not less than one hundred percent (100%) insurable replacement value with no coinsurance penalty, Tenant shall also obtain and maintain Business Income and Extra Expense coverage for a period

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of twelve (12) months. Tenant may self-insure personal property and leasehold improvements (but not inventory).

9.5 Waiver of Subrogation. Tenant hereby waives, and Tenant's insurance policy or policies shall include a waiver of such carrier's, entire right of recovery (i.e., subrogation) against Landlord, and the officers, directors, agents, representatives, employees, successors and assigns of Landlord which arises or might arise by reason of any payment under Tenant's property, worker's compensation and employer's liability insurance policy or by Tenant or by reason of any act or omission of Landlord, its directors, partners, agents, employees or representatives.

9.6 General Requirements. Landlord will provide certificates of insurance on facility with specific coverages and deductibles. Landlord will be responsible for notifying Tenant of changes to Insurance coverages. All policies of insurance required to be carried hereunder by Tenant shall be evidenced by an appropriate evidence of insurance (ACORD Form 24 for property insurance and ACORD Form 25 for all others), which evidences must contain the following additional clause:

"It is agreed that this insurance will not be canceled, not renewed, or the limits of coverage in any way reduced without at least thirty (30) days' advance written notice [ten (10) days for nonpayment of premiums] sent by certified mail, return receipt requested, to the [enter Landlord's Name and Address]."

(a) Licensed in State. Be written by companies reasonably satisfactory to Landlord and licensed to do business in the state of Washington. All policies of insurance required to be maintained by Tenant shall be issued by insurance companies with an A.M. Best's financial strength rating of "A" or better and an A.M. Best's Financial Size Category of Class "XII" or higher, and shall not contain a deductible greater than \$2,500 or any self-insured retention unless expressly approved in writing by Landlord.

(b) Primary. Contain a clause that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord, and that any coverage carried by Landlord shall be excess insurance. All insurance coverage must be on an "occurrence basis"; "claims made" forms of insurance are not acceptable.

(c) Additional Named Insured. Liability policies shall name Landlord and the following parties as additional insureds utilizing ISO Endorsement CG 20-11-01-96 or its equivalent ("certificate holder" status is not acceptable):

[List names of Additional Insured Entities]

Landlord shall be listed as a "loss payee" on property policies.

(d) Notice of Cancellation. Not be subject to cancellation or reduction in coverage except upon at least thirty (30) days prior written notice to each additional insured. The policies of insurance containing the terms specified herein, or duly executed certificates evidencing them, shall be deposited with each additional insured at least 30 days prior to the Lease Commencement Date and subsequently not less than thirty (30) days prior to the expiration of the original or any renewal term of such coverage. If Tenant fails to comply with the insurance requirements set forth in this Lease, Landlord shall have the right, but not the obligation, at any time and from time to time, without notice, to procure such insurance and/or pay the premium for such insurance, in which event Tenant shall repay Landlord, immediately upon demand by Landlord, as additional rent, all sums so paid by Landlord together with interest thereon and any costs or expenses incurred by Landlord in connection therewith, without prejudice to any other rights and remedies of the Landlord under this Lease.

9.7 Blanket Insurance. Each party shall be entitled to fulfill its insurance obligations hereunder by maintaining a so-called "blanket" policy or policies of insurance. Such policy shall contain an endorsement that names the other party as an additional insured, references the Premises, and guarantees a minimum limit of coverage available for the obligations under this Lease at least equal to the insurance amounts required hereunder. Tenant's right to fulfill its insurance obligations hereunder through a "blanket" policy shall be subject to approval of such policy by Landlord and Landlord's lender(s).

## ARTICLE 10

### DAMAGE AND RESTORATION

10.1 Damage and Destruction of the Premises. If the Premises are at any time destroyed or damaged by a casualty insured against by Landlord pursuant to Article 9 hereof or otherwise insured against by Landlord, and if as a result of such occurrence:

(a) the Premises are rendered untenable only in part, this Lease shall continue in full force and effect and, provided Tenant shall covenant in writing to Landlord that Tenant shall comply with the provisions of **Paragraph 10.3** below upon completion of Landlord's reconstruction, rebuilding or repair of the Premises, Landlord shall, subject to the provisions of **Paragraph 10.4** below, commence diligently to reconstruct, rebuild or repair the Premises to the extent only of Landlord's Work set forth in **Exhibit "A"** (Landlord shall have no obligation to construct any of Tenant's Work). In such event, fixed minimum rent and additional rent shall abate proportionately to the portion of the Premises rendered untenable from the date of the destruction or damage until the entire Premises have been restored by Landlord to the extent of Landlord's Work as set forth on **Exhibit "A"** hereto;

(b) the Premises are rendered totally untenable, provided Tenant shall covenant in writing to Landlord that Tenant shall reopen in the entire Premises for such use and will comply with the provisions of **Paragraph 10.3** below upon completion of Landlord's reconstruction, rebuilding or repair of the Premises, Landlord shall, subject to **Paragraph 10.4** hereof, commence diligently to reconstruct, rebuild or repair the Premises to the same operative condition at the time of Lease Commencement and including the requirements of **Exhibit "A"** (Landlord shall have no obligation to perform any of Tenant's Work). In such event, fixed minimum rent and additional rent shall abate entirely from the date of the destruction or damage until the Premises have been restored by Landlord to the extent of Landlord's Work as set forth on **Exhibit "A"** hereto.

#### 10.2 Damage or Destruction of Development.

(a) If 25% or more of the Leasable Area of the Premises or 25% or more of the Common Area of the Development, or any combination of Leasable Area of the Premises and Common Area which aggregate 25% or more of the total square footage of Development land, is at any time destroyed or damaged (including, without limitation, by smoke or water damage) as a result of fire, the elements, accident, or other casualty, whether or not the Premises are affected by such occurrence, Landlord may, at its option (to be exercised by written notice to Tenant within ninety (90) days following any such occurrence), elect to terminate this Lease. In the case of such election, the term and tenancy created hereby shall expire on the ninety (90th) day after such notice is given, without liability or penalty payable or any other recourse by one party to or against the other; and Tenant shall, within such 30-day period, vacate the Premises and surrender them to Landlord. All rent shall be due and payable without reduction or abatement subsequent to the destruction or damage and until the date of termination, unless the Premises shall have been destroyed or damaged, in which event the terms of **Paragraph 10.1(a) or (b)**, as applicable, of this Lease shall apply to determine the obligations of Tenant to pay rent.

(b) If Landlord does not elect to terminate this Lease in accordance with the terms of **Paragraph 10.2(a)**, Landlord shall, following such destruction or damage, commence diligently to reconstruct, rebuild, or repair, if necessary, that part of the Development which is necessary, in Landlord's sole judgement, to create an economically viable unit. However, Landlord shall reconstruct, rebuild, or repair the Premises and the Development to the extent only of proceeds received by Landlord from its insurers. Further, if Landlord elects to repair, reconstruct, or rebuild the Development, or any part thereof, Landlord may use plans, specifications, and working drawings other than those used in the original construction of the Development and shall only be obligated to restore the damaged portions thereof to a reasonably operative condition similar to that which existed prior to the event of damage or destruction, provided that the ultimate reconstruction does not unreasonably impair Tenant use, occupancy and enjoyment of the Premises as the same existed prior to such event.

10.3 Tenant's Work. If this Lease has not been terminated after damage or destruction as provided above, then upon receipt by Tenant of written notice that Landlord's Work has been substantially completed, Tenant shall forthwith complete all Tenant's Work as described in **Exhibit "A"** hereto, and all other work required to fully restore the Premises for business fully fixtured, stocked, and staffed. If the Premises have been closed for business, Tenant shall reopen for business for the permitted use set forth in the Basic Lease Provisions, but no later than sixty (60) days after notice that Landlord's Work is substantially completed.

10.4 Limitation of Obligations. Notwithstanding anything set forth to the contrary herein, in the event the Premises or Development are damaged as a result of any cause in respect of which there are no insurance proceeds available to Landlord, or the proceeds of insurance are insufficient to pay for the costs of repair or reconstruction, or any mortgagee or other person entitled to the proceeds of insurance does not consent to the payment to Landlord of such proceeds to fully restore the Premises or Development, or if the Premises or Development cannot be fully restored to its prior condition under land use and building codes in force at the time of the casualty, then Landlord may, without obligation or liability to Tenant, terminate this Lease on sixty (60) days' written notice to Tenant and all rent shall be adjusted as of the effective date of such termination, and Tenant shall vacate and surrender the Premises on the date set forth in Landlord's termination notice.

10.5 Damage or Destruction at End of Term. Notwithstanding anything to the contrary contained herein, Neither Landlord nor Tenant shall have any obligation to repair, reconstruct, or restore the Premises or Development when the damage or destruction occurs during the last eighteen (18) months of the term of this Lease.

10.6 Waiver. Tenant hereby waives any statutory and common law rights of termination which may arise by reason of any partial or total destruction of the Premises which Landlord is obligated to restore or may restore under any of the provisions of this Lease.

### ARTICLE 11

#### FLOOR AREA DEFINED

"Floor Area" or "floor area" means: (a) as to each building or part thereof within the Development, including Tenant's Premises, the actual number of square feet of ground floor space measured to the exterior faces of exterior walls and to the center of party walls, including columns, stairs, elevators and escalators, excluding exterior ramps and loading docks.

### ARTICLE 12

#### EMINENT DOMAIN

12.1 Definition. If there is any taking or condemnation of or transfer in lieu thereof for a public or quasi-public use of all or any part of the Development or the Premises or any interest therein because of the exercise of the power of eminent domain or inverse condemnation, whether by condemnation proceedings or otherwise (all of the foregoing being hereinafter referred to as "taking") before or during the term hereof, the rights and obligations of the parties with respect to such taking shall be as provided in this Article 12.

12.2 Total Taking. If there is a taking of all of the Premises, this Lease shall terminate as of the date of such taking. All fixed minimum rent and other amounts due under this Lease shall be paid by Tenant to the date of such termination.

12.3 Partial Taking of Premises. If any part of the Premises shall be taken, and a part thereof remains which is reasonably susceptible of occupation hereunder for the use permitted herein, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor or transferee, and the fixed minimum rent payable hereunder shall be reduced by the proportion which the floor area taken from the Premises bears to the total Floor Area of the Premises immediately before the taking; but in such event Landlord or Tenant shall have the option to terminate this Lease as of the date when title to the part so condemned vests in the condemnor or transferee. All fixed minimum rent and other amounts due under this Lease shall be paid by Tenant to the date of any such termination.

12.4 Common Area Taking. If so much of the Common Area is taken that in the commercially reasonable judgement of Landlord the Development will be rendered unsuitable for the continued use thereof for the purposes for which it was intended, Landlord, or Tenant, if such taking significantly negatively impacts Tenant's business, may elect to terminate this Lease by giving the other party written notice of such election within sixty (60) days after the date that title to the portion so taken vests in the condemnor or transferee. If either party fails to give such notice, this Lease shall remain in full force and effect. If any part of the Development is taken, but no part of the Premises is taken, and Landlord does not elect to terminate this Lease, the rent payable hereunder shall not be reduced, nor shall Tenant be entitled to any part of the award made therefor. In the event of termination, all fixed minimum rent and other amounts due under this Lease shall be paid by Tenant to the date of such termination.

12.5 Repair and Restoration. If this Lease is not terminated as provided in this Article 12, Landlord shall, at its sole expense, restore with due diligence the remainder of the improvements occupied by Tenant so far as is practicable to a complete unit of like quality, character, and condition as that which existed immediately prior to the taking, provided that the scope of the work shall not exceed the scope of the work to be done by Landlord originally in construction of the Premises, and further provided that Landlord shall not be obligated to expend an amount greater than that which was awarded to Landlord for such taking. Tenant, at its sole cost and expense, shall restore its furniture, fixtures and other allowed leasehold improvements to their condition immediately preceding such taking.

12.6 Award. In the event of any taking, Landlord shall be entitled to the entire award of compensation or settlement in such proceedings, whether for a total or partial taking or for diminution in the value of the leasehold or for the fee. Any such amounts shall belong to and be the property of Landlord. Without in any way diminishing the rights of Landlord under the preceding sentence, Tenant shall be entitled to recover from the condemnor such compensation as may be separately awarded by the condemnor to Tenant or recoverable from the condemnor by Tenant in its own right for the taking of trade

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fixtures and equipment owned by Tenant (meaning personal property, whether or not attached to real property, which may be removed without injury to the Premises) and for the expense of removing and relocating them, and for loss of goodwill, but only to the extent that the compensation awarded to Tenant shall be in addition to and shall not diminish the compensation awarded to Landlord as provided above.

12.7 Waiver. Tenant hereby waives any statutory and common law rights of termination which may arise by reason of any partial taking of the Premises under the power of eminent domain.

### ARTICLE 13

#### INDEMNITY; WAIVER

##### 13.1 Indemnification and Waivers.

(a) Indemnity. To the fullest extent permitted by law, Tenant shall, at Tenant's sole cost and expense, Indemnify Landlord Parties against all Claims arising from (i) any Personal Injury, Bodily Injury or Property Damage whatsoever occurring in or at the Premises; (ii) any Bodily Injury to an employee of a Tenant Party arising out of and in the course of employment of the employee and occurring anywhere in the Development; (iii) the use or occupancy, or manner of use or occupancy, or conduct or management of the Premises or of any business therein; (iv) subject to the waiver of subrogation provisions of this Lease, any act, error, omission or negligence of any of the Tenant Parties in, on or about the Premises or the Development; (v) the conduct of Tenant's business; (vi) any alterations, activities, work or things done, omitted, permitted or allowed by Tenant Parties in, at or about the Premises or Development, including the violation of or failure to comply with, or the alleged violation of or alleged failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, or judgments in existence on the date of the Lease or enacted, promulgated or issued after the date of this Lease including Hazardous Materials Laws (defined below); (vii) any breach or default by Tenant in the full and prompt payment of any amount due under this Lease, any breach, violation or nonperformance of any term, condition, covenant or other obligation of Tenant under this Lease, or any misrepresentation made by Tenant or any guarantor of Tenant's obligations in connection with this Lease; (viii) all damages sustained by Landlord as a result of any holdover by Tenant or any Tenant Party in the Premises including, but not limited to, any claims by another tenant resulting from a delay by Landlord in delivering possession of the Premises to such tenant; (ix) any liens or encumbrances arising out of any work performed or materials furnished by or for Tenant; (x) commissions or other compensation or charges claimed by any real estate broker or agent with respect to this Lease by, through or, under Tenant or, (xi) any matter enumerated in Paragraph 13(b) below.

To the fullest extent permitted by law, Landlord shall, at Landlord's sole cost and expense, Indemnify Tenant Parties against all Claims arising from (i) any Personal Injury, Bodily Injury or Property Damage whatsoever occurring in or at the remainder of the Development other than the Premises; (ii) any Bodily Injury to an employee of a Landlord Party arising out of and in the course of employment of the employee and occurring anywhere in the Development outside the Premises; (iii) any breach, violation or nonperformance of any term, condition, covenant or other obligation of Landlord under this Lease; (iv) any liens or encumbrances arising out of any work performed or materials furnished by or for Landlord; or (v) commissions or other compensation or charges claimed by any real estate broker or agent with respect to this Lease by, through or, under Landlord.

(b) Waivers. To the fullest extent permitted by law, Tenant, on behalf of all Tenant Parties, Waives all Claims against Landlord Parties arising from the following: (i) any Personal Injury, Bodily Injury, or Property Damage occurring in or at the Premises; (ii) any loss of or damage to property of a Tenant Party located in the Premises or other part of the Development by theft or otherwise; (iii) any Personal Injury, Bodily Injury, or Property Damage to any Tenant Party caused by other tenants of the Development, parties not occupying space in the Development, occupants of property adjacent to the Development, or the public or by the construction of any private, public, or quasi-public work occurring either in the Premises or elsewhere in the Development; (iv) any interruption or stoppage of any utility service or for any damage to persons or property resulting from such stoppage; (v) business interruption or loss of use of the Premises suffered by Tenant; (vi) any latent defect in construction of the Building; (vii) damages or injuries or interference with Tenant's business, loss of occupancy or quiet enjoyment and any other loss resulting from the exercise by Landlord of any right or the performance by Landlord of Landlord's maintenance or other obligations under this Lease, or (viii) any Bodily Injury to an employee of a Tenant Party arising out of and in the course of employment of the employee and occurring anywhere in the Development.

(c) Definitions. For purposes of this **Article 13**: (i) the term "**Tenant Parties**" means Tenant, and Tenant's officers, members, partners, agents, employees, sublessees, licensees, invitees and independent contractors, and all persons and entities claiming through any of these persons or entities; (ii) the term "**Landlord Parties**" means Landlord and the members, partners, venturers, trustees and ancillary trustees of Landlord and the respective officers, directors, shareholders, members, parents,

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subsidiaries and any other affiliated entities, personal representatives, executors, heirs, assigns, licensees, invitees, beneficiaries, agents, servants, employees and independent contractors of these persons or entities; (iii) the term "**Indemnify**" means indemnify, defend (with counsel reasonably acceptable to Landlord) and hold free and harmless for, from and against; (iv) the term "**Claims**" means all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding); (v) the term "**Waives**" means that the Tenant Parties waive and knowingly and voluntarily assume the risk of; and (vi) the terms "**Bodily Injury**", "**Personal Injury**" and "**Property Damage**" will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc. most recently prior to the date of the injury or loss in question.

(d) Scope of Indemnities and Waivers. Except as provided in the following sentence, the indemnities and waivers contained in this **Article 13** shall apply regardless of the active or passive negligence or sole, joint, concurrent, or comparative negligence of any of the Landlord Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on any of the Landlord Parties. The indemnities and waivers contained in this **Article 13** shall not apply to the extent of the percentage of liability that a final judgment of a court of competent jurisdiction establishes under the comparative negligence principles of the state of Washington, that a Claim against a Landlord Party was proximately caused by the willful misconduct or gross negligence of that Landlord Party, provided, however, that in such event the indemnity or waiver will remain valid for all other Landlord Parties.

(e) Duty to Defend. Tenant's duty to defend Landlord Parties is separate and independent of Tenant's duty to Indemnify Landlord Parties. Tenant's duty to defend includes Claims for which Landlord Parties may be liable without fault or may be strictly liable. Tenant's duty to defend applies regardless of whether issues of negligence, liability, fault, default or other obligation on the part of Tenant Parties have been determined. Tenant's duty to defend applies immediately, regardless of whether Landlord Parties have paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any Claims. It is the express intention of Landlord and Tenant that Landlord Parties will be entitled to obtain summary adjudication regarding Tenant's duty to defend Landlord Parties at any stage of any Claim within the scope of this **Article 13**.

(f) Obligations Independent of Insurance. The indemnification provided in this **Article 13** shall not be construed or interpreted as in any way restricting, limiting or modifying Tenant's insurance or other obligations under this Lease, and the provisions of this **Article 13** are independent of Tenant's insurance and other obligations. Tenant's compliance with the insurance requirements and other obligations under this Lease does not in any way restrict, limit or modify Tenant's indemnification obligations under this Lease.

(g) Waiver of Immunity. EACH OF LANDLORD AND TENANT HEREBY WAIVES ITS IMMUNITY WITH RESPECT TO THE PARTIES INDEMNIFIED UNDER THE PRECEDING PARAGRAPHS UNDER THE INDUSTRIAL INSURANCE ACT (RCW TITLE 51) AND/OR THE LONGSHOREMAN'S AND HARBORWORKER'S ACT AND/OR ANY EQUIVALENT ACTS AND EXPRESSLY AGREES TO ASSUME POTENTIAL LIABILITY FOR ACTIONS BROUGHT AGAINST AN INDEMNIFIED PARTY BY THE INDEMNIFYING PARTY'S EMPLOYEES. THIS WAIVER HAS BEEN SPECIFICALLY NEGOTIATED BY THE PARTIES TO THIS LEASE AND EACH PARTY HAS HAD THE OPPORTUNITY TO, AND HAS BEEN ENCOURAGED, TO CONSULT WITH INDEPENDENT COUNSEL REGARDING THIS WAIVER.

(h) Survival. The provisions of this **Article 13** will survive the expiration or earlier termination of this Lease until all Claims against Landlord Parties involving any of the indemnified or waived matters are fully and finally barred by the applicable statutes of limitations.

## ARTICLE 14

### OPERATION OF BUSINESS

Tenant shall (a) keep the Premises and interior portions of windows, doors and all other glass or plate glass fixtures in a neat, clean, sanitary and safe condition; (b) refrain from burning any papers or refuse of any kind in the Development; (c) store in the area designated by Landlord all trash and garbage in neat and clean containers so as not to be visible to members of the public and arrange for the regular pick-up and cartage of such trash or garbage at Tenant's expense, or cooperate in the employment of a trash removal contractor designated by Landlord, as long as at the same rate or lower rates of other third party providers, if Landlord deems it desirable to have all waste materials removed by one contractor; (d) observe and promptly comply with all governmental requirements and insurance requirements affecting the Premises or any part of the Common Area which is under Tenant's exclusive control and promulgated

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during the term of this Lease; and (e) not use or suffer or permit the Premises or any part thereof to be used for any use other than the use set forth in the Basic Lease Provisions or in any manner that will constitute a nuisance or unreasonable annoyance to the public, to other occupants of the Development or to

Landlord, or that will injure the reputation of the Development, or for any extra hazardous purpose or in any manner that will impair the structural strength of the building of which the Premises are a part.

## ARTICLE 15

### SIGNS AND ADVERTISING

15.1 Interior. Tenant may at its own expense erect and maintain upon the interior areas of the Premises all signs and advertising matter customary and appropriate in the conduct of Tenant's business, subject to Landlord's right to remove any signs or advertising matter which violates Article 14 or this Article 15. The Tenant shall not affix or maintain upon the glass panes and supports of the exterior windows and doors, or within twelve inches (12") of the exterior windows and doors, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first received the written approval of the Landlord as to size, type, color, location, copy, nature and display qualities.

15.2 Exterior. Tenant shall be permitted, but not obligated, to place a sign on the high-image monument sign which exists in the Development, and shall be permitted to place its signage on the southern and western fascia of the Building in which the Premises are situated, at Tenant's expense, provided such sign conforms in all respects to the sign criteria established by Landlord for the Development from time to time, and shall be subject to the prior written approval of Landlord as to construction, method of attachment, size, shape, height, lighting, color and general appearance. All signs and other advertising media shall comply with all applicable governmental requirements. Except for signs which comply with the terms of this Article, Tenant shall not erect, place, paint, or maintain in or on the Premises, any sign, exterior advertising medium, or any other object of any kind whatsoever, whether an advertising device or not, visible or audible outside the Premises. Tenant shall not change the color, size, location, composition, wording or design of any sign or advertisement on the Premises that may have been theretofore approved by Landlord, without the prior written approval of Landlord and the applicable governmental authorities. Tenant shall at its own expense maintain and keep in good repair all installations, signs, and advertising devices which it is permitted or required by Landlord to maintain.

## ARTICLE 16

### LIENS

Tenant shall keep the Premises and the Development free of any liens or claims of lien arising from any work performed, material furnished or obligations incurred by Tenant. Notwithstanding the foregoing, in the event that any lien is recorded in connection with Tenant's work or materials, Tenant shall, within twenty (20) days after recording thereof, post such bond as will release said property from the lien claimed.

## ARTICLE 17

### RIGHT OF ENTRY

Landlord and its authorized agents and representatives shall be entitled to enter the Premises at all reasonable times to inspect them, to make the repairs which Landlord is obligated to make under this Lease, to show them to prospective tenants, purchasers or lenders, to cure a default of Tenant, to post any notice provided by law that relieves a landlord from responsibility for the acts of a tenant, to comply with any governmental requirements or insurance requirements, to post ordinary signs advertising the Premises for sale or for lease, and for any other lawful purpose relating to Landlord's rights and obligations under this Lease. Landlord shall make reasonable efforts to notify Tenant 24-hours prior to entering Premises unless an emergency exists in which case no advance notice shall be required. Nothing in the preceding sentence shall imply or impose a duty to make repairs which Tenant has agreed to make hereunder. Landlord may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be unreasonably blocked. Landlord shall have the right to use any means which Landlord may deem proper to enter the Premises in an emergency. Landlord's entry to the Premises shall not under any circumstances be construed to be a forcible or unlawful entry into the Premises or an eviction of Tenant from the Premises.

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## ARTICLE 18

### DELAYING CAUSES

If either party is delayed in the performance of any covenant of this Lease because of any of the following causes (referred to elsewhere in this Lease as a "**delaying cause**"): acts of the other party, action of the elements, war, riot, labor disputes, inability to procure or general shortage of labor or material in the normal channels of trade, delay in transportation, delay in inspections, or any other cause beyond the reasonable control of the party so obligated, whether similar or dissimilar to the foregoing, financial inability excepted, then, such performance shall be excused for the period of the delay; and the period for such performance shall be extended for a period equivalent to the period of such delay, except that the foregoing shall in no way affect Tenant's obligation to pay rent or any other amount payable hereunder, or the length of the term of this Lease.

## ARTICLE 19

### ASSIGNMENT AND SUBLEASE

19.1 Consent Required. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not assign this Lease or any interest herein or any right or privilege appurtenant hereto or sublet, license, grant any concessions, or otherwise give permission to anyone other than Tenant to use or occupy all or any part of the Premises (hereinafter sometimes referred to as a "**Transfer**"), without the prior written consent of Landlord,. Any actual or attempted Transfer without the Landlord's prior written consent or otherwise in violation of the terms of this Lease shall, at Landlord's election, be void and shall confer no rights upon any third person, and shall be a non-curable default under this Lease which shall entitle Landlord to terminate this Lease upon ten (10) days' written notice to Tenant at any time after such actual or attempted Transfer without regard to Landlord's prior knowledge thereof. The acceptance of rent by Landlord from any person or entity shall not be deemed to be a waiver by Landlord of any provision of this Lease or consent to any Transfer. Consent by Landlord to one or more Transfers shall not be deemed to be consent to any subsequent Transfer. In addition, the option to extend the term hereunder shall be personal to Tenant, and shall not be transferred without the prior written consent of Landlord in accordance with the terms of this Article 19.

(a) Notwithstanding anything in this Article 19 to the contrary, neither (a) an assignment or transfer of this Lease as a result of a merger, a consolidation, public offering, and/or sale of all of Tenant's capital stock and/or assets nor (b) an assignment of this Lease to an Affiliate of Tenant nor (c) transfer of stock to members of the immediate family of Tenant's stockholders through gift, will or trust (each of (a), (b), and (c), a "Permitted Transfer") shall require a prior consent of Landlord, provided, however, the same shall not be binding on Landlord until a fully executed copy of such assignment and/or assumption of this Lease by the assignee shall have been delivered to Landlord, and further, provided that:

- (i) Tenant shall not then be in default under this Lease;
- (ii) In each instance, the succeeding entity shall assume in writing all of the obligations of this Lease on the part of Tenant;
- (iii) In the case of (a) above, the net worth of the succeeding entity (and any guarantors thereof) immediately following such assignment shall not be less than the net worth of Tenant (and any guarantors thereof) as of the date of mutual execution of this Lease;
- (iv) In the case of (b) above, any such assignee in possession of the Premises shall, during such possession, remain an Affiliate of Tenant;
- (v) Such assignment or transfer shall in no manner relieve Tenant of any of the obligations undertaken by it under this Lease; and
- (vi) The Premises shall continue to be operated solely for the Permitted Use specified in this Lease and consistent with the manner in which the Premises were prior to the effective date of (a) and (b); provided, however, that if at any time thereafter, there is a material or adverse change in the nature, standard or quality of the operation at the Premises, Landlord reserves the right to declare such change a breach of this Lease, subject to the remedies provided for in this Lease.

Tenant shall submit such information as Landlord may reasonably require concerning all of the foregoing for Landlord's files.

As used herein, the term "Affiliate" shall mean an entity which (a) directly or indirectly controls Tenant, or (b) is under the direct or indirect control of Tenant or (c) is under common direct or indirect control with Tenant. Control shall mean ownership of 51% or more of the voting securities or rights of the controlled entity.

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19.2 Request For Consent. If Tenant shall desire Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice shall include: (a) the proposed effective date ; (b) the portion of the Premises subject to the Transfer; (c) all of the terms of the proposed Transfer and the consideration therefor; (d) the name and address of the proposed transferee; (e) a copy of the proposed sublease, instrument of assignment and all other documentation pertaining to the proposed Transfer; (f) current financial statements of the proposed transferee certified by an officer, partner or owner thereof; (g) any information reasonably requested by Landlord to enable Landlord to determine the financial responsibility, character, and reputation of the proposed transferee and the nature of such transferee's business and the proposed use the Premises; and (h) such other information as Landlord may reasonably request

19.3 Intentionally Omitted.

19.4 General Conditions. If Landlord consents to a Transfer, such consent shall be subject to the following conditions, which the parties hereby agree are reasonable:

(a) Payment of Transfer Premium. Landlord shall receive 90% and Tenant shall receive 10% of any Transfer Premium derived by Tenant from such Transfer. "**Transfer Premium**" shall mean all rent and any other consideration payable by such transferee in excess of the fixed minimum rent payable by Tenant under this Lease (on a per square foot basis, if less than all of the Premises is Transferred), after deducting therefrom any brokerage commissions and legal fees in connection with the Transfer actually paid by Tenant to an unaffiliated broker and/or attorney, as applicable. If any part of the consideration for such Transfer shall be payable other than in cash, Landlord's share of such non-cash consideration shall be in such form as is reasonably satisfactory to Landlord. The Transfer Premium payable hereunder shall be due within ten (10) days after Tenant receives such payments.

(b) Continued Liability of Tenant. Tenant shall remain primarily liable on its covenants hereunder unless released in writing by Landlord. In the event of any assignment or sublease which is consented to by Landlord, the transferee shall agree in writing to perform and be bound by all of the covenants of this Lease required to be performed by Tenant.

19.5 Reserved.

19.6 Transfer Pursuant to Bankruptcy Code. Anything to the contrary notwithstanding, if this Lease is assigned (or all or a portion of the Premises is sublet) to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U. S. C. 101 et. seq. (the "**Bankruptcy Code**"), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment or subletting shall be paid or delivered to Landlord, shall be and remains the exclusive property of Landlord and shall not constitute property of Tenant or of its estate within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any assignee pursuant to the Bankruptcy Code shall be deemed to have assumed all of Tenant's obligations under this Lease. Any such assignee shall on demand by Landlord execute and deliver to Landlord a written instrument confirming such assumption.

## ARTICLE 20

### NOTICES

All notices, requests and demands to be made hereunder shall be in writing at the addresses set forth in the Basic Lease Provisions by any of the following means: (a) personal service (including service by overnight courier service); (b) electronic communication, whether by telex, telegram or facsimile (if confirmed in writing sent by personal service or by registered or certified, first class mail, return receipt requested); or (c) registered or certified, first class mail, return receipt requested. Such addresses may be changed by notice to the other party given in the same manner provided above. Any notice, request, or

demand sent pursuant to clause (a) or (b) of this **Article 20** shall be deemed received upon such personal service or upon dispatch by electronic means, and if sent pursuant to clause (c) shall be deemed received three (3) days following deposit in the mail.

## ARTICLE 21

### SURRENDER OF POSSESSION

21.1 **Surrender.** At the expiration of the tenancy created hereunder, whether by lapse of time or otherwise, Tenant shall surrender the Premises broom clean and in good condition and repair. This obligation of Tenant shall include the repair of any damage occasioned by the installation, maintenance or removal of Tenant's alterations or Tenant's Changes, furnishings, and equipment, as well as the removal of any storage tank installed by or for Tenant (whether or not the installation was consented to by

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Landlord), and the removal, replacement, or remediation of any soil, material or ground water contaminated by Tenant's Permittees, all as may then be required by applicable Laws.

21.2 **Holding Over.** If Tenant fails to surrender the Premises at the expiration or earlier termination of this Lease, occupancy of the Premises after the termination or expiration shall be that of a tenancy at sufferance. Tenant's occupancy of the Premises during the holdover shall be subject to all the terms and provisions of this Lease and Tenant shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to 150% for the first 90 days of the holdover period and 200% thereafter, in each case, of the greater of: (1) the sum of the Minimum Annual Rent and Additional Rent due for the period immediately preceding the holdover; or (2) the fair market gross rental for the Premises as determined by Landlord. No holdover by Tenant or payment by Tenant after the expiration or early termination of this Lease shall be construed to extend the Term or prevent Landlord from immediate recovery of possession of the Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover, Tenant shall be liable to Landlord for all damages, including, without limitation, consequential damages, that Landlord suffers from the holdover. Nothing herein shall be construed as consent to such holding over.

## ARTICLE 22

### QUIET ENJOYMENT

Subject to the provisions of this Lease and conditioned upon performance of all of the provisions to be performed by Tenant hereunder, Landlord shall secure to Tenant during the Lease term the quiet and peaceful possession of the Premises and all rights and privileges appertaining thereto, free from hinderance or molestation by Landlord and those claiming by, through or under Landlord.

## ARTICLE 23

### SUBORDINATION

Unless otherwise required by a lender, this Lease shall be subordinate to any mortgage or deed of trust held by any lender, now or hereafter in force against the Premises or the Development or any part thereof, and to all advances made or to be made upon the security thereof. If any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord, Tenant shall, at the option of the lender or other purchaser at any such foreclosure or sale, attorn to and recognize the purchaser as the Landlord under this Lease. Although the subordination in the immediately preceding sentence shall be self-operating, Tenant agrees, within ten (10) business days following the request of Landlord, to execute such documents or instruments as may be requested by Landlord or its lender(s) to confirm such subordination, provided that such mortgagees or beneficiaries agree in writing not to disturb Tenant's possession of the Premises in the event of foreclosure if Tenant is not in default. The failure of Tenant to so timely execute any such instrument or other such document shall constitute a non-monetary default hereunder. If Tenant fails to execute and deliver such instrument or other document within said ten (10) business day period, Landlord shall use reasonable efforts to contact, orally or in writing, Tenant to confirm such non-election, whereafter Tenant hereby appoints Landlord as Tenant's attorney-in-fact for the purpose of completing, executing and delivering the same to the person or firm requesting it.

## ARTICLE 24

### ESTOPPEL CERTIFICATE; FINANCIAL STATEMENTS

Tenant shall, at any time and from time to time within ten business (10) days after written request therefor by Landlord, without change, deliver a certificate to Landlord or to any person or entity designated by Landlord, certifying the date the Lease term commenced, the date the rent commenced and is paid through, the amount of rent and other charges due under the Lease, the expiration date of the Lease term, that this Lease is then in full force and effect, setting forth the amount and nature of modifications, defenses, or offsets, if any, claimed by Tenant, and any other matter concerning the Lease, the Tenant, or the Premises requested by Landlord or such person or entity. If Tenant fails to respond within such 10-business day period, Landlord shall use reasonable efforts to contact, orally or in writing, Tenant prior to declaring a default hereunder.

Tenant acknowledges that it has provided Landlord with certain financial statement(s) as a material inducement to Landlord's agreement to lease the Premises to Tenant, and that Landlord has relied on the accuracy of such financial statement(s) in entering into this Lease. Tenant represents and warrants that the information contained in such financial statement(s) is true, complete and correct in all material respects. Within twenty (20) days from a written request by Landlord, Tenant will make

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available to Landlord or to any prospective purchaser or lender of the Development, the most recent audited financial statements of Tenant and any guarantor, provided, if Tenant is not a publicly traded entity, that Landlord or any such prospective purchaser or lender agrees to maintain such statements and

information in confidence. Notwithstanding the foregoing, so long as the named Tenant herein is a publicly traded corporation and its financial information is readily available to the public, Tenant will not be required to deliver additional financial statements to Landlord.

## ARTICLE 25

### DEFAULT

25.1 Default. The occurrence of any or more of the following events shall constitute a material breach and default of this Lease (each, an “**Event of Default**”):

(a) Any failure by Tenant to pay fixed minimum rent, Common Area Expenses, additional rent or any other charge when due; or

(b) Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant not provided for in subparagraph (a) above and subparagraphs (c), (d) and (h) below where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant, provided that if the nature of such breach is such that although curable, the breach cannot reasonably be cured within a thirty (30) day period, an Event of Default shall not exist if Tenant shall commence to cure such breach and thereafter rectifies and cures such breach with due diligence; or

(c) Abandonment of the Premises; or

(d) A general assignment by Tenant for the benefit of creditors, or the filing by or against Tenant of any proceeding under any insolvency or bankruptcy law, or the appointment of a trustee or receiver to take possession of all or substantially all of Tenant’s assets located upon the Premises or of Tenant’s interest in this Lease; or

(e) Any three (3) or more failures of the type described in Paragraph 25.1(a) in any twelve month period; or

(f) Reserved; or

(g) The conducting by Tenant of a going out of business sale, bankruptcy sale or any similar liquidation sale in violation of the provisions of this Lease where such sale does not permanently cease within twenty-four (24) hours after written notice of such violation by Landlord to Tenant; or

(h) The occurrence of an Event of Default as defined in any other provision of this Lease.

25.2 Remedies.

(a) Reentry and Termination. Upon and during the continuance of an Event of Default, but after all notice and cure periods, Landlord, in addition to any other remedies available to Landlord at law or in equity, at Landlord’s option, may without further notice or demand of any kind to Tenant or any other person:

1. Declare the Lease Term ended and reenter the Premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim to the Premises; or

2. Without declaring this Lease ended, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid fixed minimum rent, rent, Additional Rent, Common Area Expenses and other charges, which have become payable, or which may thereafter become payable; or

3. Even though Landlord may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

(b) Express Termination Required. Should Landlord have reentered the Premises under the provisions of Paragraph 25.2(a)(2) above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any fixed minimum rent, Common Area Expenses, Additional Rent or other charges thereafter accruing, or to have terminated Tenant’s liability for damages under any of the provisions of this Lease, by any such reentry or by any action, in unlawful detainer or otherwise, to

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obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that Landlord had elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State where the Development is situated and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease.

(c) Damages. Should Landlord elect to terminate this Lease pursuant to the provisions of Paragraphs 25.2(a)(1) or 25.2(a)(3) above, Landlord may recover from Tenant as damages, the following:

1. The worth at the time of award of any unpaid fixed minimum rent, Common Area Expenses, Additional Rent or other charges which had been earned at the time of such termination; plus

2. The worth at the time of award of the amount by which the unpaid fixed minimum rent, Common Area Expenses, Additional Rent or other charges which would have been earned after termination until the time of award exceeds the amount of such loss Tenant proves could have been reasonably avoided; plus

3. The worth at the time of award of the amount by which the unpaid fixed minimum rent, Common Area Expenses, Additional Rent or other charges for the balance of the Lease Term after the time of award exceeds the amount of such loss that Tenant

proves could be reasonably avoided; plus

4. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees, (ii) maintaining or preserving the Premises after the occurrence of an Event of Default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises; plus

5. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Development is situated.

(d) Alternative Damages. Should Landlord elect to bring an action against Tenant in unlawful detainer or for damages or both or otherwise (and Landlord may bring as many actions as Landlord may elect to bring throughout the Lease Term), without terminating this Lease, Landlord may recover from Tenant as damages the following:

1. The worth at the time of award of any unpaid fixed minimum rent, Common Area Expenses, Additional Rent or other charges which had been earned at the time Landlord recovered possession of the Premises; plus

2. The worth at the time of award of the amount by which the unpaid fixed minimum rent, Common Area Expenses, Additional Rent or other charges which would have been earned after the date Landlord recovered possession until the time of award exceeds the amount of such loss Tenant proves could have been reasonably avoided; plus

3. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, including but not limited to, any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees, (ii) maintaining or preserving the Premises after the occurrence of an Event of Default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises; plus

4. At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Development is situated.

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(e) Definitions. As used in **Paragraphs 25.2(c)(1), 25.2(c)(2), and 25.2(d)(1)** above, the "**worth at the time of award**" is computed by allowing interest at the rate of eighteen percent (18%) per annum. As used in **Paragraphs 25.2(c)(3) and 25.2(d)(2)** above, the "**worth at the time of award**" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Development at the time of award plus one (1) percentage point.

(f) Computation of Certain Sums. For all purposes of this **Article 25**, Common Area Expenses, Additional Rent and other charges shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding sixty (60) month period, except that if it becomes necessary to compute such amounts before such a sixty (60) month period has occurred then such amounts shall be computed on the basis of the average monthly amounts accruing during such shorter period.

(g) Reserved.

(h) Cumulative Remedies. The remedies given to Landlord in this **Paragraph 25** shall be in addition and supplemental to all other rights or remedies which Landlord may have at law, in equity or by statute and the exercise of any one remedy shall not preclude the subsequent or concurrent exercise of further or additional remedies.

(i) No Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition of this Lease. The subsequent acceptance of fixed minimum rent, Common Area Expenses, Additional Rent or other charges due hereunder shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular amount so accepted regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such amount. No covenant, term, or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver shall be in writing and signed by Landlord.

25.3 Interest. Any sum accruing to Landlord under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the interest rate provided herein from the date the same becomes due and payable by the terms and provisions of this Lease until paid, unless otherwise specifically provided in this Lease. The interest rate which shall apply shall be lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate allowed by applicable law.

## ARTICLE 26

### INSOLVENCY

26.1 Breach of Lease. Subject to the applicable United States Bankruptcy Code and other laws, the filing of any petition by or against Tenant under any chapter of the Bankruptcy Act, or any successor statute thereto, or the adjudication of Tenant as a bankrupt or insolvent, or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tenant, or a general assignment by Tenant for the benefit of creditors, or any other action taken or suffered by Tenant under any state or federal insolvency or bankruptcy act, shall constitute a default under and breach of this Lease by Tenant, regardless of Tenant's compliance with the other provisions of this Lease; and Landlord at its option by written notice to Tenant may exercise all rights and remedies provided for in **Article 25**, including the termination of this Lease, effective of such notice, without the necessity of further notice under **Article 25**.

26.2 Operation of Law. Neither this Lease, nor any interest herein, nor any estate created hereby, shall pass by operation of law under any state or federal insolvency or bankruptcy act to any trustee, receiver, assignee for the benefit of creditors or any other person whatsoever without the prior written consent of Landlord, which shall not be unreasonably withheld. Any purported transfer in violation of the provisions of this **Paragraph 26.2** shall constitute a default under and breach of this Lease, regardless of Tenant's compliance with the other provisions of this Lease; and Landlord at its option by written notice to Tenant may exercise all rights and remedies provided for in **Article 25**, including the termination of this Lease, effective on service of such notice without the necessity of further notice under **Article 25**.

26.3 Non-Waiver. The acceptance of rent at any time and from time to time by Landlord from Tenant as debtor in possession or from a transferee of the type mentioned in **Paragraph 26.2**, shall not preclude Landlord from exercising its rights under this **Article 26** at any time hereafter.

26.4 Events of Bankruptcy. The following shall be Events of Bankruptcy under this Lease:

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(a) Tenant's becoming insolvent, as that term is defined in Title 11 of the United States Code, entitled Bankruptcy, U.S.C. Sec. 101 et. seq. (the "**Bankruptcy Code**"), or under the insolvency laws of the State in which the Premises are situated ("**Insolvency Laws**");

(b) The appointment of a receiver or custodian for any or all of Tenant's property or assets, or the institution of a foreclosure action upon any of Tenant's real or personal property;

(c) The filing of a voluntary petition under the provisions of the Bankruptcy Code or Insolvency Laws;

(d) The filing of an involuntary petition against Tenant as the subject debtor under the Bankruptcy Code or Insolvency Laws, which is either not dismissed within sixty (60) days of filing, or results in the issuance of an order for relief against the debtor, whichever is later; or

(e) Tenant's making or consenting to an assignment for the benefit of creditors or a common law composition of creditors.

26.5 Landlord's Remedies.

(a) Termination of Lease. Upon occurrence of an Event of Bankruptcy, Landlord shall have the right to terminate this Lease by giving written notice to Tenant; provided, however, that this **Paragraph 26.5(a)** shall have no effect while a case in which Tenant is the subject debtor under the Bankruptcy Code is pending, unless Tenant or its Trustee is unable to comply with the provisions of **Paragraph 26.5(d)** and **(e)** below. At all other times this Lease shall automatically cease and terminate, and Tenant shall be immediately obligated to quit the Premises upon the giving of notice pursuant to this **Paragraph 26.5(a)**. Any other notice to quit, or notice of Landlord's intention to re-enter is hereby expressly waived. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of Landlord to be done and performed shall cease without prejudice; subject, however, to the rights of Landlord to recover from Tenant all rent and any other sums accrued up to the time of termination or recovery of possession by Landlord, whichever is later, and any other monetary damages or loss of reserved rent sustained by Landlord.

(b) Suit for Possession. Upon termination of this Lease pursuant to **Paragraph 26.5(a)**, Landlord may proceed to recover possession under and by virtue of the provisions of laws of any applicable jurisdiction, or by such other proceedings, including re-entry and possession, as may be applicable.

(c) Non-Exclusive Remedies. Without regard to any action by Landlord as authorized by **Paragraph 26.5(a)** and **(b)** above, Landlord may at its discretion exercise all the additional provisions set forth in **Article 25**.

(d) Assumption or Assignment by Trustee. In the event Tenant becomes the subject debtor in a case pending under the Bankruptcy Code, Landlord's right to terminate this Lease pursuant to **Paragraph 26.5(a)** shall be subject to the rights of the Trustee in Bankruptcy to assume or assign this Lease. The Trustee shall not have the right to assume or assign this Lease unless the Trustee (i) promptly cures all defaults under this Lease, (ii) promptly compensates Landlord for monetary damages incurred as a result of such default, and (iii) provides adequate assurance of future performance on the part of Tenant as debtor in possession or on the part of the assignee Tenant.

(e) Adequate Assurance of Future Performance. Landlord and Tenant hereby agree in advance that adequate assurance of future performance, as used in **Paragraph 26.5(a)** above, shall mean that all of the following minimum criteria must be met: (i) Tenant must pay its estimated pro rata share of the cost of all services provided by Landlord (whether directly or through agents or contractors and whether or not previously included as part of the minimum or base rent), in advance of the performance or provision of such services; (ii) the Trustee must agree that Tenant's business shall be conducted in a first class manner, and that no liquidating sales, auctions, or other non-first class business operations shall be conducted on the Premises (iii) the Trustee must agree that the use of the Premises as stated in this Lease will remain unchanged and that no prohibited use shall be permitted; and (iv) the Trustee must agree that the assumption or assignment of this Lease will not violate or affect the rights of other tenants in the Development.

(f) Failure to Provide Adequate Assurance. In the event Tenant is unable to (i) cure its defaults, (ii) reimburse the Landlord for its monetary damages, (iii) pay the rent due under this Lease and all other payments required of Tenant under this Lease on time (or within three (3) days), or (iv) meet the criteria and obligations imposed by **Paragraph 26.5(d)** above, Tenant agrees in advance that it has not met its burden to provide adequate assurance of future performance, and this Lease may be terminated by Landlord in accordance with **Paragraph 26.5(a)** above.

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## ARTICLE 27

### REMEDIES CUMULATIVE

The various rights, elections, and remedies of Landlord and Tenant contained in this Lease shall be cumulative, and no one of them shall be construed as exclusive of any other, or any right, priority, or remedy allowed or provided for by law.

**ARTICLE 28**

**ATTORNEY'S FEES**

If either party hereto shall file any action or bring any proceeding against the other party arising out of this Lease or for the declaration of any rights hereunder, the prevailing party therein shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as determined by the court. If either party ("**secondary party**") without its fault is made a party to litigation instituted by or against the other party, the primary party shall pay to the secondary party all costs and expenses, including reasonable attorneys' fees, incurred by the secondary party in connection therewith.

**ARTICLE 29**

**WAIVER OF DEFAULT**

The waiver by either party of any default in the performance by the other of any covenant contained herein shall not be construed to be a waiver of any preceding or subsequent default of the same or any other covenant contained herein. The subsequent acceptance of rent or other sums hereunder by Landlord shall not be deemed a waiver of any preceding default other than the failure of Tenant to pay the particular rent or other sum or portion thereof so accepted, regardless of Landlord's knowledge of such preceding default at the time of acceptance of such rent or other sum.

**ARTICLE 30**

**NO PARTNERSHIP**

Landlord shall not in any way for any purpose be deemed a partner, joint venturer or member of any joint enterprise with Tenant.

**ARTICLE 31**

**SUBTENANCIES**

The voluntary or other surrender of this Lease by Tenant or a mutual cancellation of this Lease shall not effect a merger and shall, at Landlord's option, terminate all existing subtenancies or operate as an assignment to Landlord of any or all of such subtenancies.

**ARTICLE 32**

**SUCCESSORS**

This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. The term "**successors**" is used herein in its broadest possible meaning and includes, but is not limited to, every person succeeding to any interest in this Lease or the premises of Landlord or Tenant herein whether such succession results from the act or omission of such party. Every covenant and condition of this Lease shall be binding upon all assignees, subtenants, licensees, and concessionaires of Tenant.

**ARTICLE 33**

**REMOVAL OF TENANT'S PROPERTY**

Upon the expiration of the term of this Lease or upon any earlier termination thereof, Tenant shall remove at its own expense all trade fixtures, equipment, inventory, and personal property (collectively called "**Tenant's property**") in this Lease which were installed by Tenant or any subtenant, concessionaire or licensee in or upon the Premises. All equipment and personal property which existed in the Premises prior to the Lease Commencement shall remain thereon. In case of any injury or damage to the building or any portion of the Premises resulting from the removal of Tenant's property, Tenant shall promptly pay to Landlord the cost of repairing such injury or damage, excepting normal wear and tear

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over the term of the lease. Tenant shall also remove at its own expense all of its racking and mezzanine storage equipment, and shall repair, or promptly reimburse Landlord for the cost of repairing, all damage done to the Premises or the Building by such removal. Tenant shall complete all of the foregoing repairs, restoration and removal by the time provided in the first sentence of this **Article 33** unless prevented from so doing by a delaying cause, or Landlord may, at Landlord's option, retain any or all of Tenant's property, and title thereto shall thereupon vest in Landlord without the execution of documents or sale or conveyance by Tenant; or Landlord may remove any or all items of Tenant's property from the Premises and dispose of them in any manner Landlord sees fit, and Tenant shall pay upon demand to Landlord the actual expense of such removal and disposition together with interest from the date of payment by Landlord until repayment by Tenant.

**ARTICLE 34**

**EFFECT OF CONVEYANCE**

If, during the term of this Lease, Landlord conveys its interest in the Development, the Premises or this Lease, then, from and after the effective date of such conveyance, Landlord shall be released and discharged from any and all further obligations and responsibilities under this Lease, and the transferee shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such transferee, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease. Any security given by Tenant to secure performance of its obligations hereunder may be transferred and assigned by Landlord to such transferee.

**ARTICLE 35**

## LANDLORD'S DEFAULT; NOTICE TO LENDER

35.1 **Landlord's Default.** In the case of a default by Landlord, Landlord shall commence promptly to cure such default immediately after receipt of written notice from Tenant specifying the nature of such default and shall complete such cure within thirty (30) days thereafter, provided that if the nature of such default is such that it cannot be cured within said thirty (30) day period, Landlord shall not be in default hereunder if Landlord shall commence to cure such breach and thereafter rectifies and cures such breach with due diligence.

35.2 **Notice to Lender.** Whenever Tenant is required to serve notice on Landlord of Landlord's default, written notice shall also be served at the same time upon the mortgagee under any first mortgage or beneficiary under any first deed of trust, so long as Landlord has provided Tenant with written notice of such mortgagee. Such mortgagee or beneficiary shall have the periods of time within which to cure Landlord's defaults as are provided in **Paragraph 35.1**, which periods shall commence to run ten (10) days after the commencement of the periods within which Landlord must cure its defaults under **Paragraph 35.1**. In this connection, any representative of the mortgagee or beneficiary shall have the right to enter upon the Premises for the purpose of curing the Landlord's default. Such mortgagee or beneficiary shall notify Landlord and Tenant in the manner provided by **Article 20** of the address of such mortgagee or beneficiary to which such notice shall be sent, and the agreements of Tenant hereunder are subject to prior receipt of such notice.

35.3 **Independent Covenants; Limitation of Remedies.** The obligations of Landlord and Tenant, respectively, under this Lease are expressly agreed by the parties to be independent covenants. If Landlord fails to perform any obligation under this Lease required to be performed by Landlord, Tenant shall have no right to: (i) terminate this Lease; (ii) avail itself of self-help or to perform any obligation of Landlord except as expressly permitted in Section 35.1 above; (iii) abate or withhold any rent or any other charges or sums payable by Tenant under this Lease; or (iv) any right of setoff. If Landlord is in default hereunder, and as a consequence Tenant recovers a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received on execution of the judgment and levy against the right, title and interest of Landlord in the Premises, and out of rent or other income from the Premises receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Premises. Neither Landlord, nor any agent, officer, director, partner or employee of Landlord shall be personally liable for any portion of such a judgment.

## ARTICLE 36

### CONSENT

In consideration of each covenant made elsewhere under this Lease wherein one of the parties agrees not to unreasonably withhold its consent or approval, the requesting party hereby releases the other and waives all claims for any damages arising out of or connected with any alleged or claimed

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unreasonable withholding or consent or approval, and the requesting party's sole remedy shall be to have the consent granted.

## ARTICLE 37

### INTERPRETATION

The captions by which the articles and paragraphs of this Lease are identified are for convenience only, and shall not affect the interpretation of this Lease. Wherever the context so requires, the singular number shall include the plural, the plural shall refer to the singular and the neuter gender shall include the masculine and feminine genders. If there is more than one signatory hereto as Tenant, the liability of such signatories shall be joint and several. If any provision of this Lease shall be held to be invalid by a court, the remaining provisions shall remain in effect and shall in no way be impaired thereby.

## ARTICLE 38

### ENTIRE INSTRUMENT

It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. All of the agreements heretofore and contemporaneously made by the parties are contained in this Lease, and this Lease cannot be modified in any respect except by a writing executed by Landlord and Tenant.

## ARTICLE 39

### EASEMENTS

This Lease is made expressly subject to:

(a) any conditions, covenants and restrictions and/or easements of record on the Premises and/or the Development; and

(b) any easements for utilities or ingress and egress which now or hereafter may be placed of record by Landlord for purposes of the common benefit of the occupants of the Development. Tenant agrees, subject to the provisions of **Article 23**, to execute such documents necessary to subordinate its interest hereunder to such easements.

## ARTICLE 40

### SALE BY LANDLORD

The Premises and/or Landlord's interest under this Lease may be freely sold or assigned by Landlord, and in the event of any such sale or assignment, the covenants and obligations of Landlord herein shall be binding on each successive "landlord," and its successors and assigns, only during their respective periods of ownership.

ARTICLE 41

CANCELLATION BY LANDLORD

In the event that the Lease Commencement Date has not occurred within two (2) years following the date of execution hereof for any reason other than a default by Landlord hereunder, then Landlord shall have the right to cancel this Lease with no obligation or liability whatsoever upon notice to Tenant.

ARTICLE 42

RESERVED

ARTICLE 43

WAIVER OF TRIAL BY JURY

Tenant hereby waives trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto on any matters whatsoever arising out of or in any way connected with this Lease, including without limitation, the relationship of Landlord and Tenant, Tenant's use or occupancy of the

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Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation.

ARTICLE 44

HAZARDOUS SUBSTANCES

44.1 **Indemnity.** Tenant shall be solely responsible and liable for, and shall indemnify, defend and hold harmless Landlord for, from and against any and all Hazardous Substances, unless determined to be pre-existing, existing on the Premises or the Development or any other property, or present in or on the air, ground water, soil, buildings or other improvements or otherwise in, on, under or about the Premises or the Development or any other property, resulting from the Handling by Tenant's Permittees of any Hazardous Substance during the period of Tenant's occupancy or use of the Premises. Without limiting the generality of the foregoing, Tenant shall, at any time during the term of the Lease and at the end of the term of the Lease, perform all work necessary to render the Premises or any other property "clean" and free of all Hazardous Substances, in accordance with all present and then-applicable Laws.

44.1.1 Nothing else in this Lease notwithstanding, Tenant shall be responsible for only the Hazardous Substances introduced to or released at the Development by the Tenant, its agents, contractors and employees. Tenant shall have no liability to Landlord for Hazardous materials installed in the Premises or the Common Areas by Landlord, previous tenants or their agents, contractors, employees or other parties.

44.2 **Covenant.** Tenant shall not cause or permit any Hazardous Substance to be Handled in, upon, under or about the Premises (or any part thereof) or any part of the Development by Tenant's Permittees without the prior written consent of Landlord. Notwithstanding the foregoing, Tenant shall promptly deliver to Landlord true copies of all governmental permits and approvals relating to the Handling of Hazardous Substances and all correspondence sent or received by Tenant's Permittees regarding any Handling of Hazardous Substances in or about the Premises, including, without limitation, inspection reports and citations.

44.3 **Definitions.** As used in this **Article 44**, the following terms shall have the following definitions:

(a) **"Hazardous Substance"** means any chemical, compound, material, substance or other matter that: (i) is a flammable explosive, asbestos, radioactive material, nuclear medicine material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance, petroleum product, or related injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other Substance; (ii) is controlled, designated in or governed by any Hazardous Substance Law; (iii) gives rise to any reporting, notice or publication requirements under any Hazardous Substance Law; or (iv) gives rise to any liability, responsibility or duty on the part of Tenant or Landlord with respect to any third person under any Hazardous Substance Law.

(b) **"Handle" or "Handled" or "Handling"** means generated, produced, brought upon, used, handled, stored, treated or disposed of.

(c) **"Tenant's Permittees"** means and includes Tenant, Tenant's employees, licensees, contractors, subcontractors, representatives, agents, officers, partners, directors, subtenants, sub- subtenants and invitees:

(d) **"Laws"** means all applicable present and future laws, ordinances, rules, regulations, statutes, requirements, actions, policies, and common law of any local, state, Federal or quasi- governmental agency, body, board or commission.

44.4 **Breach of Obligations.** If Tenant breaches the obligations set forth in **Paragraphs 44.1 and 44.2** of this Lease, or if the presence of Hazardous Substances in, upon, under or about the Premises, excluding pre-existing Hazardous Substances not released by Tenant or its agents, employees or contractors, caused or permitted by Tenant's Permittees results in contamination of the Premises or any other property, or if contamination of the Premises or any other property by Hazardous Substances otherwise occurs or exists at any time during or after the term of this Lease, resulting from Tenant's Permittee's use of the Premises, then Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liabilities, costs, expenses, claims, judgments, damages, penalties, fines or losses (including without limitation, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Development, claims by any government agency or other third parties, and sums paid in settlement of claims, attorneys' fees, consultants' fees, experts' fees and the like) which arise at any time during the term of this Lease or after the term of this Lease as a direct result therefrom. This obligation of Tenant to indemnify, defend and hold Landlord harmless shall survive and extend beyond the expiration or earlier termination of this Lease and includes, without limitation,

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indemnification against all costs incurred in connection with any investigation of site conditions or any studies, testing, reports, monitoring, clean-up, detoxification, decontamination, repairs, replacements, restoration and remedial work required by any federal, state or local governmental agency, authority or political subdivision because of any Hazardous Substance present in soil, ground water, air, buildings or other improvements or otherwise in, upon, under or about the Premises or the adjacent Development or any other property, air or water. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Premises or the Development due to the Handling of Hazardous Substances by Tenant's Permittees results in contamination of the Premises or the Development or any other property, air or water, Tenant shall immediately take all actions at its sole cost and expense as are necessary or appropriate to return the Premises and the Development to the condition existing prior to the Handling, provided that Tenant obtains Landlord's prior written approval of such actions and of the contractors and other persons performing such actions, which approval shall not be unreasonably withheld, so long as such actions would not potentially have any materially adverse long-term or short-term effect on the Premises or the Development. In any event, any and all actions by Tenant to return the Premises and the Development to the condition existing prior to the Handling of any such Hazardous Substance shall be done in compliance with all Laws, and in such a manner and at such times as to avoid interference with and/or inconvenience to any or all other tenants, occupants, contractors and invitees of any adjacent property to the maximum extent possible. It is the intent of Landlord and Tenant (and Landlord and Tenant hereby agree) that Landlord shall have no liability whatsoever for the existence or presence of Hazardous Substances in, upon, under or about the Premises resulting from the Handling of any Hazardous Substances in connection with Tenant's occupancy or use of the Premises, and that Tenant shall have sole and absolute responsibility for the existence or presence of Hazardous Substances in, upon, under or about the Premises and shall fully indemnify and hold Landlord harmless from and against any liabilities, costs, expenses (including attorneys' fees), claims, judgments, damages, demand, penalties, fines and losses arising from or in connection with the existence or presence of Hazardous Substances in, upon, under or about the Premises or the migration thereof from or to the Premises resulting from the Handling of any Hazardous Substances in connection with Tenant's occupancy or use of the Premises. Tenant's obligations under this Article shall survive the termination of this Lease.

44.5 **Handling; Notices.** Without in any way diminishing or waiving the limitations on and obligations of Tenant set forth in this **Article 44**, if Tenant's Permittees Handle Hazardous Substances in, upon, under or about the Premises, such Handling shall be done in full compliance with all Laws. In that connection, Landlord and its agents and representatives shall have the right, but not the obligation, at Tenant's cost, to enter onto and to inspect the Premises and conduct investigations, studies, tests, reports, monitoring and analysis of the Premises and any and all Hazardous Substances at any and all reasonable times to determine whether Tenant is complying with its obligations under this Lease; provided, however, that before Landlord enters the Premises to conduct any such tests or investigations, Landlord shall provide Tenant with at least five (5) working days' prior notice. Furthermore, Tenant shall immediately upon receipt thereof, provide to Landlord written notice of the following:

(a) Any enforcement, clean-up or other regulatory action taken or threatened by any governmental authority (including, without limitation, the Washington State Department of Ecology or any other federal, state or local governmental entity) with respect to the presence of any Hazardous Substances in, upon under or about the Premises or the migration thereof from or to other property;

(b) All demands or claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Substances;

(c) Any spill, release, discharge or disposal of Hazardous Substances in, upon, under or about the Premises;

(d) All matters with respect to which Tenant is required to give notice pursuant to any applicable health and safety regulations.

Landlord shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions affecting the Premises initiated in connection with any Hazardous Substances or related laws.

44.6 **Landlord Representations.** Landlord represents and warrants, to the best of its knowledge, that the Building and Premises do not contain any asbestos, PCB's, underground storage tanks, or other Hazardous Substances and that the Premises shall be in compliance with all applicable federal, state and local ordinance and laws relating to environmental protection and/or Hazardous Substances as of the Commencement Date of this Lease.

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## ARTICLE 45

### AUTHORITY

If Tenant is other than a natural person, each person executing this Lease on behalf of Tenant hereby covenants and warrants to Landlord that: such person is duly authorized to execute this Lease on behalf of Tenant; Tenant is duly qualified in all respects; all steps have been taken prior to the date hereof to qualify Tenant to do business in the state in which the Premises are situated; all franchise and other taxes have been paid to date; and all forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due. Tenant will furnish to Landlord promptly upon demand, a corporate resolution, proof of due authorization of partners, or other appropriate documentation reasonably requested by Landlord evidencing the due authorization of Tenant to enter into this Lease.

## ARTICLE 46

### BROKERS

Tenant hereby represents and warrants that, other than Landlord's Broker and Tenant's Broker, Tenant has not employed any broker with regard to this Lease and that Tenant has no knowledge of any other broker being instrumental in bringing about this Lease transaction. Tenant shall indemnify Landlord against any expense incurred by Landlord as a result of any claim for brokerage or other commissions made by any other broker, finder, or agent, whether or not meritorious, employed by Tenant or claiming by, through or under Tenant. Tenant acknowledges that Landlord shall not be liable for any representations of Landlord's leasing agent or other agents of Landlord regarding this Lease transaction except for the representations and covenants of Landlord expressly set forth in this Lease.

Landlord shall pay brokerage commissions due to Landlord's Broker. Through Landlord's Leasing Agreement with Landlord's broker, Tenant's Broker shall be paid for the initial Premises any and any ROFO Space added pursuant to Section 1.4 above, a commission equal to the sum of (x) five percent

(5%) of the Minimum Monthly Rent payable during Lease Months 1-60, and (y) two and one-half percent (2.5%) of the Minimum Monthly Rent payable during Lease Months 61-89; such commission to be payable one-half upon mutual execution hereof and one-half upon the Commencement Date hereof (or, with respect to any ROFO Space, one-half upon Tenant's election to lease such ROFO Space and one-half upon Tenant's taking occupancy thereof). If Tenant exercises its first 5-year Extended Term option pursuant to Section 3.2 above, Tenant's Broker shall be paid an additional commission equal to two and one-half percent (2.5%) of the Minimum Monthly Rent payable during the first Extended Term, payable one-half upon exercise of such option and one-half upon the Commencement Date thereof.

IN WITNESS WHEREOF, the parties hereto have executed this lease the day and year first above written.

**LANDLORD:**

**MERRILL CREEK HOLDINGS, LLC**

**By: WASHINGTON REAL ESTATE HOLDINGS, LLC**

By: /s/ Brent Lower  
Name: Brent Lower  
Its: Senior Vice President  
Date: 8/2/04

**TENANT:**

**ZUMIEZ, INC., A DELAWARE CORPORATION**

By: /s/ Brenda I. Morris  
Name: Brenda I. Morris  
Its: CFO, Secretary  
Date: 8/4/02

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that Brent Lower is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Sr. Vice Pres. of WASHINGTON REAL ESTATE HOLDINGS, LLC, a Washington limited liability company, the Sr. Vice Pres. of MERRILL CREEK HOLDINGS, LLC, a Washington limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this 2nd day of August, 2004.

/s/ Trina K. Olsen  
(Signature of Notary)

[SEAL]

Trina K. Olsen  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the state of Washington,  
residing at Kirkland  
My appointment expires 10-14-06

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that Brenda I. Morris is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the CFO of ZUMIEZ, Inc., a Delaware corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

/s/ Katrina L. Basic  
(Signature of Notary)

/s/ Katrina L. Basic  
(Legibly Print or Stamp Name of Notary)  
Notary public in and for the state of Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

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**EXHIBIT "A"**

**CONSTRUCTION AND ACCEPTANCE OF PREMISES**

A-1

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**EXHIBIT "A"**

**CONSTRUCTION AND ACCEPTANCE OF PREMISES**

LANDLORD: **MERRILL CREEK HOLDINGS LLC**  
TENANT: **ZUMIEZ, INC.**  
PREMISES: **6300 Merrill Creek Parkway, Everett, Washington**

The purpose of this Work Letter is to set forth how, by whom, and at whose cost the improvements comprising the Landlord Work and Tenant Work (each defined below) are to be constructed. The dates for submission of plans and documents to Landlord pursuant to Section 2.3 below are as follows:

- |     |                           |   |
|-----|---------------------------|---|
| (A) | Schematic Plans:          | Completed & attached as Schedules A-2 & A-3 |
| (B) | Final Preliminary Plans:  | September 15, 2004                          |
| (C) | Final Construction Plans: | October 1, 2004                             |

The preliminary construction schedule for Landlord Work and Tenant Work (subject to change) is attached hereto as Schedule A-4.

1. Tenant Work.

Improvements to the Premises that are in addition to those identified herein as "Landlord's Work" are herein called the "**Tenant Work.**" Tenant Work shall be completed by Landlord at Tenant's expense, and Landlord's Work shall be completed by Landlord at Landlord's expense. The same procedure shall pertain to any matters referred to in this Exhibit as being at Tenant's expense or a charge to Tenant Work. Tenant Work, and costs charged to Tenant Work, shall include without limitation:

- (a) The work described on Schedule A-1 attached hereto and made a part hereof for all purposes. Upon completion of the final plans and specification for the Tenant Work as set forth in Section 2 below, Landlord and Tenant shall enter into an amendment of this Exhibit to include the list of final plans and specifications in Schedule A-1.
- (b) All changes or additions made, at Tenant's request, (i) to Landlord's Work (as described below) to the extent that the cost to Landlord of completing Landlord's Work is increased by the aggregate of all such changes or additions or (ii) to the Tenant Work.
- (c) Any structural modification to the Building or Development with respect to the Tenant Work, which shall be subject to Landlord's consent.
- (d) The fees of architects, engineers, consultants and contractors, including Landlord's Construction Manager (defined below), for services with respect to the Tenant Work.
- (e) All applicable Washington State sales tax.
- (f) Fees and expenses for all permits, including building, special energy and structural modification permits and other governmental fees, except for the permits required for Landlord's Work.
- (g) Any other costs referred to in this Exhibit as being at Tenant's expense or a charge to Tenant Work.

1A. Landlord's Work. Landlord shall perform the following items (which are depicted on Schedule A-3 and Exhibit B) of work at its sole expense:

Exterior:

a. Provide additional asphalt paving at truck maneuvering area. Work to include removal of existing sidewalks and planters adjacent to north face of the Building B wing. Asphalt paving to be 3" compacted class "B" asphalt concrete pavement on 6" compacted crushed rock base course on 12" subgrade compacted to 95%.

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b. Install (12) dock high truck doors (11 on north elevation, 1 on west elevation), with canopies, dock levelers and dock seals at each new opening per plan. Dock doors, canopies and dock seals to match existing. Relocate trash compactor at west end of building for Tenants exclusive use.

Interior:

a. Infill existing openings between building link and Building A wing. Provide GWB each side of 3 5/8" metal studs (paint).

b. Provide clearance as required to accommodate tenants racking and relocated mezzanine storage, however, HVAC units and distribution ducts shall remain in place. Remove existing curtainboards as much as possible (where allowed by code).

c. Provide separate metering for electricity, gas and to the extent feasible, water.

d. Landlord shall create, at its sole cost, a telecommunications demarcation room at the Development that provides reasonable and customary security and access for multiple tenants, (the "Common Telecommunication Demarcation Room"), which shall be directly accessible at all times from the exterior of the Building. Landlord shall also be responsible for providing 3" conduit between the Common Telecommunication Demarcation Room and the Premises. In designing and constructing the Common Telecommunication Demarcation Room, Landlord will permit Tenant to utilize any surplus telecommunications-related equipment from the existing Telecommunication Demarcation / data center Room for Tenant's exclusive use at no additional cost (e.g. fire suppression system, raised flooring, HVAC units, server racks, etc.). Such equipment will remain with the Premises at the end of the Lease Term. Tenant will be responsible for the construction of its demarcation and server room.

## 2. Design of Leasehold Improvements.

2.1 Landlord's Construction Manager. Landlord has engaged the services of a construction manager ("**Landlord's Construction Manager**") to provide certain professional services required for the improvement of the Premises. The fees and expenses of Landlord's Construction Manager for services pertaining to the Premises shall be a charge to Tenant Work. The fee for such services shall be 4% of the total construction costs of the Tenant Work (exclusive of architects' and engineers' fees). Construction management of Landlord's Work shall be Landlord's responsibility.

2.2 Architect. Landlord and Tenant shall use the services of a qualified architect/office planner ("**Architect**"), licensed to practice architecture in the State of Washington and approved by Landlord and Tenant, to provide architectural services related to the Tenant Work and Landlord Work, except for those services that by express provisions of this Exhibit are to be provided by Landlord's Construction Manager. Tenant shall pay for Architect's time and costs associated with Tenant Work and Landlord shall pay for Architect's time and costs associated with Landlord Work. As a charge to Tenant Work, if reasonably required, Landlord shall retain the services of a qualified civil, electrical and mechanical engineers to provide services/drawings related to the Tenant Work. Architect shall timely prepare all plans and specifications described in Section 2.3 of this Exhibit. Upon completion of the final construction drawings, Architect shall provide Landlord with a record set in a format designated by Landlord.

2.3 Plans for Tenant Work. The Schematic Plans, Final Preliminary Plans, and Final Contract Documents shall be subject to Landlord and Tenant's approval. Such plans shall be compatible with the basic plans and specifications for the Building and when submitted to Landlord for its approval shall clearly show any proposed modifications to the plans and specifications for the Building. Tenant shall (a) provide timely and adequate information, direction and approval of plans and specifications to Landlord's Construction Manager and (b) work with Landlord's Construction Manager and submit the following plans or documents to Landlord for Landlord's approval on or before the respective dates specified at page 1 of this Exhibit:

### A. Schematic Plans.

The Schematic Plan(s) and specifications are attached as Schedules A-2 & A-3. These plans are to be the basis for the Final Preliminary Plans.

### B. Final Preliminary Plans.

The Final Preliminary Plans submitted for interim approval shall show all partition layouts indicating partition type and identifying each room and its function. The floor plan must also clearly identify and locate equipment and fixtures requiring plumbing or other special mechanical systems, and any other major or

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special features, including an outline specification of special finishes. These plans are to be the basis for the Final Contract Documents.

### C. Final Contract Documents.

The Final Contract Documents shall be prepared in accordance with the standards adopted by Landlord including scale, common symbols, legends and abbreviations together with information required to obtain permits. The Final Contract Documents shall be approved and signed by the Tenant and Landlord's Construction Manager prior to submittal to Landlord and approved and signed by Landlord prior to submittal to contractors for pricing, and shall include:

(1) Architectural Floor Plan(s): A plan, fully dimensioned, showing partition layout and type, identifying each room with a number and each door with a number, and the location, nature and extent of floor finishes, casework, relites, etc. Plumbing locations and requirements shall be shown on this plan.

(3) Telecommunications, Electrical and Telephone Outlet Plan(s): A plan locating all telecom, power and telephone requirements dimensioned to give exact location of outlet and height above concrete slabs if locations are critical. This plan shall identify all dedicated circuits and identify all power outlets greater than 120 volts. For equipment used in outlets that require dedicated circuits and/or that require greater than 120 volts, identify the type of equipment, the manufacturer's name and manufacturer's model number and provide power requirements and other technical specifications. The plan shall also show modifications to basic system, circuit identification, conduit size, the number and size of wires, all in compliance with applicable Everett codes or other applicable laws and regulations.

(4) Mechanical Plan(s), HVAC, and Plumbing: A plan that clearly shows the basic HVAC system, modifications to the basic system if required, any special cooling or stand-alone systems, all supply air diffusers, thermostats and return air grills. All plumbing information shall be complete for final installation, including the fixture schedule and specifications.

(5) Construction Note and Specifications: Provide all required special notes and complete specifications, including instruction for bidders, special conditions incorporating the ALA standard form of general conditions or such modifications thereof as are designated or approved by Landlord and technical specifications for all special improvements.

(6) Structural Modifications: If Tenant's leasehold improvements include any items that require structural modifications, a structural engineer, approved by Landlord, shall be engaged to perform all required structural engineering services. The cost of such services shall be a charge to Tenant Work. A drawing shall be prepared showing the extent of structural modification necessary and a separate building permit shall be obtained for this phase of work.

2.4 Contract Administration. Landlord's Construction Manager shall provide construction administration and management during the execution of Tenant Work on the Premises and will observe progress of such work, attend necessary contractor coordination meetings, advise Tenant and Landlord on status and progress payments, prepare a punchlist for any construction deficiencies at completion and certify the Premises substantially completed.

2.5 Delays. Tenant shall be responsible for delays and additional costs in completion of the Tenant Work and any damages or other costs incurred by Landlord that are caused by (a) Tenant's failure to provide adequate information and direction to Architect or failure to timely perform its obligations in order to meet the plan delivery dates set forth in Section 2.3 of this Exhibit, in either case of which such failure Landlord has notified Tenant in writing promptly after the occurrence of the applicable failure, (b) Tenant's failure to timely authorize Landlord to proceed with the Tenant Work, (c) changes made to any of Tenant's Plans after the specified Delivery Date for Final Contract Documents, (d) delays in delivery of special materials or (e) delays requested by Tenant. The costs of any such delay or damage of which Tenant has been notified in writing shall be a charge to Tenant Work.

2.6 Services by Landlord's Construction Manager. Certain services with respect to Tenant Work shall be provided by Landlord's Construction Manager and any third-party charges incurred in connection therewith shall be charged to Tenant Work. Landlord's Construction Manager shall:

(a) Provide Architect with information about the Building and background drawings for execution of the Tenant Work as reasonably requested by Architect.

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(b) Review all plans and specifications required under Section 2.3 and assist Architect regarding compliance with the requirements of building systems and codes related to Tenant Work. Notwithstanding such review and assistance, Architect is responsible for compliance with such requirements and codes.

(c) Provide coordination with the Landlord, Tenant and/or Architect and the contractor(s), as applicable, throughout the design, pricing and construction of the Tenant Work. Transmit shop drawings and submittals pertaining to special items to contractor as requested, and provide contract administration as provided in Section 2.4, such administration to be coordinated with Architect.

(d) Obtain the blanket building permit for tenant improvement construction and transmit the Final Contract Documents to the appropriate department and officials at the permitting authority (the "Permit Authority") for review and approval. Architect shall be responsible for all changes required as a result of such review by the Permit Authority. All other permits, including without limitation electrical, mechanical, plumbing, energy code and structural permits, shall be obtained by subcontractors or Landlord's Construction Manager.

(e) Perform Construction Management services through completion of Tenant Work.

### 3. Construction of Leasehold Improvements.

3.1 Authorization to Proceed. Contract work shall be submitted to contractors selected and approved by Landlord and Tenant. After they have been completed, the Final Contract Documents shall be promptly submitted to such contractors for bids. Landlord and Tenant will review all bids and contracts will be awarded as they mutually agree. If the price of Tenant Work exceeds Tenant's expectations, Tenant may in such authorization delete any or all items of extra cost; but if Landlord, acting reasonably, deems these changes to be extensive, Landlord may refuse to accept the authorization to proceed until all changes have been incorporated in revised Final Contract Documents signed by Tenant, approved and signed by Landlord, and priced by Landlord, and Tenant's written acceptance of the revised price has been received by Landlord. In the absence of written authorization to proceed, Landlord shall not be obligated to commence work on the Premises.

3.2 Payments. Contractor shall complete the Tenant Work in accordance with the approved Final Contract Documents. Contractor shall submit monthly progress billings to Tenant, which shall be payable within twenty (20) days after receipt, subject to a ten percent (10%) holdback (the "Retainage"). Final billing shall be rendered and payable within twenty (20) days after acceptance of the Premises by Tenant in accordance with the terms of the Lease, subject to the Retainage. The Retainage shall be payable within twenty (20) days after completion of any punchlist items identified by Tenant in writing within ten (10) business days after Landlord's delivery to Tenant of written notice of completion.

3.3 Final Plans and Modifications. If Tenant requests any change from the approved Final Contract Documents, Tenant shall request such change in writing to Landlord and such request shall be accompanied by all plans and specifications necessary to show and explain changes from the approved Final Contract Documents. After receiving this information, Landlord shall give Tenant a written price for the cost to incorporate the changes in Tenant's Final Contract Documents. If Tenant approves such price in writing, Landlord shall have such Final Contract Documents changes made and the cost thereof shall be a charge to Tenant Work. Within a reasonable time after completion of such changes in the Final Contract Documents, Landlord shall obtain and notify Tenant in writing of the construction cost, if any, that will be chargeable to Tenant as a result of such change. The cost for such change, whether chargeable or credited to Tenant, shall include a coordination fee payable to Landlord equal to ten percent (10%) of the amount of such change, which charge shall be in lieu of, and not in addition to, the standard four percent (4%) construction management fee payable pursuant to Section 2.1 of this Exhibit (in the event any one such change exceeds \$5,000, the standard four percent (4%) construction management fee shall apply). Tenant shall within five (5) days notify Landlord in writing to proceed with such change. In the absence of such notice, Landlord shall proceed in accordance with the previously approved Final Contract Documents before such change was requested. Tenant shall also be responsible for any demolition work required as a result of the change.

3.4 Tenant's Entry to Premises. Tenant's entry to the Premises for any purpose prior to commencement of the Lease term shall be scheduled in advance with Landlord and shall be subject to all the terms and conditions of the Lease except the payment of rent. Tenant's entry shall mean entry by Tenant its officers, contractors, office planner, licensees, agents, servants, employees, guests, invitees or visitors.

3.5 Tenant's Telecom Services. Tenant is responsible for Tenant's telecom services. Tenant shall select Tenant's telephone and telecom systems. Information concerning telephone and telecom equipment size, manufacturer, technical specifications, special requirements and other information requested by Landlord's Construction Manager shall be provided by Tenant to Landlord's Construction Manager during the development of the Final Preliminary Plans. Tenant shall coordinate installation of the telephone

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and telecom system with Landlord's Construction Manager during the construction phase. Notwithstanding anything to the contrary contained herein, Tenant shall be totally responsible for the installation of telephone and telecom wiring and equipment, all subject to Landlord's approval.

#### 4. General Provisions.

The following provisions shall apply to all Tenant Work.

- (a) Tenant shall be responsible for the design, function and maintenance of all special improvements made to the Premises.
- (b) Tenant shall pay, as additional rent, any increase in energy cost for all special lighting and any lighting not governed by the Permit Authority's Energy Code and such lighting shall not be installed without Landlord's prior approval. Lamp or bulb replacement for special lights shall be charged to Tenant as a service charge.
- (c) In addition to other requirements in the Lease, signs or signage proposed by Tenant shall comply in all respects with Landlord's sign policies for the Premises.
- (d) Tenant shall be solely responsible for compliance with all applicable laws and all regulations and requirements of municipal or other governmental bodies exercising authority over the Tenant Work; this compliance shall include (but not be limited to) the filing of plans and other documents as required, the procuring of all required licenses or permits, the cost of any upgrades required to receive permits necessary for the completion of the Tenant Work or the operation of Tenant's business at the Premises. Notwithstanding the foregoing, if Landlord is managing the construction of the Tenant Work, Landlord or Landlord's Construction Manager will obtain necessary permits therefor at Tenant's expense (and Tenant shall cooperate as necessary with Landlord's efforts with respect thereto).
- (e) If any portion of the Tenant Work within the Premises (collectively referred to below as "**such work**") is to be performed at any time by someone other than Landlord's contractor or subcontractor, then the following terms and conditions shall apply (in addition to any requirements set forth in the Lease):
  - (1) All such work shall be subject to Landlord's prior approval. Tenant shall be responsible to coordinate and schedule such work with Landlord's Construction Coordinator.
  - (2) All costs and expenses of such work shall be paid by Tenant.
  - (3) All such work shall conform to written standards or rules and regulations of Landlord.
  - (4) Tenant shall at no time permit anything to be done whereby the Premises or the Land is subjected to any mechanic's or other liens or encumbrances arising out of the Tenant Work.
  - (5) If the performance of such work requires additional services or facilities (including, but not limited to, hoisting, utilities, cleanup or other cleaning services, trash removal from the Premises, field supervision or ordering materials) be provided, Tenant shall pay Landlord (or Landlord's contractor, if directed to do so by Landlord) a reasonable charge therefor, which shall not exceed the direct additional costs to provide such services (being the actual out-of-pocket cost or expense to Landlord that would not have been incurred by Landlord but for such work) plus a markup often percent (10%) thereon (but in no event more than four percent (4%) of Tenant's cost for such work).
  - (6) Landlord shall have no responsibility for such work. Tenant shall remedy at Tenant's expense and be responsible for any and all defects in such work. Tenant shall reimburse Landlord for any extra expense incurred by Landlord by reason of faulty work done by Tenant or Tenant's contractor(s), by reason of delays caused by such work, or by reason of inadequate clean up.
  - (7) Tenant shall, at its sole expense, comply with all applicable laws and all regulations and requirements of municipal or other governmental bodies exercising authority over such work, and this compliance shall include the filing of plans and other documents as required and the procuring of all required licenses or permits.

(8) If any shutdown of plumbing, electrical, fire and life safety equipment or air conditioning equipment becomes necessary, Tenant shall notify Landlord and Landlord will determine when such shutdown may be made. Any such shutdown shall be done only if an agent or employee of Landlord is present. In the case of a shutdown of fire and life safety equipment, it shall be Tenant's responsibility to obtain all necessary fire department and other governmental approvals.

(9) Tenant or Tenant's contractor shall not install plumbing, mechanical, electrical wiring or fixtures, acoustical or integrated ceilings, unless prior written approval is obtained from Landlord. In addition to the foregoing, all telecommunications infrastructure and other special electrical equipment shall be installed only under the coordination supervision of Landlord or Landlord's electrical contractor (i.e., in the presence of and in a manner approved by Landlord or Landlord's electrical contractor). Landlord and Landlord's electrical contractor shall not incur any obligations or liability to Tenant or Tenant's contractors or others as a result of such coordination supervision. Such coordination supervision by Landlord or Landlord's electrical contractor shall be at Tenant's expense.

(10) Tenant shall be responsible for any delay in completion of Tenant Work as a result of such work.

(f) If Tenant requests to perform any alterations, additions or improvements to the Premises that are in addition to the Tenant Work, and Landlord consents to such requests, the terms and conditions of this Exhibit shall apply to all such work.

5. Delivery; Punchlist; Commencement Date. Although this Lease shall be effective as of the date of mutual execution hereof, the "Commencement Date" shall be the later of: a) February 1, 2005 or b) the date Landlord notifies Tenant that the Landlord's Work is substantially completed, subject to completion of punchlist items described below, to the point that Tenant may complete without unreasonable interference or delay by Landlord or Landlord's contractors the installation of Tenant's furniture, fixtures, equipment, and data/telephone cabling. Subject to force majeure and delays caused by Tenant, Landlord shall use commercially reasonable efforts to cause substantial completion of both Landlord's Work and Tenant's Work and delivery of the Premises to occur not later than February 1, 2005. Within ten (10) business days after substantial completion and delivery of the Premises, Tenant shall prepare a punchlist of any deficiencies or incompletes items of Landlord's Work or Tenant's Work. Landlord shall correct such deficiencies or incompletes items thereof within a reasonable period of time, without unreasonable interference or delay to Tenant, but in no event later than thirty (30) days after receipt of the punchlist. The existence of such deficiencies or incompletes items of Landlord's Work shall not affect Tenant's obligation to accept the Premises as otherwise required under the Lease.

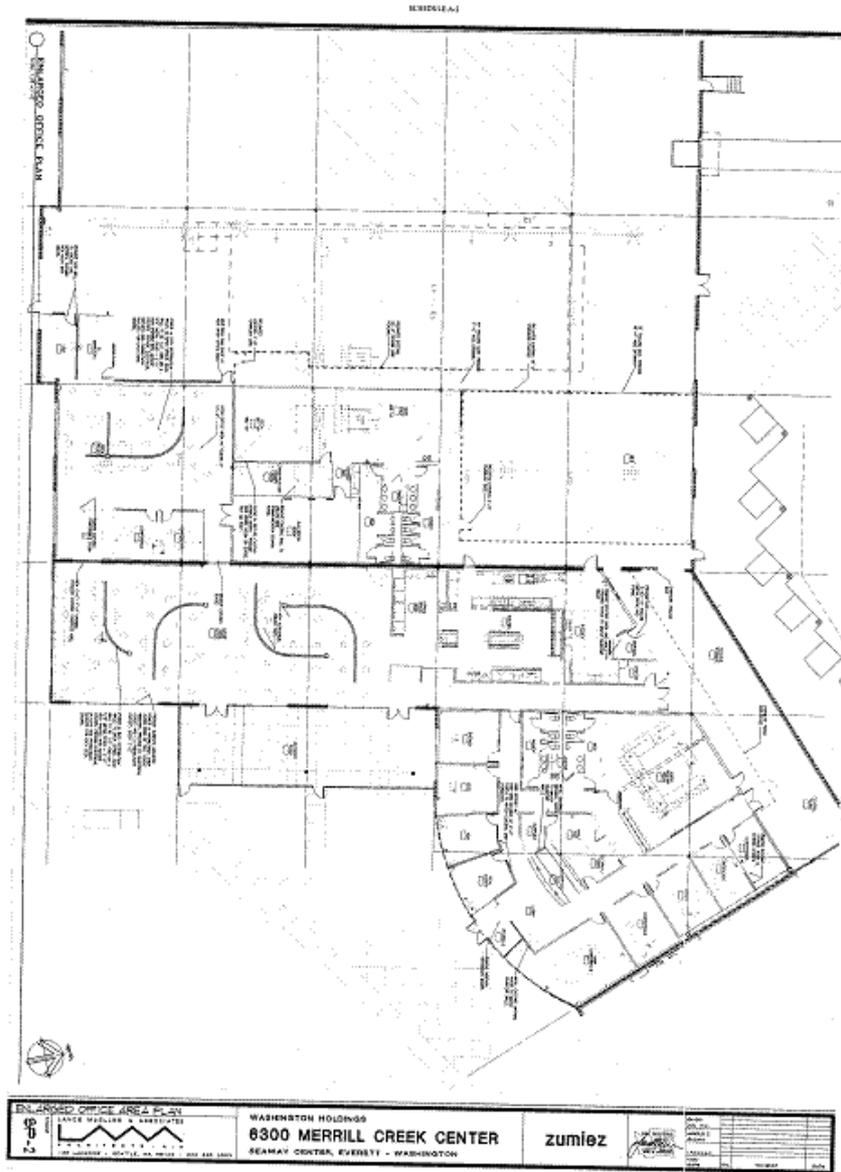
### **Schedule A-1**

#### **Tenant Work**

The Tenant Work is generally described below. This Schedule will be amended pursuant to Section l(a) of the Tenant Work Letter to include list of approved final plans and specifications.

- a. Remove all carpet from open office areas, VCT from cafeteria, hallway and serving area. Scrape glue from floor and provide concrete sealer. Alternate floor treatment: Provide unit square footage cost for colored stain for concrete or other similar treatment.
- b. Sawcut and create opening into existing concrete panel separating existing cafeteria and warehouse. Provide finished opening 8'-6" wide x 7'-0" high. Patch to match adjacent walls.
- c. Optional - Remove existing double doors separating cafeteria from warehouse. Patch walls to match adjacent.
- d. Remove wall between existing storage room and network closet in Building B. Patch walls to match adjacent.
- e. Remove interior vestibule doors. Store for future use.
- f. Provide (2) new offices at existing lobby area with doors and relites to match existing office/ conference rooms. Patch ceiling inside room and existing lobby to match or complement existing design.
- g. Remove existing storage room near building link and extend existing conference rooms an additional 5'-7". Patch walls and ceiling to match existing.
- h. Optional - Infill opening from reception to fax/copy. Provide GWB each side of 3 5/8" metal studs and paint to match existing adjacent walls.
- i. Provide line item cost for converting existing dry food storage room to nursing room for breast feeding mothers. Provide new hollow metal door and frame to building link and infill opening from existing door removed.
- j. Remove and replace existing ceiling tiles in cafeteria. Provide acoustical ceiling tiles with high NRC rating.
- k. Remove existing conference room adjacent to south wall of Building B. Patch walls to match existing.
- l. Provide new walls and ceiling to create large opening office area within existing warehouse portion of Building B.
- m. Provide new wall within existing conference room in building B for creation of two offices. Provide new door with relite per plan. Patch walls to match existing.

- n. Provide new fenced areas within Building B warehouse using existing fence and gate materials from previous owner. See floor plan for extent.
- o. Relocate existing free standing steel mezzanine from tenant's facility. Coordinate relocation and required retrofit needed for new conveyor and stair locations.
- p. Provide 36" high power and phone distribution walls in new open office areas per plan. Wall to be 1/2" GWB on 3 5/8" metal studs with 12"x12" GWB furred columns at one end of each wall section. Provide power and data outlets at each wall per quantity of desks depicted.
- q. Optional – Tenant may utilize the existing security system in the Development provided it reconfigures the system to secure only the Premises at Tenants sole cost. Tenant shall provide plans and specifications for such reconfiguration for Landlords review and approval, which shall be required prior to Tenant commencing work on security system.







**EXHIBIT "B"**

**SITE PLAN**

B-1

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**EXHIBIT "C"**

**RULES AND REGULATIONS**

Dated: \_\_\_\_\_, 2004.

This Exhibit is attached to and becomes a part of that certain Lease by and between Merrill Creek Holdings, LLC, as Landlord, and Zumiez, Inc., as Tenant.

1. The outside sidewalks and loading areas immediately adjoining the Premises, and all other Common Areas, shall be kept clean and free from dirt and rubbish by Tenant and Tenant shall not place or permit any obstructions in such areas, except with Landlord's prior written consent.
2. Tenant shall not make or permit any noise or odors that annoy or interfere with other tenants or persons having business within the Development.
3. No radio or television aerial or satellite dish (or similar device) shall be installed or erected on the roof or exterior walls of the Leased Premises, or on the grounds of the Development generally, without first obtaining in each instance the written consent of Landlord. Any aerial or satellite dish so installed without such written consent shall be subject to removal without notice at any time.
4. All of Tenant's refuse and rubbish shall be removed to central trash bins located in the Development. Tenant shall not place any rubbish or other matter outside any building within the Development, except in such containers as are authorized from time to time by Landlord. Trash enclosures where any food-related trash is deposited, shall be emptied on a daily basis. Dumpsters for food-related trash shall be supplied with closable lids, and shall be kept closed at all times. Trash shall not be allowed to accumulate outside of/ or within a trash enclosure, or outside of a dumpster or other approved receptacle. All necessary measures shall be taken to ensure that the accumulation of trash does not attract animals or insects.
5. No window coverings, shades, or awnings shall be installed or used by Tenant, except with prior written consent of Landlord.
6. Tenant shall make no use of the roof without obtaining the consent of Landlord.
7. Tenant shall not use any method of heating or air conditioning other than as provided by Landlord, without Landlord's prior written consent.
8. Tenant shall not use, and shall not allow anyone else to use, the Premises as a habitation.
9. Tenant will obey all posted signs and park only in the areas designated for vehicle parking.
10. The maintenance, washing, waxing, cleaning, and repairing of vehicles in the Common Areas is prohibited.
11. Landlord reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Development, its occupants and customers. Tenant agrees to abide by these and such rules and regulations. Rules shall be enforced fairly against all tenants of the Development.

C-1

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**EXHIBIT "D"**

**DELIVERY OF PREMISES**

NAME OF DEVELOPMENT:	MERRILL CREEK CENTER
NAME OF TENANT:	ZUMIEZ, INC.
PREMISES ADDRESS:	6300 Merrill Creek Parkway Everett, WA 98203

**ACKNOWLEDGEMENT**

As stipulated under **Paragraph 3.1** ("Term") of the Lease Agreement executed by Landlord and Tenant herein for the above-referenced demised Premises, Tenant does hereby acknowledge that Tenant is in receipt of the keys to said Premises as of the date listed below.

Furthermore, Tenant acknowledges that Tenant has inspected the demised Premises, and that Landlord's Work pursuant to **Paragraph 7** of **Exhibit "A"** are substantially completed. The date listed below (the "**Possession Date**") shall be the start date of Tenant's fixturation period pursuant to said Lease.

**TENANT:**

ZUMIEZ, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

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**EXHIBIT "E"**

**SIGN CRITERIA**

**[Landlord shall complete and provide to Tenant by September 15, 2004]**

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## EXECUTIVE AGREEMENT

This Executive Agreement (“Agreement”), dated as of November 4, 2002, is entered into between Zumiez, Inc., a Delaware corporation (“Zumiez”), and Richard M. Brooks (“Executive”).

### RECITALS

- A. Zumiez is engaged in the retail business of offering, selling, and marketing active sportswear, sports equipment and lifestyle products to teens, young men, and young women. Zumiez may in the future expand its business to additional products, services and markets.
- B. Zumiez has employed Executive as President and Chief Executive Officer (CEO), and Executive wishes to hold this position under the terms and conditions of this Agreement.
- C. As President and CEO, Executive holds a sensitive position with access to, and requiring knowledge of, Zumiez’s proprietary and commercially valuable information, including trade secrets and strategic information. Executive also has contact with Zumiez’s customers, suppliers, investors and strategic partners (collectively, “Zumiez Business Partners”). Unauthorized use or disclosure of such information, or interference with Zumiez’s relationships with Zumiez Business Partners could cause Zumiez irreparable injury. This Agreement is intended to assure that Zumiez’s proprietary information and materials and relationships with Zumiez Business Partners will be protected both during and after Executive’s employment. Executive understands the need for this commitment and makes it willingly.

### AGREEMENT

In consideration of Executive’s employment by Zumiez, Executive’s receipt of benefits under this Agreement, and the other covenants in this Agreement, the parties agree:

1. **Employment.** Zumiez shall employ Executive, and Executive shall serve as an employee of Zumiez, on the terms and conditions in this Agreement. Executive’s employment under this Agreement shall continue indefinitely, until terminated by Zumiez or Executive under Section 5 below.
2. **Duties.** Executive shall serve as President and CEO, or in such other positions as determined by Zumiez, and perform other such duties that Zumiez may assign to Executive from time to time. Executive shall comply with all of Zumiez’s policies and procedures applicable to similarly situated executives, as modified from time to time.
3. **Attention and Effort.** Executive shall devote Executive’s full working time, energies, and best efforts to Zumiez’s business and affairs, and shall faithfully and diligently serve Zumiez’s interests. Executive shall not engage in any other business or employment activity (whether or not pursued for gain or profit) except for (a) activities approved in writing in advance by Zumiez’s Board of Directors (the “Board”), and (b) passive investments that do not involve Executive providing any advice or services to the businesses in which the investments

are made, except that Executive may continue to serve as a member of the Board of Directors of MicroServ, Inc., as a Trustee of the University of Puget Sound and such other boards as may be approved from time to time by the Board.

4. **Compensation and Benefits.** Executive shall receive the following compensation and benefits:
  - (a) **Base Salary.** Executive shall receive an initial base salary (“Base Salary”) of \$175,000 per year. Base Salary shall be paid in substantially equal periodic installments in accordance with Zumiez’s payroll schedule, but in any case not less frequently than monthly. All payments shall be subject to standard employee withholding taxes and deductions.
  - (b) **Bonus.** Executive shall be considered for an annual discretionary bonus of up to \$100,000 based on Zumiez’s determination that Executive achieved the individual and company goals set by the Board as part of Zumiez’s Annual Operating Plan, as it may be modified by the Board. In order to receive a bonus, Executive must be actively employed on the date the bonus is paid.
  - (c) **Fringe Benefits.** Executive shall participate in all benefit programs that Zumiez from time to time makes available to other employees holding positions similar to that of Executive, subject to applicable eligibility and other restrictions as set forth in the applicable summary plan description or other policy description. Zumiez may modify or eliminate benefits from time to time.
  - (d) **Expenses.** In accordance with Zumiez’s policies, Executive shall be reimbursed for all reasonable authorized business expenses incurred in connection with Zumiez duties following receipt of such documentation as Zumiez may reasonably require.
  - (e) **Stock Options.** Executive also shall be eligible to receive such future stock option grants as the Board from time to time deems appropriate.
5. **Termination.** Executive’s employment with Zumiez shall be terminated upon the occurrence of any one or more of the following events:
  - (a) Immediately, upon Executive’s death.
  - (b) At the election of Zumiez, upon written notice to Executive, if Executive is prevented by sickness or disability from fully and adequately performing Executive’s job duties, with or without reasonable accommodation, for a continuous period of not less than ninety (90) days or for intermittent periods totaling not less than ninety (90) days in any twelve month period. This provision shall be interpreted consistently with applicable disability law.

(c) At the election of Zumiez, upon written notice to Executive, with or without Cause. "Cause" shall mean Zumiez's determination that Executive has committed an act or acts constituting any of the following: (i) dishonesty, fraud, misconduct or gross negligence in connection with Executive's performance of his duties and responsibilities at Zumiez;

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(ii) intentional unauthorized disclosure or use of Confidential Information (as defined in Section 6); (iii) misappropriation of a business opportunity of Zumiez; (iv) materially and deliberately aiding a competitor of Zumiez; (v) conduct that constitutes a felony; (vi) failure or refusal to attend to the duties or obligations of Executive's position under this Agreement, or to comply with Zumiez's rules, policies or procedures, which failure or refusal remains uncorrected thirty (30) days after the Board delivers written notice of such misconduct to Executive; (vii) any other reason that constitutes "cause" under Washington law; or (viii) the failure of Zumiez to achieve at least eighty percent (80%) of its projected operating income (earnings before interest and taxes) set forth in its Annual Operating Plan for two consecutive years.

(d) At the election of Executive, upon thirty (30) days' notice to Zumiez, with or without Good Reason. "Good Reason" shall mean (i) a forced relocation of more than one hundred (100) miles in the principal place for Executive's performance of duties under this Agreement; or (ii) Zumiez's material breach of a material provision of this Agreement, which breach remains uncured thirty (30) days after Executive delivers written notice of such breach to Zumiez; (iii) a material worsening in Executive's title, duties, responsibilities or authority, which worsening is not corrected thirty (30) days after Executive delivers written notice to Zumiez; or (iv) a reduction in Executive's Base Salary or percentage of bonus opportunity under Section 4(b). Good Reason shall not exist if Zumiez contemporaneously has Cause to terminate Executive's employment.

#### 6. Payments and Other Financial Obligations Upon Termination.

(a) If Executive's employment is terminated (i) due to Executive's death or permanent disability, (ii) by Zumiez for Cause (other than as set forth in Section 5(b)(viii) above), or (iii) by Executive without Good Reason, Zumiez shall pay Executive's Base Salary through the date of termination, and provide such other payments and benefits as applicable law may require.

(b) If Executive's employment is terminated by Zumiez without Cause or by Executive with Good Reason or for the reason set forth in Section 5(b)(viii) above, then as liquidated damages or severance pay, or both, Zumiez shall continue to pay Executive's Base Salary until the earlier of the date that Executive accepts employment with another employer or upon the expiration of eighteen (18) months after Executive's termination of employment. All employee benefits shall cease upon termination of employment. As a condition to post-termination salary continuation payments under this Section, Zumiez may require that Executive provide consulting services to Zumiez on a reasonable basis during the period that payments continue.

(c) Zumiez's obligations under Section 6(b) shall immediately cease if Executive breaches any of the covenants in Sections 7 through 10 of this Agreement, and Executive shall repay to Zumiez all amounts previously paid to Executive during the period of such breach. The amounts paid, the amounts withheld and the amounts repaid are intended as a reasonable forecast of only some of the damages that would result from Executive's breach of Section 7, 8, 9, or 10, and not as a penalty. The obligation on the part of Executive to repay any

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amount under this Agreement shall not preclude the exercise by Zumiez of any right or remedy available to it at law or in equity.

#### 7. Confidentiality.

(a) "Confidential Information" means any and all confidential and/or proprietary knowledge, data or information of Zumiez. By way of illustration but not limitation, "Confidential Information" includes (i) Zumiez's trade secrets, inventions, ideas, processes, systems, designs, formulas, computer programs, databases, customer lists, business practices, and strategic plans; (ii) any information regarding plans for research, development, new products, marketing and selling, business plans, budgets, unpublished financial statements, licenses, prices and costs, suppliers and customers; (iii) information regarding the skills and compensation of employees of Zumiez; and (iv) information received from third parties including, without limitation, Zumiez Business Partners and their clients, vendors, business partners, or potential business partners that Zumiez is obligated to treat as confidential. Confidential Information disclosed to Executive by any Zumiez partner, employee, contractor and/or agent is also covered by this Agreement. Confidential Information will not include information Executive can establish: (i) entered or subsequently enters the public domain without Executive's breach of any obligation owed Zumiez; (ii) became known to Executive prior to Zumiez's disclosure of such information to Executive; or (iii) became known to Executive from a source other than Zumiez other than by the breach of an obligation of confidentiality owed to Zumiez.

(b) Executive shall not use any Confidential Information for any purpose other than to further Zumiez's business interests as requested by Zumiez and, without limiting the foregoing, Executive shall not use the Confidential Information for the benefit of himself or any third party. Executive shall not disclose any Confidential Information to any third party without having first received the express prior written permission of Zumiez. Executive shall at all times keep Confidential Information confidential and shall take all reasonable security precautions to keep confidential and protect the Confidential Information from unauthorized access and use. Executive may directly or indirectly reproduce, summarize and distribute Confidential Information provided to Executive only in pursuance of Zumiez's business and only as otherwise provided hereunder.

(c) Executive's Section 7 obligations shall remain in effect for the longest time permitted by applicable law. If Executive is required by subpoena or otherwise to disclose Confidential Information, Executive shall give Zumiez notice of the proposed disclosure as soon as practicable after learning of the subpoena or the disclosure requirement and shall make any such disclosure in a manner so as to maximize the protection of the information from further disclosure.

8. Return of Documents and Property. At termination of employment, or earlier if requested, Executive shall promptly surrender to Zumiez, without retaining copies, all tangible and intangible things which are or contain Confidential Information. Executive shall also return all files, correspondence, memoranda, computer software and print-outs, work papers, client lists, and other property or things which Zumiez gave to Executive, which Executive created in

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whole or part within the scope of Executive's employment, or to which Executive had access, even if they do not contain Confidential Information. In addition, at the time of termination from Zumiez, regardless of reason, Executive shall in good faith take all acts necessary and reasonable to assure that Executive's work is efficiently transitioned to Zumiez.

9. Restrictive Covenants.

(a) "Competitor" means any person or entity which engages or is preparing to engage in a retail business by selling, offering, or marketing the same or similar products or services which Zumiez then sells, offers or markets, or is then preparing to sell, offer, and/or market to teens and/or young men and women.

(b) During employment with Zumiez and continuing for eighteen (18) months thereafter (the "Non-Competition Term"), regardless of the reason for termination, Executive shall not, unless Zumiez gives its prior written consent: (i) manage, operate, control, or be employed by any Competitor; (ii) consult with, act as agent for, or otherwise assist any Competitor to compete or prepare to compete with Zumiez; (iii) own any interest (other than a passive investment interest in a publicly traded company) in any Competitor; (iv) take any action calculated to divert from Zumiez any opportunity within the scope of its then business; (v) solicit, hire or otherwise engage any person who had been employed by Zumiez during the last six (6) months before Executive's termination, to perform services for Executive or any other person or entity; or (vi) solicit, divert, or in any other manner persuade or attempt to persuade any Zumiez Business Partner to alter or discontinue its relationship with Zumiez. The Non-Competition Term shall terminate if Zumiez breaches its obligation to pay liquidated damages or severance pay, pursuant to Section 6(b) hereof.

(c) The covenants contained in this Section 9 shall be limited to a geographic area of the United States, specifically including the twelve (12) states where Zumiez currently conducts its business, the states where Zumiez conducts or has taken preparatory measures to conduct its business on the date Executive's employment at Zumiez is terminated, and the states where Zumiez contemplates conducting its business on Executive's termination date.

10. Assignment of Inventions.

(a) Executive shall promptly make full written disclosure to Zumiez of, shall hold in trust for the sole right and benefit of Zumiez, and, subject to Section 3(c) of this Agreement, hereby assigns to Zumiez or its designee all of Executive's right, title, and interest in and to, any and all inventions, original works of authorship, developments, concepts, ideas, discoveries, improvements and trade secrets, whether or not patentable or registrable under copyright or similar laws, that Executive may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time Executive is employed by Zumiez.

(b) Notwithstanding Section 10(a) above, Section 49.44.140 of the Revised Code of Washington exempts from assignment to Zumiez certain inventions developed entirely on Executive's own time without using Zumiez's equipment, supplies, facilities or trade secret

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information, except for inventions that: (i) relates directly to Zumiez's business, (ii) relates to Zumiez's actual or demonstrably anticipated research or development, or (iii) results from any work performed by Executive for Zumiez. A copy of Section 49.44.140 of the Revised Code of Washington is attached as Appendix A to this Agreement. Executive shall advise Zumiez promptly in writing of any inventions, original works of authorship, developments, concepts, ideas, discoveries, improvements or trade secrets that Executive believes need not be assigned to Zumiez; and Executive shall at that time provide to Zumiez in writing all evidence necessary to substantiate that belief. Zumiez will keep in confidence and will not use for any purpose or disclose to third parties without Executive's consent any confidential information disclosed in writing to Zumiez relating to inventions that qualify fully under the provisions of Section 49.44.140 of the Revised Code of Washington.

(c) Executive acknowledges that all original works of authorship made by Executive (solely or jointly with others) within the scope of Executive's employment by Zumiez and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C.A., Section 101) and that Executive is an "employee" as defined by that Act. Executive further agrees from time to time to execute written transfers of ownership to Zumiez of specific original works of authorship (and all copyrights therein) made by me (solely or jointly with others) which may, despite the preceding sentence be deemed by a court of law not to be works made for hire, and which are being assigned by Executive to Zumiez pursuant to this Agreement in such form as is acceptable to Zumiez in its reasonable discretion.

(d) Executive shall keep and maintain adequate and current written records of all inventions and original works of authorship made by Executive (solely or jointly with others) during the term of Executive's employment by Zumiez. The records will be in the form of notes, drawings, and any other format that may be specified by Zumiez. The records will be available to and remain the sole property of Zumiez at all times.

(e) Executive agrees to assist Zumiez to obtain United States or foreign letters patent, copyrights or trademark rights covering inventions, works of authorship and trademarks, respectively, assigned hereunder to Zumiez. Such obligation shall continue beyond the termination of Executive's employment by Zumiez, at which point Zumiez shall compensate Executive at a reasonable rate for time actually spent by Executive at Zumiez's request on such assistance. If Zumiez is unable because of Executive's mental or physical incapacity or for any other reason to secure Executive's signature to apply for or to pursue any application for any United States or foreign letters patent, copyrights or mask work rights covering inventions or other rights assigned to Zumiez under this Agreement, then Executive hereby irrevocably designates and appoints Zumiez and its duly authorized officers and agents as Executive's agent and attorney in fact, to act for and in Executive's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyrights and mask work rights with the same legal force and effect as if executed by Executive. This appointment is coupled with an interest in and to the inventions and works of authorship and shall survive Executive's death or disability. Executive hereby waives and quitclaims to Zumiez any and all claims, of any nature whatsoever, which Executive now or

may hereafter have for infringement of any patents, copyrights or mask work rights resulting from or relating to any such application assigned hereunder to Zumiez.

(f) Executive agrees to assign to the United States government all right, title and interest in and to any and all inventions, original works of authorship, developments, improvements or trade secrets whenever such full title is required to be in the United States by a contract between Zumiez and the United States or any of its agencies.

11. Remedies. Executive acknowledges that Zumiez would be greatly injured by, and has no adequate remedy at law for, Executive's breach of Section 7, 8, 9, or 10. Executive therefore consents that if such breach occurs or is threatened, Zumiez may, in addition to all other remedies, enjoin Executive (together with all persons acting in concert with Executive) from such breach or threatened breach. If an injunction is granted, the periods in Sections 7 and 9 shall be extended so as to commence when such injunction is entered.

(a) Attorneys' Fees. In any claim arising out of or relating to this Agreement, the substantially prevailing party shall recover its reasonable costs and attorneys' fees to the extent permitted by law.

(b) Venue and Jurisdiction/Controlling Law. For any claim or cause of action arising under or relating to this Agreement, Zumiez and Executive consent to the exclusive jurisdiction of the King County, Washington Superior Court, or a federal court located within Seattle, Washington, and waive any objection based on jurisdiction or venue, including forum non conveniens. Washington law shall apply.

12. Assignment. Zumiez may assign rights and duties under this Agreement, but Executive may not. This Agreement shall bind Executive's heirs and personal representatives, and inure to the benefit of Zumiez and its successors and/or assigns.

13. Freedom To Contract. Executive warrants that Executive has the full power and authority to enter into and perform according to the terms of this Agreement and is under no disability or obligation, express or implied, to any other party, including former employers, that prevents Executive from entering into this Agreement and from complying with all of its provisions to the fullest extent, and that no third party approval or consent is necessary for its entry into or performance under this Agreement. Executive shall comply fully with all confidentiality obligations owed to all third parties, including all former employers, and shall not disclose to Zumiez any trade secret or proprietary information of any third party that Executive is obligated not to disclose without the written consent of Zumiez and the third party.

14. Complete Agreement; Severability; No Waiver. This Agreement is the entire agreement between the parties on its subject matters, and supersedes all prior and contemporaneous discussions and understandings, except that nothing in this Agreement shall be construed to alter or amend either party's rights or duties under the Plan, as amended from time to time. No waiver, modification or termination of any term of this Agreement shall be effective unless in writing and signed by both parties. If any provision as written is deemed unlawful, overbroad or otherwise unenforceable, the parties agree to follow a construction which will give Zumiez the maximum protection which is reasonable and permissible under the circumstances

(including, if necessary, a reduction in the time and/or geographic scope of nondisclosure and/or restrictive covenants), or if this is not possible, it shall be deemed severed. The failure, delay or forbearance on the part of either party to insist on strict performance of any provision of this Agreement, or to exercise any right or remedy, shall not be construed as a waiver. The waiver of any right or remedy by either party in one or more instances shall not excuse the strict performance of the duties and obligations on the part of the other party.

15. Legal Representation. Executive has been represented by counsel of his own choosing in connection with this Agreement. As the parties have cooperated in the drafting and negotiation of this Agreement, this Agreement shall not be construed against either party as the drafter. Executive understands this Agreement and acknowledges that the restrictions in this Agreement are fair and reasonable.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ZUMIEZ:

ZUMIEZ INC.  
a Delaware corporation

By: /s/ Thomas D. Campion  
Thomas D. Campion  
Chairman

EXECUTIVE:

/s/ Richard M. Brooks  
Richard M. Brooks

**APPENDIX A**

**Notice to Executive Regarding Employee Rights to Inventions Under the Revised Code of  
Washington Section 49.44.140**

“(1) A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee’s rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee’s own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer’s actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this state and is to that extent void and unenforceable.

(2) An employer shall not require a provision made void and unenforceable by subsection (1) of this section as a condition of employment or continuing employment.

(3) If an employment agreement entered into after September 1, 1979, contains a provision requiring the employee to assign any of the employee’s rights in any invention to the employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee’s own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer’s actual or demonstrably anticipated research or development, or (b) the invention results from any work performed [performed] by the employee for the employer.”

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CONFIDENTIAL TREATMENT HAS BEEN REQUESTED FOR PORTIONS OF THIS EXHIBIT. THE COPY FILED HERewith OMITs THE INFORMATION SUBJECT TO THE CONFIDENTIALITY REQUEST. OMISSIONS ARE DESIGNATED AS [\*\*\*\*]. A COMPLETE VERSION OF THIS EXHIBIT HAS BEEN FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION.

### Carrier Agreement

This Agreement ("Agreement") is made and entered into by and between ZUMIEZ ("Customer") and United Parcel Service Inc., an Ohio Company ("UPS").

UPS will provide the pickup and delivery services ("Services") as set forth below subject to the terms of this Agreement. These Services will be provided with the incentives ("Incentives") as also set forth below. These Incentives shall only be available to the locations and account numbers identified in **Addendum A**. Account numbers may be added or deleted only by mutual written agreement by both Parties and require five (5) business days notice to UPS to become effective. Customer is prohibited from reselling or offering Incentives to any other party without the prior written consent of UPS and failure to comply with this prohibition may result in immediate cancellation of this Agreement.

UPS will apply Incentives as set forth in **Addendum B** to the effective UPS rates at the time of shipment, where applicable. Each eligible package (or shipment) will receive its applicable Incentive for the term of this Agreement. Incentives are applied on a weekly basis unless otherwise specified. Incentives shall be applied to prepaid outbound shipments unless otherwise noted. This Agreement will be subject to periodic review by UPS for Customer compliance.

Customer agrees to supply the UPS Service Provider with a hard copy summary manifest at the time that the packages are tendered to UPS for shipment and provide UPS with Timely Upload of electronic Package Level Detail ("PLD") in a form acceptable to UPS. PLD includes, but is not limited to, consignee's full name, complete delivery address, package weight and zone. Timely Upload is defined as the electronic transmission of PLD to UPS at the time the packages are tendered to UPS. Customer agrees to provide smart labels on all packages tendered to UPS. A smart label, as defined herein and described in the current UPS Guide to Labeling, which may be updated from time to time by UPS, includes, but is not limited to, a MaxiCode, Postal Bar Code, current UPS Routing Code, appropriate UPS Service Icon and a UPS IZ Tracking Number Bar Code. Customer further agrees that all shipping locations will use a UPS OnLine or OnLine compatible shipping solution that is approved and authorized by UPS as such.

Customer agrees to pay for all shipments in full within the time period required by UPS.

All Services provided by UPS shall be pursuant to the UPS Rate and Service Guide and UPS Tariff in effect at the time of shipping, both of which are incorporated herein by reference and which may be subject to change without notice.

Customer and UPS agree to maintain the confidentiality of this Agreement including its rates, terms and incentives ("Confidential Information") unless disclosure is required by law. Customer agrees not to post or publicly display this Confidential Information.

The Incentives will remain in effect for 156 weeks. At the end of this Agreement, UPS in its sole discretion, reserves the right to extend the terms of this Agreement on a month-to-month basis. Notwithstanding, UPS and Customer agree that either party may terminate this Agreement upon 30 calendar days prior written notice.

This offer is void if not accepted by July 15, 2004 ("Deadline"). Customer may accept Agreement by providing a duly signed copy of this Agreement to UPS by the Deadline. This Agreement supercedes all other agreements between the Customer and UPS regarding these Services. This Agreement is hereby signed and executed by authorized representatives of both parties.

UPS	Customer	
United Parcel Service Inc.	ZUMIEZ	
By:	By:	/s/ Lisa Harding
_____		_____
Title:	Title:	DC Manager
_____		_____
Address:	Address:	1420 80th St. SW
_____		_____
		Everett, Wa 98203
_____		_____
Date Signed:	Date Signed:	11/18/04
		_____

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Effective Date:

MONDAY, JUNE 28, 2004

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**Addendum A**  
**List of Account Numbers**

ZUMIEZ's UPS accounts identified below shall be included in the agreement between United Parcel Service Inc. (Carrier) and ZUMIEZ (Account):

The following accounts are eligible for incentives as specified in Addendum B:

ACCOUNT	NAME AND ADDRESS	Commodity Tier**
Section 1:		
0000AE5301	ZUMIEZ #78 1 CROSSGATES MALL RD ALBANY, NY 12203	
0000AE5446	ZUMIEZ #83 21182 SALMON RUN LOOP W WATERTOWN, NY 13601	
0000AE5466	ZUMIEZ #079 4155 ROUTE 31 CLAY, NY 13041	
0000AE5467	ZUMIEZ #82 RT 5 & 5A NEW HARTFORD, NY 13413	
0000AE5488	ZUMIEZ #81 1300 ULSTER AVE KINGSTON, NY 12401	
0000AE5489	ZUMIEZ #86 320 HIAWATHA BLV W SYRACUSE, NY 13290	
0000A1653V	ZUMIEZ #70 3450 PALISADES CENTER #344 WEST NYACK, NY 10994	
0000A1687V	ZUMIEZ #72 1 GALLERIA DR MIDDLETOWN, NY 10941	
0000A32F00	ZUMIEZ #58 2901 BROOKS ST MISSOULA, MT 59801	
0000A3661F	ZUMIEZ #65 1850 W PULLMAN MOSCOW, ID 83843	
0000A62T39	ZUMIEZ #66 1770 E RED CLIFF DR SAINT GEORGE, UT 84790	
0000A9T963	ZUMIEZ #63 1300 N MAIN LOGAN, UT 84341	

0000A9T974	ZUMIEZ #64 1081 LAYTON HILLS MALL LAYTON, UT 84041
0000A994W6	ZUMIEZ #010 2855 STEVENSCREEK BLVD SANTA CLARA, CA 95050
0000EW8130	ZUMIEZ #242 1101 SUPERMALL WAY AUBURN, WA 98001
0000E2F634	ZUMIEZ #102 6600 MENAUL BLVD NE ALBUQUERQUE, NM 87110
0000E3F174	ZUMIEZ #103 3528 S MARYLAND PKWY #142 LAS VEGAS, NV 89109
0000E3F175	ZUMIEZ #104 4650 N HWY 89 FLAGSTAFF, AZ 86004
0000E3F179	ZUMIEZ #106 31111 W CHANDLER BLVD CHANDLER, AZ 85226
0000E3F180	ZUMIEZ #107 775 FIESTA MALL MESA, AZ 85202
0000E3F181	ZUMIEZ #108 6170 W GRAND AVE GURNEE, IL 60031
0000E3F677	ZUMIEZ #110 6699 N LANDMARK, DR PARK CITY, UT 84098
0000E392E2	ZUMIEZ #37 918 LLOYD CENTER PORTLAND, OR 97232
0000E4E239	ZUMIEZ #88 509 APACHE MALL ROCHESTER, MN 55902
0000E4F968	ZUMIEZ #111 2029 MAPLEWOOD MALL MAPLEWOOD, MN 55109
0000E42E35	ZUMIEZ #096 4101 W DIVISION ST SAINT CLOUD, MN 56301

0000E5W426	ZUMIEZ #51 3800 STATE RD 16 LA CROSSE, WI 54601
0000E59292	ZUMIEZ #25 1700 28TH ST BOULDER, CO 80301
0000E67961	ZUMIEZ #36 1689 ARDEN WAY SACRAMENTO, CA 95815
0000E72421	ZUMIEZ #27 300 S 24TH ST W BILLINGS, MT 59102
0000E81623	ZUMIEZ #33 8405 PARK MEADOWS CTR. DR LITTLETON, CO 80124
0000E81776	ZUMIEZ #43 1200 10TH AVE S GREAT FALLS, MT 59405
0000RA0633	ZUMIEZ #80 454 GREECE RIDGE CTR DR ROCHESTER, NY 14624
0000RA0661	ZUMIEZ #84 1 WALDEN GALLERIA BUFFALO, NY 14225
0000RA0728	ZUMIEZ #94 700 MIRACLE MILE DR ROCHESTER, NY 14623
0000R0V332	ZUMIEZ #087 4800 GOLF ROAD #92 EAU CLAIRE, WI 54701
0000V57757	ZUMIEZ #56 2424 HIGHWAY 6 AND 50 GRAND JUNCTION, CO 81505
0000V734F8	ZUMIEZ #98 1215 PINE RIDGE MALL CHUBBUCK, ID 83202
0000V735F0	ZUMIEZ #100 1130 HILLSDALE MALL SAN MATEO, CA 94403
0000V735F2	ZUMIEZ #101 3251 20TH AVE SAN FRANCISCO, CA 94132

0000V735F3	ZUMIEZ #498 1008 SOUTHCENTER MALL TUKWILA, WA 98188	
0000V98F52	ZUMIEZ #60 3300 BROADWAY EUREKA, CA 95501	
0000V98F59	ZUMIEZ #61 3200 NAGLEE RD STE 153 TRACY, CA 95304	
0000V98F63	ZUMIEZ #59 1950 E 20TH ST CHICO, CA 95928	
0000W093X4	ZUMIEZ #42 6172 SUNRISE MALL CITRUS HEIGHTS, CA 95610	
0000W3X391	ZUMIEZ #46 12545 WAYZATA BLVD MINNETONKA, MN 55305	
0000XX5185	ZUMIEZ #31 9493 SW WASH SQ RD TIGARD, OR 97223	
0000X55733	ZUMIEZ #06 865 SOUTHDAL CENTER EDINA, MN 55435	
0000X907W2	ZUMIEZ #40 1710 BRIARGATE COLORADO SPRINGS, CO 80920	
00000X8W54	ZUMIEZ #48 215 E FOOTHILLS PKWY FORT COLLINS, CO 80525	
000005684X	ZUMIEZ #995 1420 80TH ST SW EVERETT, WA 98203	05
00001AW587	ZUMIEZ #99 2068 GREELEY MALL GREELEY, CO 80631	
00001A7R30	ZUMIEZ #53 2825 W MAINE ST BOZEMAN, MT 59718	
000017W041	ZUMIEZ #54 240 N GARDEN BLOOMINGTON, MN 55425	

000019E1E0	ZUMIEZ #29 900 DANA DR REDDING, CA 96003
0000204AV7	ZUMIEZ #62 800 S CAMINO DEL RIO DURANGO, CO 81301
0000205AV6	ZUMIEZ #55 8501 W BOWLES AVE LITTLETON, CO 80123
00003A22T7	ZUMIEZ #67 1855 41ST AVE CAPITOLA, CA 95010
00003X8W61	ZUMIEZ #50 1200 TOWNE CENTER BLVD PROVO, UT 84601
000041XW15	ZUMIEZ #34 5403 W 88TH WESTMINSTER, CO 80031
000046E43V	ZUMIEZ #109 14500 W COLFAX AVE LAKEWOOD, CO 80401
000046E45V	ZUMIEZ #105 4500 N ORACLE RD TUCSON, AZ 85705
00004673W8	ZUMIEZ #23 1600 RIVERSIDE MEDFORD, OR 97501
00004674W2	ZUMIEZ #16 12000 SE 82ND AVE PORTLAND, OR 97266
00004679W0	ZUMIEZ #22 420 VALLEY RIVER CTR EUGENE, OR 97401
00004700W0	ZUMIEZ #28 1040 STONERIDGE MALL RD PLEASANTON, CA 94588
00005XW270	ZUMIEZ #41 16571 NE 74TH ST REDMOND, WA 98052
00005XW272	ZUMIEZ #17 14700 E INDIANA AVE SPOKANE, WA 99216

00005X5969	ZUMIEZ #47 175 ROSEDALE ROSEVILLE, MN 55113
000058V634	ZUMIEZ #761 1420 80TH ST SW EVERETT, WA 98203
00006AT453	ZUMIEZ #69 305 SUN VALLEY MALL CONCORD, CA 94520
000062V037	ZUMIEZ #85 617 NW 12TH ST GRESHAM, OR 97030
000064W206	ZUMIEZ #30 6191 S STATE MURRAY, UT 84107
000064W218	ZUMIEZ #32 3601 S 2700 W WEST VALLEY, UT 84119
0000682E7W	ZUMIEZ #600 1420 80TH ST SW EVERETT, WA 98203
00007AT115	ZUMIEZ 76 2323 HILLTOP MALL RD RICHMOND, CA 94806
00007AT118	ZUMIEZ #75 1350 TRAVIS BLVD FAIRFIELD, CA 94533
00007AT858	ZUMIEZ #073 186 OAKRIDGE MALL SAN JOSE, CA 95123
000070V521	ZUMIEZ #093 51027 HIGHWAY 6 AND 24 GLENWOOD SPRINGS, CO 81601
000073W200	ZUMIEZ #13 330 CASCADE MALL BURLINGTON, WA 98233
000073W202	ZUMIEZ #1 931 NORTHGATE MALL SEATTLE, WA 98125
000073W205	ZUMIEZ #4 3000 184TH SW LYNNWOOD, WA 98037

000073W210	ZUMIEZ #15 2529 MAIN ST UNION GAP, WA 98903
000073W214	ZUMIEZ #12 385 COLUMBIA CENTER KENNEWICK, WA 99336
000073W219	ZUMIEZ #19 1115 SOUTHCENTER MALL TUKWILA, WA 98188
000073W225	ZUMIEZ #5 224 BELLEVUE SQUARE BELLEVUE, WA 98004
000073W226	ZUMIEZ #20 511 VALLEY MALL PKWY EAST WENATCHEE, WA 98802
000073W229	ZUMIEZ #8 10315 SILVERDALE WAY SILVERDALE, WA 98383
000073W232	ZUMIEZ #24 3500 S MERIDIAN PUYALLUP, WA 98373
000073W233	ZUMIEZ #39 4750 N DIVISION ST SPOKANE, WA 99207
000073W240	ZUMIEZ #2 1402 SE EVERETT MALL WAY EVERETT, WA 98208
000073W241	ZUMIEZ #18 625 BLACK LAKE BLVD SW OLYMPIA, WA 98502
000073W243	ZUMIEZ #14 2104 S SEATAC MALL FEDERAL WAY, WA 98003
000073W250	ZUMIEZ #3  4502 S STEELE ST TACOMA, WA 98409
000073W251	ZUMIEZ #11 1 BELLIS FAIR PKWY BELLINGHAM, WA 98226
000073149W	ZUMIEZ #26 350 N MILWAUKEE BOISE, ID 83704

000073197W	ZUMIEZ #38 50 S MAIN ST #188 2-A-22 SALT LAKE CTY, UT 84144
0000746E48	ZUMIEZ #21 8700 NE VANCOUVER MALL DR VANCOUVER, WA 98662
000078V948	ZUMIEZ #095 3800 EAST MAIN STREET UNIT G-1 ST CHARLES, IL 60174
000079V974	ZUMIEZ #095 3800 E MAIN ST ST CHARLES, IL 60174
00008A8V29	ZUMIEZ #63 1300 N MAIN #-1123 LOGAN, UT 84341
00008E56V1	ZUMIEZ #112 6415 LABEAUX AVE NE ALBERTVILLE, MN 55301
00008E56V3	ZUMIEZ #115 401 CENTER ST NE SALEM, OR 97301
00008E56V4	ZUMIEZ #117 5870 E BROADWAY BLVD TUCSON, AZ 85711
00008E56V9	ZUMIEZ #118 7400 LAS VEGAS BLVD S LAS VEGAS, NV 89123
00008E569F	ZUMIEZ #123 ONE MILLS CIRCLE ONTARIO, CA 91764
00008E57V2	ZUMIEZ #124 5000 ARIZONA MILLS CIR TEMPE, AZ 85282
000081AOE4	ZUMIEZ #68 432 GREAT MALL DR MILPITAS, CA 95035
000082W073	ZUMIEZ #49 1168 NEWGATE MALL OGDEN, UT 84405
000082W221	ZUMIEZ #44 1485 POLELINE RD E TWIN FALLS, ID 83301

000082W228	ZUMIEZ #45 2300 E 17TH ST IDAHO FALLS, ID 83404
000083V502	ZUMIEZ #091 3340 MALL LOOP DRIVE JOLIET, IL 60431
000083V504	ZUMIEZ # 092 1562 SPRING HILL MALL WEST DUNDEE, IL 60118
000083V506	ZUMIEZ #90 903 STRATFORD SQUARE BLOOMINGDALE, IL 60108
0000839AV6	ZUMIEZ #62 800 S CAMINO DEL RIO DURANGO, CO 81301
000084W219	ZUMIEZ #35 5750 E UNIVERSITY PKWY OREM, UT 84097
0000867R5A	ZUMIEZ #89 1001 ARNEY RD WOODBURN, OR 97071
000093V38I	ZUMIEZ #074 2038 SANTA ROSA PLZ SANTA ROSA, CA 95401
00009300AX	ZUMIEZ #052 3401 DALE RD MODESTO, CA 95356
00009302AF	ZUMIEZ #009 3065 ROUTE 50 SARATOGA SPRINGS, NY 12866
00009303AX	ZUMIEZ #077 2001 S ROAD POUGHKEEPSIE, NY 12601
00009564AR	ZUMIEZ #71 578 AVIATION RD QUEENSBURY, NY 12804
00009623AR	ZUMIEZ #07 93 W CAMPBELL RD SCHENECTADY, NY 12306

\* If there is an account number for the same service included in another UPS agreement, such account number will be deemed deleted from such other agreement as of the effective date.

\*\* The commodity tier displayed is for Hundredweight outbound prepaid. For other Hundredweight Billing Options (third party, freight collect and consignee billing) please refer to the Hundredweight service contract agreement. The stated commodity tier supercedes applicable provisions in Section 2 of the Hundredweight Service Contract Agreement.

**Addendum B  
Incentives**

All incentives contained in this Addendum B apply to the effective UPS rate at the time of shipment and shall be applied on a weekly basis unless otherwise specified.(1)

**UPS Ground Commercial—Incentives Off Effective Rates**

Weight (lbs)	Zones						
	2	3	4	5	6	7	8
1—10	[****]	[****]	[****]	[****]	[****]	[****]	[****]
11—20	[****]	[****]	[****]	[****]	[****]	[****]	[****]
21—70	[****]	[****]	[****]	[****]	[****]	[****]	[****]
71—150	[****]	[****]	[****]	[****]	[****]	[****]	[****]

This incentive shall also be extended to UPS Ground Package Commercial Freight Collect.

**UPS Ground Residential—Incentives Off Effective Rates**

Weight (lbs)	Zones						
	2	3	4	5	6	7	8
1—5	[****]	[****]	[****]	[****]	[****]	[****]	[****]
6—10	[****]	[****]	[****]	[****]	[****]	[****]	[****]
11—20	[****]	[****]	[****]	[****]	[****]	[****]	[****]
21—70	[****]	[****]	[****]	[****]	[****]	[****]	[****]
71—150	[****]	[****]	[****]	[****]	[****]	[****]	[****]

**UPS Ground Package Commercial Third Party—Incentives Off Effective Rates**

Weight (lbs)	Zones						
	2	3	4	5	6	7	8
1—10	[****]	[****]	[****]	[****]	[****]	[****]	[****]
11—20	[****]	[****]	[****]	[****]	[****]	[****]	[****]
21—70	[****]	[****]	[****]	[****]	[****]	[****]	[****]
71—150	[****]	[****]	[****]	[****]	[****]	[****]	[****]

Commitment levels for UPS Ground Package Commercial Third Party are at least [\*\*\*\*].

**Export Worldwide Express Letter—Incentives Off Effective Rates**

For shipments listed in the current UPS Rate and Service Guide, an incentive of [\*\*\*\*] will be applied.

**Export Worldwide Express Document—Incentives Off Effective Rates**

For shipments listed in the current UPS Rate and Service Guide, an incentive of [\*\*\*\*] will be applied

**Export Worldwide Express Package—Incentives Off Effective Rates**

For shipments listed in the current UPS Rate and Service Guide, an incentive of [\*\*\*\*] will be applied.

**Export Worldwide Expedited Document—Incentives Off Effective Rates**

<b>Weight (lbs)</b>	<b>Zones ALL</b>
1—150	[****]
151—199	[****]
200 and up	[****]

**Export Worldwide Expedited Package—Incentives Off Effective Rates**

<b>Weight (lbs)</b>	<b>Zones ALL</b>
1—150	[****]
151—199	[****]
200 and up	[****]

**Portfolio Tier Incentive**

Each eligible package will receive an incentive per the following schedule based on a 52 week rolling average of eligible packages tendered to UPS. These incentives apply to all zones unless otherwise stated. The band determination is based on the cumulative gross transportation charges per week (excluding accessorials and surcharges, unless otherwise specified). The incentives will be administered on a weekly basis.

UPS Next Day Air Letter Service: Zone(s) 102, 103, 104, 105, 106, 107, 108.

UPS Next Day Air Package Service: Zone(s) 102, 103, 104, 105, 106, 107, 108.

UPS 2nd Day Air Letter Service: Zone(s) 202, 203, 204, 205, 206, 207, 208.

UPS 2nd Day Air Package Service: Zone(s) 202, 203, 204, 205, 206, 207, 208.

UPS Ground Package Commercial Third Party: Zone(s) 2, 3, 4, 5, 6, 7, 8.

Service(s)	Gross Weekly Revenue Bands			
	[****]	[****]	[****]	[****]
UPS Next Day Air Letter Service(FC)	[****]	[****]	[****]	[****]
UPS Next Day Air Package Service(FC)	[****]	[****]	[****]	[****]
UPS Next Day Air Package TP Commercial	[****]	[****]	[****]	[****]
UPS Next Day Air Saver Letter Service*(FC)	[****]	[****]	[****]	[****]
UPS Next Day Air Saver Package Service(FC)	[****]	[****]	[****]	[****]
UPS 2nd Day Air Letter Service*(FC)	[****]	[****]	[****]	[****]
UPS 2nd Day Air Package Service(FC)	[****]	[****]	[****]	[****]
UPS 2nd Day Air Package Third Party Commercial	[****]	[****]	[****]	[****]
UPS 3 Day Select Package Service(FC)	[****]	[****]	[****]	[****]
UPS 3 Day Select Package TP Commercial	[****]	[****]	[****]	[****]
UPS Ground Commercial(FC)	[****]	[****]	[****]	[****]
UPS Ground Package Commercial Third Party	[****]	[****]	[****]	[****]
UPS Ground Hundredweight Service—Regular Pickup	[****]	[****]	[****]	[****]
UPS Ground Hundredweight Service Freight Collect—Reg P/U	[****]	[****]	[****]	[****]
UPS Ground Hundredweight Service Third Party—Regular P/U	[****]	[****]	[****]	[****]
Export Worldwide Express Letter	[****]	[****]	[****]	[****]
Export Worldwide Express Document	[****]	[****]	[****]	[****]
Export Worldwide Express Package	[****]	[****]	[****]	[****]
Export Worldwide Expedited Document	[****]	[****]	[****]	[****]
Export Worldwide Expedited Package	[****]	[****]	[****]	[****]

(FC) The incentives shall also be extended to Freight Collect Shipments.

The following additional products will be included in determining the appropriate revenue bands of the customer: UPS Next Day Air Letter FC Commercial, UPS Next Day Air Package FC Commercial, UPS Next Day Air Saver Letter FC Commercial, UPS Next Day Air Saver Package FC Commercial, UPS 2nd Day Air Letter FC Commercial, UPS 2nd Day Air Package FC Commercial, UPS 3 Day Select Package FC Commercial, UPS Ground Residential, UPS Ground Package Commercial Freight Collect. This incentive rate supercedes applicable provisions in Section 2 of the Hundredweight Service Contract Agreement.

\* Shipper agrees to comply with the restrictions required under the Private Express Statute in its UPS Next Day Air Saver. UPS Second Day Air A.M., and UPS Second Day Air letters.

**Minimum Net Charge**

Shipper agrees to pay the greater of the net charge based on the above incentives or the minimum net charge as defined below.

Service	Minimum Per	Zone	Base Rate
UPS 3 Day Select Package Service	Package	[****]	[****]
UPS Ground Commercial	Package	[****]	[****]
UPS Ground Package Commercial Third Party	Package	[****]	[****]

(l) Effective UPS Rate as described in the UPS Tariff Section 400.

## QuickLinks

[Exhibit 10.4](#)

[Carrier Agreement](#)

[Addendum A List of Account Numbers](#)

[Addendum B Incentives](#)

**ZUMIEZ, INC.  
1993 STOCK OPTION PLAN**

**ARTICLE I—GENERAL**

**1.01. Purpose.**

The purposes of this 1993 Stock Option Plan (the "Plan") are to: (1) closely associate the interests of the management of Zumiez, Inc. and its subsidiaries and affiliates (collectively referred to as the "Company") with the shareholders by reinforcing the relationship between participants' rewards and shareholder gains; (2) provide management with an equity ownership in the Company commensurate with Company performance, as reflected in increased shareholder value; (3) maintain competitive compensation levels; and (4) provide an incentive to management for continuous employment with the Company.

**1.02. Administration.**

- (a) The Plan shall be administered by a Committee appointed by the Board of Directors of Zumiez, Inc. (the "Committee"), as constituted from time to time. The Committee shall consist of at least two members of the Board. A member of the Committee shall be eligible to receive stock options, but shall not participate in any decision regarding the grant of options to him or herself.
- (b) The Committee shall have the authority, in its sole discretion and from time to time to:
  - (i) designate the employees or classes of employees eligible to participate in the Plan;
  - (ii) grant options provided in the Plan in such form and amount as the Committee shall determine;
  - (iii) impose such limitations, restrictions and conditions upon any such award as the Committee shall deem appropriate; and
  - (iv) interpret the Plan, adopt, amend and rescind rules and regulations relating to the Plan, and make all other determinations and take all other action necessary or advisable for the implementation and administration of the Plan.
- (c) Decisions and determinations of the Committee on all matters relating to the Plan shall be in its sole discretion and shall be conclusive. No member of the Committee shall be liable for any action taken or decision made in good faith relating to the Plan or any award thereunder.
- (d) In the event the Company registers any of its equity securities pursuant to Section 12(b) or 12(g) of the Exchange Act, it is the intention of the Company that this Plan, and options granted under this Plan, comply in all respects with Rule 16b-3 under the Exchange Act and, if any Plan provision is later found not to be in compliance with such Section, the provision shall be deemed null and void, and in all events this Plan shall be construed in favor of its meeting the requirements of Rule 16b-3. Notwithstanding anything in this Plan to the contrary, the Board, in its absolute discretion, may bifurcate this Plan so as to restrict, limit or condition the use of any provision of this Plan to participants who are officers and directors subject to Section 16(b) of the Exchange Act without so restricting, limiting or conditioning other Plan participants.

**1.03. Eligibility for Participation.**

Participants in the Plan shall be selected by the Committee from the executive officers and other key employees of the Company who occupy responsible managerial or professional positions and who have the capability of making a substantial contribution to the success of the Company. In making this

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selection and in determining the form and amount of awards, the Committee shall consider any factors deemed relevant, including the individual's functions, responsibilities, value of services to the Company and past and potential contributions to the Company's profitability and sound growth.

#### **1.04. Type of Option Under Plan.**

The options granted under the Plan will be nonstatutory Stock Options as described in Article II.

#### **1.05. Aggregate Limitation on Awards.**

- (a) Shares of stock which may be issued under the Plan shall be authorized and unissued or treasury shares of Common Stock of Zumiez, Inc. ("Common Stock"). The maximum number of shares of Common Stock that may be issued under the Plan shall be One Hundred (100). If any option granted under this Plan expires or is surrendered, exchanged for another option, canceled or terminated for any reason without having been exercised in full, the unpurchased shares subject to such option shall again be available for purposes of this Plan.
- (b) For purposes of calculating the maximum number of shares of Common Stock that may be issued under the Plan, all the shares issued (including the shares, if any, withheld for tax withholding requirements) shall be counted.

#### **1.06. Effective Date and Term of Plan.**

The effective date of the Plan is July 30, 1993. The Committee may grant Stock Options for a period of 10 years after the effective date or until options representing the maximum number of shares is issued, whichever occurs first. The Plan and all Stock Options granted under the Plan will remain in effect until all Stock Options have been exercised or terminated in accordance with the Plan and the terms of the grants of the Stock Options.

## **ARTICLE II—STOCK OPTIONS**

#### **2.01. Award of Stock Options.**

The Committee may from time to time, and subject to the provisions of the Plan and such other terms and conditions as the Committee may prescribe, grant to any participant in the Plan one or more options to purchase for cash the number of shares of Common Stock ("Stock Options") allotted by the Committee. The date a Stock Option is granted ("Date of Grant") shall mean the date selected by the Committee as of which the Committee allots a specific number of shares to a participant pursuant to the Plan.

#### **2.02. Stock Option Agreements.**

The grant of a Stock Option shall be evidenced by a written Grant of Stock Option, executed by the Company and the holder of a Stock Option (the "optionee"), stating the number of shares of Common Stock subject to the Stock Option evidenced thereby, and in such form as the Committee may from time to time determine.

#### **2.03. Stock Option Price.**

The option price per share of Common Stock deliverable upon the exercise of a Stock Option shall be 100% of the fair market value of a share of Common Stock on Date of Grant.

#### **2.04. Term and Exercise.**

Each Stock Option shall be exercisable in full or in installments as provided in its grant and unless a shorter period is provided by the Committee or by another Section of this Plan, may be exercised during a period of ten years from the date of grant thereof (the "Option Term"). No Stock Option shall be exercisable after the expiration of its Option Term.

#### **2.05. Manner of Payment.**

Each Stock Option Agreement shall set forth the procedure governing the exercise of the Stock Option granted thereunder, and shall provide that, upon such exercise in respect of any shares of Common Stock subject thereto, the optionee shall pay to the Company the full option price in cash or certified or cashier's check for such shares.

#### **2.06. Restrictions on Certain Shares.**

As soon as practicable after receipt of payment, the Company shall deliver to the optionee a certificate or certificates for such shares of Common Stock. The optionee shall become a shareholder of the Company with respect to Common Stock represented by share certificates so issued and as such shall be fully entitled to receive dividends, to vote and to exercise all other rights of a shareholder. Notwithstanding the foregoing, Common Stock received upon the exercise of the options shall be subject to certain restrictions. The restrictions on these shares of Common Stock shall be as follows:

- (a) The optionee shall be prohibited from the sale, exchange, transfer, pledge, hypothecation, gift or other disposition of such shares of Common Stock without first offering the shares for purchase by the Company at their fair market value. In addition, after termination of employment or termination of the Option, whichever occurs later, the Company shall have the right to repurchase all shares acquired pursuant to the Option from Grantee or Grantee's estate at their fair market value. Additional terms related to these restrictions will be contained in the Grant of Stock Option.
- (b) The restrictions shall apply to any new, additional or different securities the optionee may become entitled to receive with respect to such shares by virtue of a stock split or stock dividend or any other change in the corporate or capital structure of the Company.
- (c) Until such time as the restrictions hereunder lapse, the share certificate representing such shares shall contain a restrictive legend evidencing said restrictions. Alternatively, the optionee shall be required to deposit the share certificate with the Company or its agent, endorsed in blank or accompanied by a duly executed irrevocable stock power or other instrument of transfer,

#### **2.07. Death of Optionee.**

- (a) Upon the death of the optionee, any rights to the extent exercisable on the date of death may be exercised by the optionee's estate, or by a person who acquires the right to exercise such Stock Option by bequest or inheritance or by reason of the death of the optionee, provided that such exercise occurs within both the remaining effective term of the Stock Option and one year after the optionee's death.
- (b) The provisions of this Section shall apply notwithstanding the fact that the optionee's employment may have terminated prior to death, but only to the extent of any rights exercisable on the date of death.

### **2.08. Retirement or Disability.**

Upon termination of the optionee's employment by reason of retirement or permanent disability (as each is determined by the Committee), the optionee may, within 12 months from the date of termination, exercise any Stock Options to the extent such options are exercisable during such 12 month period.

### **2.09. Termination for Other Reasons.**

Except as provided in Sections 2.07 and 2.08, or except as otherwise determined by the Committee, all Stock Options shall terminate upon the termination of the optionee's employment.

## **ARTICLE III—MISCELLANEOUS**

### **3.01. General Restriction.**

Each Stock Option under the Plan shall be subject to the requirement that, if at any time the Committee shall determine that (i) the listing, registration or qualification of the shares of Common Stock subject or related thereto upon any securities exchange or under any state or Federal law, or (ii) the consent or approval of any government regulatory body, or (iii) an agreement by the grantee of an award with respect to the disposition of shares of Common Stock, is necessary or desirable as a condition of, or in connection with, the granting of such award or the issue or purchase of shares of Common Stock thereunder, such award may not be consummated in whole or in part unless such listing, registration, qualification, consent, approval or agreement shall have been effected or obtained free of any conditions not acceptable to the Committee.

### **3.02. Non-Assignability.**

No Stock Option under the Plan shall be assignable or transferable by the recipient thereof, except by will or by the laws of descent and distribution. During the life of the recipient, such option shall be exercisable only by such person or by such person's guardian or legal representative.

### **3.03. Withholding Taxes.**

Whenever the Company proposes or is required to issue or transfer shares of Common Stock under the Plan, the Company shall have the right to require the grantee to remit to the Company an amount sufficient to satisfy any Federal, state and/or local withholding tax requirements prior to the delivery of any certificate or certificates for such shares. Alternatively, the Company may issue or transfer such shares of Common Stock net of the number of shares sufficient to satisfy the withholding tax requirements. For withholding tax purposes, the shares of Common Stock shall be valued on the date the withholding obligation is incurred.

### **3.04. Right to Terminate Employment.**

Nothing in the Plan or in any agreement entered into pursuant to the Plan shall confer upon any participant the right to continue in the employment of the Company or affect any right which the Company may have to terminate the employment of such participant.

### **3.05. Non-Uniform Determinations.**

The Committee's determinations under the Plan (including without limitation determinations of the persons to receive options, the form, amount and timing of such options, the terms and provisions of such options, and the agreements evidencing same) need not be uniform and may be made by it selectively among persons who receive, or are eligible to receive, options under the Plan whether or not such persons are similarly situated.

### **3.06. Rights as a Shareholder.**

The recipient of any option under the Plan shall have no rights as a shareholder with respect thereto unless and until certificates for shares of Common Stock are issued to him.

### **3.07. Definitions.**

In this Plan the following definitions shall apply:

- (a) "Subsidiary" means any corporation of which, at the time more than 50% of the shares entitled to vote generally in an election of directors are owned directly or indirectly by Zumiez, Inc. or any subsidiary thereof
- (b) "Affiliate" means any person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Zumiez, Inc.
- (c) "Fair market value" as of any date and in respect of any share of Common Stock means the market value of a share of Common Stock as determined by the Board of Zumiez, Inc. from time to time. Each such determination shall be based upon the recommendation of an independent appraiser, who shall be chosen by the Board and shall have no family or other material relationship with any Shareholder that, in the sole opinion of the Board, could prejudice the judgment of such appraiser, and shall be based upon such valuation procedures as the Board may designate from time to time. Promptly after the Board has determined the fair market value per share, the Secretary shall record the agreed value in the minutes of the Corporation. Any determination of fair market value shall remain in full force and effect, and the parties shall be entitled to rely on it until (i) the Board makes a more current determination of the fair market value per Share, or (ii) two (2) years have expired since the date of the most recent meeting at which the Board fixed the fair market value. In no event shall the fair market value of any share of Common Stock be less than its par value.
- (d) "Option price" means the purchase price per share of Common Stock deliverable upon the exercise of a Stock Option.

### **3.08. Leaves of Absence.**

The Committee shall be entitled to make such rules, regulations and determinations as it deems appropriate under the Plan in respect of any leave of absence taken by the recipient of any award. Without limiting the generality of the foregoing, the Committee shall be entitled to determine (i) whether or not any such leave of absence shall constitute a termination of employment within the meaning of the Plan and (ii) the impact, if any, of any such leave of absence on grants of options under the Plan theretofore made to any recipient who takes such leave of absence.

### **3.09. Newly Eligible Employees.**

The Committee shall be entitled to make such rules, regulations, determinations and awards as it deems appropriate in respect of any employee who becomes eligible to participate in the Plan or any portion thereof after the commencement of an award or incentive period.

### **3.10. Adjustments.**

In any event of any change in the outstanding Common Stock by reason of a stock dividend or distribution, recapitalization, merger, consolidation, split-up, combination, exchange of shares or the like, the Committee may appropriately adjust the number of shares of Common Stock which may be issued under the Plan, the number of shares of Common Stock subject to Options theretofore granted

under the Plan, the option price of Options theretofore granted under the Plan, and any and all other matters deemed appropriate by the Committee.

**3.11. Amendment of the Plan.**

- (a) The Committee may, without receiving further consideration from the participants, amend this Plan or condition or modify awards under this Plan in response to changes in securities or other laws or rules, regulations or regulatory interpretations thereof applicable to this Plan or to comply with stock exchange rules or requirements.
- (b) The Committee may at any time and from time to time terminate or modify or amend the Plan in any respect. The termination or any modification or amendment of the Plan, except as provided in subsection (a), shall not without the consent of a participant, affect his or her rights under an award previously granted to him or her.

IN WITNESS WHEREOF, this Plan is executed as of the effective date stated in Section 1.06 above.

**ZUMIEZ INC.**

/s/ THOMAS D. CAMPION

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Thomas D. Campion, President

## QuickLinks

[Exhibit 10.5](#)

[ZUMIEZ, INC. 1993 STOCK OPTION PLAN](#)  
[ARTICLE I—GENERAL](#)  
[ARTICLE II—STOCK OPTIONS](#)  
[ARTICLE III—MISCELLANEOUS](#)

ZUMIEZ INC.  
2004 STOCK OPTION PLAN

ADOPTED: June 1, 2004

1. INTRODUCTIONS AND DEFINITIONS

1.1 The Plan

The purposes of this 2004 Stock Option Plan (the "Plan") are to: (1) closely associate the interests of the management of Zumiez Inc. and its subsidiaries and affiliates (collectively referred to as the "Company") with the shareholders by reinforcing the relationship between participants' rewards and shareholder gains; (2) provide management with an equity ownership in the Company commensurate with Company performance, as reflected in increased shareholder value; (3) maintain competitive compensation levels; and (4) provide an incentive to management for continuous employment with the Company. This Plan provides for the granting of two types of options, namely (1) Incentive Stock Options, as defined and governed by Section 422 of the Internal Revenue Code of 1986, as amended, and (2) Nonqualified Stock Options.

1.2 Definitions

Capitalized terms used in this Plan shall have the following meanings:

"**Board**" means the Board of Directors of the Company.

"**Change in Control**" means an Ownership Change Event or a series of related Ownership Change Events (collectively, a "**Transaction**") wherein the shareholders of the Company immediately before the Transaction do not retain immediately after the Transaction, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately before 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 a Transaction involving the sale, exchange or transfer of all or substantially all of the assets of the Company, the corporation or other business entity to which the assets of the Company were transferred (the "**Transferee**"), as the case may be. 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 or the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Board 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.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Committee**" means a committee appointed by the Board, pursuant to Section 2.3 hereof, to administer the provisions of this Plan, and in the absence of any such committee, references to the Committee shall mean the Board.

"**Company**" means Zumiez Inc.

"**Director**" means a member of the Board.

"**Employee**" means, for purposes of this Plan, persons continuously employed by the Company or by any current or future foreign or domestic subsidiary of the Company on a regular basis, whether full-time or part-time, at any time during the duration hereof.

"**Exchange Act**" means the Securities Exchange Act of 1934, as from time to time amended, or any replacement act or legislation.

"**Fair Market Value**" of the Company's common stock shall be determined by the Board, or in the event the Company's common stock is listed on any national exchange, over-the-counter, or other stock trading market, then as of any time based upon the prevailing bid price of the Company's common stock as of such time.

"**Incentive Stock Option**" means an option issued by the Company to purchase shares of stock of the Company that meets the definition of "incentive stock option" contained in Section 422 of the Internal Revenue Code of 1986, as amended, and that is issued by the Company to be an Incentive Stock Option.

"**Nonqualified Stock Option**" means an option issued by the Company to purchase shares of stock of the Company that is not an Incentive Stock Option.

"**Optioned Shares**" means Shares subject to a Stock Option.

"**Optionee**" means the recipient of a Stock Option pursuant to a Stock Option Agreement.

"**Ownership Change Event**" shall be deemed to have occurred if any of the following occurs with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by shareholders of the Company or 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; (iii) the sale, exchange, transfer of all or substantially all of the assets of the Company; or (iv) a liquidation or dissolution of the Company.

"**Plan**" means this Zumiez Inc. 2004 Stock Option Plan, which also may be referred to as the "2004 Stock Option Plan."

"**Plan Guidelines**" shall mean the guidelines, rules, policies, regulations, forms of notice, and forms of agreements and instruments, if any, adopted and amended by the Board from time to time with respect to this Plan pursuant to Section 2.3.

"**Securities Act**" means the Securities Act of 1933, as from time to time amended, or any replacement act or legislation.

"**Shares**" shall mean the Shares of the Company reserved issuance under this Plan as further defined in Section 2.2.

"**Stock Option**" means an agreement entered into by the Company granting the recipient the right to purchase shares of stock of the Company, at certain times, and under certain conditions, subject to certain obligations and responsibilities as defined in this Plan and in the written Stock Option Agreement, whether an Incentive Stock Option or a Nonqualified Stock Option.

"**Stock Option Agreement**" means the written contract by which a Stock Option is granted by the Company to an Optionee.

## **2. GENERAL PROVISIONS APPLICABLE TO BOTH NONQUALIFIED STOCK OPTIONS AND INCENTIVE STOCK OPTIONS GRANTED BY THE COMPANY**

### **2.1 Objectives of This Plan**

The purpose of this Plan is to encourage ownership of common stock of the Company by executive officers and other key employees of the Company who occupy responsible managerial or professional positions and who have the capability of making a substantial contribution to the success of the Company. This Plan is intended to provide an incentive to such parties for maximum effort in the successful operation of the Company and is expected to benefit the shareholders by enabling the Company to attract and retain personnel of the best available talent through the opportunity to share in the increased value of the Company's shares to which such personnel have contributed. The benefits of this Plan are not a substitute for compensation otherwise payable to Employees pursuant to the terms of their employment.

### **2.2 Stock Reserved for This Plan**

The stock initially reserved by the Board for issue upon the exercise of Stock Options granted under this Plan shall be 14,238.6 shares of the no par value common stock of the Company (the "Shares") which Shares shall be reserved from the Company's authorized and unissued shares. Shares subject to any Stock Option under this Plan which are not exercised in full, or Shares as to which the right to purchase is forfeited through default or otherwise, shall remain available for other Stock Options under this Plan. The aggregate number of Shares subject to Stock Options under this Plan or reserved for issuance by the Board shall not exceed the number approved by the shareholders at the time of adoption hereof unless such increase is approved by the Company's shareholders. Such approval shall be by the affirmative vote of shareholders holding a majority of the issued and outstanding shares of common stock of the Company entitled to vote at a meeting called to approve said increase.

### **2.3 Administration of This Plan**

(a) This Plan shall be administered by a Committee appointed by the Board of Directors of the Company (the "Committee"), as constituted from time to time. The Committee shall consist of at least two members of the Board. A member of the Committee shall be eligible to receive stock options, but shall not participate in any decision regarding the grant of options to him or herself. The Committee shall have the authority, in its sole discretion and from time to time to:

- (1) designate the executive officers and other key employees eligible to participate in the Plan;
- (2) grant options provided in the Plan in such form and amount as the Committee shall determine;
- (3) impose such limitations, restrictions and conditions upon any such award as the Committee shall deem appropriate; and

(4) interpret the Plan, adopt, amend and rescind rules, policies, regulations, forms of notice, and forms of agreements and instruments for the administration of the Plan, and make all other determinations and take all other action necessary or advisable for the implementation and administration of the Plan.

(b) Decisions and determinations of the Committee on all matters relating to the Plan shall be in its sole discretion and shall be conclusive. No member of the Committee shall be liable for any action taken or decision made in good faith relating to the Plan or any award thereunder.

(c) At all times during which the Company is subject to the periodic reporting requirements of the Exchange Act, each member of the Board who participates on the Committee must be a "disinterested person" as that term is defined in Rule 16b(3) of the Exchange Act. The Committee shall interpret this Plan and adopt, from time to time, such Guidelines as the Committee deems necessary or advisable. Such powers include, but are not limited to (subject to the specific limitations described herein), authority to determine the management and key employees to be granted Stock Options under this Plan, to determine the size, type, and applicable terms and conditions of grants to be made to such selected individuals, to determine a time when Stock Options will be granted, and to authorize grants to eligible executive officers and key employees.

(d) Shares of stock which may be issued under the Plan shall be authorized and unissued shares of Common Stock of Zumiez Inc. ("Common Stock"). If any option granted under this Plan expires or is surrendered, exchanged for another option, canceled or terminated for any reason without having been exercised in full, the unpurchased shares subject to such option shall again be available for purposes of this Plan. For purposes of calculating the maximum number of shares of Common Stock that may be issued under the Plan, all the shares issued (including the shares, if any, withheld for tax withholding requirements) shall be counted.

#### **2.4 Eligibility For Participation.**

Participants in the Plan shall be selected by the Committee from the executive officers and other key employees of the Company who occupy responsible managerial or professional positions and who have the capability of making a substantial contribution to the success of the Company. In making this selection and in determining the form and amount of awards, the Committee shall consider any factors deemed relevant, including the individual's functions, responsibilities, value or services to the Company and past and potential contributions to the Company's profitability and sound growth.

#### **2.5 Effect of Change in Control on Stock Options**

(a) In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the "**Acquiring Corporation**"), may, without the consent of the Optionee, either assume the Company's rights and obligations under outstanding Stock Options or substitute for outstanding Stock Options substantially equivalent options for the Acquiring Corporation's stock or equity participation plan. In the event of a Change in Control, the Optionee may purchase the full amount of vested Optioned Shares for which Stock Options have been granted to the Optionee and for which the Stock Options have not been exercised, provided, however, the Company, in its sole discretion, and without the consent of any Optionee, may amend this Plan to allow an Optionee to purchase the full amount of the Option Shares for which Stock Options have been granted to such Optionee and for which the Stock Options have not been exercised. Any Stock Options which are neither assumed or substituted for by the Acquiring Corporation in connection with the Change in Control nor exercised as of the date of the Change in Control shall terminate and cease to be outstanding effective as of the date of the Change in Control. Notwithstanding the foregoing, shares acquired upon exercise of a Stock Option prior to the Change in Control and any consideration received pursuant to the Change in Control with respect to such shares shall continue to be subject to all applicable provisions of the Stock Option Agreement except as otherwise provided in such Stock Option Agreement. Any exercise of a Stock Option immediately prior to a Change in Control may be made contingent upon consummation of such Change in Control. If the Change in Control, once commenced, is canceled or revoked, the conditional purchase of Shares for which the option to purchase would not have otherwise been exercisable at the time of said cancellation or revocation, but for the operation of this Section 2.5, shall be rescinded. With respect to all other Shares conditionally purchased, the Optionee may rescind such purchase at Optionee's option.

(b) Nothing herein shall allow the Optionee to purchase Optioned Shares, the options for which have expired.

## **2.6 Stock Option Agreements; Terms and Expiration of Stock Options**

Each Stock Option granted under this Plan shall be pursuant to a written Stock Option Agreement, shall be subject to such amendment or modification from time to time as the Board shall deem necessary or appropriate to comply with or take advantage of applicable laws or regulations and shall contain provisions as to the following effect, together with such other provisions as the Board shall from time to time approve:

(a) That, subject to the provisions of Section 2.6(b) below, the Stock Option, as to the whole or any part thereof, may be exercised only by the Optionee or Optionee's personal representative;

(b) That neither the whole nor any part of the Stock Option shall be transferable by the Optionee or by operation of law other than by will of, or by the laws of descent and distribution applicable to, a deceased Optionee and that the Stock Option and any and all rights granted to the Optionee thereunder and not theretofore effectively and completely exercised shall automatically terminate and expire upon any sale, transfer, or hypothecation or any attempted sale, transfer, or hypothecation of such rights or upon the bankruptcy or insolvency of the Optionee or Optionee's estate;

(c) That subject to the foregoing provisions, a Stock Option may be exercised at different times for portions of the total number of Shares for which the right to purchase shall have vested, provided that such portions are in multiples of ten (10) shares if the Optionee holds vested Stock Options for ninety-nine (99) or fewer shares and otherwise in multiples of one hundred (100) shares;

(d) That no Optionee shall have the right to receive any dividend on or to vote or exercise any right with respect to any Shares unless and until the certificates for such Shares have been issued to such Optionee:

(e) That the Stock Option shall expire at the earliest of the following:

(1) The date specified in the Stock Option Agreement;

(2) Ninety (90) days after voluntary or involuntary termination of Optionee's employment other than termination as described in Paragraphs (3) or (4) below;

(3) Upon the discharge of Optionee for misconduct, willfully or wantonly harmful to the Company;

(4) Twelve (12) months after Optionee's death or disability;

(5) As provided in Section 2.5(a).

(f) That, to the extent a Stock Option Agreement provides for the vesting of the right to purchase in increments, such vesting shall cease as of the date of the Optionee's death, disability, or voluntary or involuntary termination of Optionee's employment with, or Consultant's provision of services to, the Company;

(g) That the terms of the Stock Option Agreement shall be a contract between the Company and the Optionee; and the specific terms of any Stock Option Agreement shall govern over the more general terms hereof, and

(h) That subject to the Plan Guidelines, the Stock Option Agreement shall not be affected by any changes of duties or position so long as the Optionee shall continue to be an Employee, and, subject to the terms hereof.

## **2.7 Notice of Intent to Exercise Stock Option**

The Optionee (or other person or persons, if any, entitled hereunder) desiring to exercise a Stock Option as to all or part of the Shares covered thereby shall in writing notify the Company, Attention: Secretary, at its principal office in the State of Washington, specifying the number of Stock Option Shares to be purchased and, if required by the Company, representing in form satisfactory to the Company that the Shares are being purchased for investment and not with a view to resale or distribution. The Company from time to time may issue or specify to Optionees a written form for use in connection with any such exercise.

## **2.8 Method of Exercise of Stock Option**

Within three (3) days after receipt by the Company of the notice provided in Section 2.7, but not later than the expiration date specified in Section 2.5(e), the Stock Option shall be exercised as to the number of Shares specified the notice by payment by the Optionee to the Company of the amount specified below in Section 3.2. Payment of such purchase price shall be made in cash, or if the Company elects to approve such, in accordance with procedures for a "cashless exercise" as the same may have been established from time to time by the Company and the brokerage firm, if any, designated by the Company to facilitate exercises of Stock Options and sales of shares under this Plan. Payment in shares of the Company's common stock shall be deemed to be the equivalent of payment in cash at the Fair Market Value of those shares. For purposes of the preceding sentence, "fair market value" shall be determined by the Board in the same manner as utilized in determining the fair market value at the time other Stock Options are granted.

## **2.9 Recapitalization**

The aggregate number of Shares for which Stock Options may be granted hereunder, the number of Shares covered by each outstanding Stock Option, and the price per Share thereof in each such Stock Option Agreement shall be proportionately adjusted for an increase or decrease in the number of outstanding shares of common stock of the Company resulting from a stock split or reverse split of shares or any other capital adjustment or the payment of a stock dividend or other increase or decrease in such shares effected without receipt of consideration by the Company excluding any decrease resulting from a redemption of shares by the Company. If the total adjustment would result in a fractional Share the Optionee shall be entitled to one (1) additional Share, provided that the total number of Shares to be granted under this Plan shall not be increased above the equivalent number of Shares initially allocated or later increased by approved amendment to this Plan.

## **2.10 Substitutions and Assumptions**

The Board shall have the right to substitute, replace, or assume options in connection with mergers, reorganizations, separations, or other "corporate transactions" as that term is defined in and said substitutions and assumptions are permitted by Section 424 of the Code and the regulations promulgated thereunder. The number of Shares reserved pursuant to Section 2.2 may be increased by the corresponding number of options assumed and, in the case of a substitution, by the net increase in the number of Shares subject to options before and after the substitution.

## **2.11 Terminal Date of Plan**

This Plan shall not extend beyond a date ten (10) years from the date of adoption hereof by the Board, provided that any Stock Option to purchase shares duly granted hereunder prior to such date shall be exercisable pursuant to its terms and the terms hereof until expiration or earlier termination of such Stock Option.

## **2.12 Granting of Stock Options**

The granting of any Stock Option pursuant to this Plan shall be entirely in the discretion of the Committee and nothing herein contained shall be construed to give any Employee any right to participate under this Plan or to receive any Stock Option under it.

The granting of a Stock Option pursuant to this Plan shall not constitute any agreement or an understanding, express or implied, on the part of the Company, or a subsidiary, to employ the Optionee for any specified period.

## **2.13 Withdrawal**

An Optionee may at any time elect in writing to abandon a Stock Option with respect to the number of Shares as to which the Stock Option shall not have been exercised.

## **2.14 Government Regulations**

This Plan and the granting and exercise of any Stock Option hereunder and the obligations of the Company to sell and deliver Shares under any such Stock Option shall be subject to all applicable laws, rules, and regulations and to such approvals by any governmental agencies as may be required.

## **2.15 Proceeds from Sale of Stock**

Proceeds of the purchase of Optioned Shares by an Optionee shall be used for the general business purposes of the Company.

## **2.16 Shareholder Approval**

This Plan shall be submitted to the shareholders for their approval within twelve (12) months from the date hereof. The Company may grant Stock Options prior to such approval which shall be conditioned upon subsequent shareholder approval.

## **2.17 Compliance with Securities Laws**

The Committee shall have the right to:

- (a) require an Optionee to execute, as a condition of exercise of a Stock Option, a letter evidencing Optionee's intent to acquire the Shares for investment and not with a view to the resale or distribution thereof;
- (b) place appropriate legends upon the certificate or certificates for the Shares; and
- (c) take such other acts as it deems necessary in order to cause the issuance of Optioned Shares to comply with applicable provisions of state and federal securities laws.

In furtherance of the foregoing, and not by way of limitation thereof, no Stock Option shall be exercisable unless such Stock Option and the Shares to be issued pursuant thereto shall be registered under appropriate federal and state securities laws, or shall be exempt therefrom, in the opinion of the Committee upon advice of counsel to the Company. Each Stock Option Agreement shall contain adequate provisions to assure that there will be no violation of such laws. This provision shall in no way obligate the Company to undertake registration of Stock Options or Shares hereunder. Issue, transfer, or delivery of certificates for Shares pursuant to the exercise of Stock Options may be delayed, at the discretion of the Committee until the Committee is satisfied that the applicable requirements of the federal and state securities laws have been met.

The dollar value and number of Stock Options granted under this Plan are limited pursuant to Rule 701 promulgated by the Securities and Exchange Commission which provides an exemption from

the registration requirements under the Securities Act. Any guidelines adopted pursuant to this Plan shall contain the current limitations specified in said Rule 701 until the Company is registered under the Securities Act.

### **3. PROVISIONS APPLICABLE SOLELY TO NONQUALIFIED STOCK OPTIONS**

In addition to the provisions of Section 2 above, the following paragraphs shall apply to any Stock Options granted under this Plan which are not Incentive Stock Options.

#### **3.1 Option Price**

The option, or purchase price, of each Share optioned as a Nonqualified Stock Option under this Plan shall be determined by the Board and set forth in the Stock Option Agreement.

#### **3.2 Method of Exercise of Stock Option**

The amount to be paid by the Optionee upon exercise of a Nonqualified Option shall be the exercise price provided for in the Stock Option Agreement, together with the amount of federal, state, and local income and FICA taxes required to be withheld by the Company. An Optionee may elect to pay Optionee's federal, state, or local income and FICA withholding tax by having the Company withhold shares of Company common stock having a value equal to the amount required to be withheld. The value of the shares to be withheld is deemed to equal the fair market value of the shares on the day the option is exercised. An election by an Optionee to have shares withheld for this purpose will be subject to the following restrictions:

- (a) If an Optionee has received multiple Stock Option grants, a separate election must be made for each grant;
- (b) The election must be made prior to the day the Stock Option is exercised;
- (c) The election will be irrevocable;
- (d) The election will be subject to the disapproval of the Board;
- (e) If the Optionee is an "officer" of the Company within the meaning of Section 16 of the Exchange Act ("Section 16") as defined in Rule 16a-1 promulgated by the Securities Exchange Commission, the election may not be made within six (6) months following the grant of the Stock Option; and
- (f) If the Optionee is an "officer" of the Company within the meaning of Section 16 as so defined, the election must be made either six (6) months prior to the day the Stock Option is exercised or during the period beginning on the third business day following the date of release of the Company's quarterly or annual summary statement of sales and earnings and ending on the twelfth business day following such date.

#### **3.3 Assignment**

The Company may allow limited assignment rights for the gifting by Optionee of rights hereunder to vested Nonqualified Stock Options, on terms to be determined by the Board from time to time.

### **4. PROVISIONS APPLICABLE SOLELY TO INCENTIVE STOCK OPTIONS**

In addition to the provisions of Section 2 above, the following paragraphs shall apply to any Stock Options granted under this Plan which are Incentive Stock Options.

#### **4.1 Conformance with Internal Revenue Code**

Stock Options granted under this Plan which are "Incentive Stock Options" shall conform to, be governed by, and be interpreted in accordance with Section 422 of the Code and any regulations promulgated thereunder and amendments to the Code and Regulations. Only Employees may be granted Incentive Stock Options hereunder.

#### **4.2 Option Price**

The option, or purchase price, of each Share optioned as an Incentive Stock Option under this Plan shall be determined by the Board at the time of the action for the granting of the Stock Option and set forth in the Stock Option Agreement, but shall not, in any event, be less than the fair market value of the Company's common stock on the date of grant.

#### **4.3 Limitation on Amount of Incentive Stock Option**

The aggregate fair market value of the Optioned Shares as determined on the date of grant, vesting in anyone calendar year with respect to which an Employee has the right to purchase (under this Plan or any other plan of the Company which authorizes Incentive Stock Options) shall not exceed \$100,000; and to the extent any Stock Option purporting to be an Incentive Stock Option grants an Employee the right to purchase Optioned Shares with an aggregate fair market value vesting in anyone calendar year in excess of \$100,000, as so determined (under this Plan or any other plan of the Company which authorizes Incentive Stock Options), shall be deemed a Nonqualified Stock Option for such excess amount.

#### **4.4 Limitation on Grants to Substantial Shareholders**

It is the Company's intent that in the case of an Employee who, immediately prior to the grant of a Stock Option hereunder, owns stock in the Company representing more than ten percent (10%) of the voting power of all classes of stock of the Company, will not be granted Incentive Stock Options unless the per share option price specified by the Board for the Incentive Stock Options granted such an Employee is at least one hundred ten percent (110%) of the fair market value of the Company's stock on the date of grant and such Stock Option, by its terms, is not exercisable after the expiration of five (5) years from the date such Stock Option is granted. Any Stock Option that by its terms purports to be an Incentive Stock Option that is issued to an Employee who owns stock in the Company representing more than ten percent (10%) of the voting power of all classes of stock of the Company that does not have an exercise price of at least one hundred ten percent (110%) of the fair market value of the Company's stock on the date of grant or that is, by its terms, exercisable after the expiration of five (5) years from the date such Stock Option is granted, shall be deemed a Nonqualified Stock Option.

#### **4.5 Method of Exercise of Stock Option**

The amount to be paid by the Optionee upon exercise of an Incentive Stock Option shall be the purchase price per share provided for in the Stock Option Agreement.

### **5. LOCK-UP AGREEMENT; SHAREHOLDER'S AGREEMENT**

The Optionee hereby agrees that in the event of any underwritten public offering of stock, including an initial public offering of stock, made by the Company pursuant to an effective registration statement filed under the Securities Act, the Optionee shall not offer, sell, contract to sell, pledge, hypothecate, grant any option to purchase or make any short sale of, or otherwise dispose of, any shares of stock of the Company or any rights to acquire stock of the Company for such period of time from and after the effective date of such registration statement as may be established by the

underwriter for such public offering; provided, however, that such period of time shall not exceed one hundred eighty (180) days from the effective date of the registration statement to be filed in connection with such public offering. The foregoing limitation shall not apply to shares registered in the public offering under the Securities Act.

Upon any exercise of any Stock Option hereunder, the Company may require an Optionee to enter into and be bound by the terms of a Shareholder's Agreement, which agreement may provide for the Company's: (i) right of first offer and first refusal with respect to a proposed transfer of Shares acquired on exercise of a Stock Option, and (ii) right of repurchase with respect to Shares acquired on exercise of a Stock Option following an Employee's termination of employment with the Company or termination of a Consultant's provision of services to the Company.

## **6. AMENDMENT**

This Plan, the Plan Guidelines, and all rules and regulations adopted in respect hereof may be terminated, suspended, or amended at any time by a majority vote of the Board, provided that no such action shall adversely affect any material rights of Optionees granted under this Plan prior to such action. The Board may amend the terms and conditions of outstanding Stock Options, provided, however, that (i) no such amendment would be adverse to the holders of such Stock Options, (ii) no such amendment shall extend the period for exercise of a Stock Option, and (iii) the amended terms of a Stock Option would be permitted under this Plan.

## **7. FOREIGN EMPLOYEES**

Without amending this Plan, the Board may grant Stock Options to eligible Employees who are foreign nationals on such terms and conditions different from those specified in this Plan as may in the judgment of the Board be necessary or desirable to foster and promote achievement of the purposes of this Plan, and, in furtherance of such purposes the Board may make such modifications, amendments, procedures, subplans, and the like as may be necessary or advisable to comply with the provisions of the laws in other countries in which the company operates or has Employees.

## **8. REGISTRATION, LISTING, AND QUALIFICATION OF SHARES**

Each Stock Option shall be subject to the requirement that if at any time the Board shall determine that the registration, listing, or qualification of the shares covered thereby upon any securities exchange or under any foreign, federal, state, or local law, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the granting of such Stock Option or the purchase of shares thereunder, no such Stock Option may be exercised unless and until such registration, listing, qualification, consent, or approval shall have been effected or obtained free of any condition not acceptable to the Board. Any person exercising a Stock Option shall make such representations and agreements and furnish such information as the Board may request to assure compliance with the foregoing or any other applicable legal requirements.

## **9. NO RIGHTS TO STOCK OPTIONS OR EMPLOYMENT; NO RESTRICTIONS; NO DAMAGES**

No Employee or other person shall have any claim or right to be granted a Stock Option under this Plan. Having received a Stock Option under this Plan shall not give any person any right to receive any other grant or Stock Option under this Plan. Optionee agrees that continuation of the engagement of each Employee or Consultant of the Company is, in the absence of any written and signed contract to the contrary, terminable at the will of the Company. An Optionee shall have no rights to or interest in any Stock Option except as set forth herein. Neither this Plan nor any action taken hereunder shall be construed as giving any Employee any right to be retained in the employ of the Company. Nothing in this Plan shall restrict the Company's rights to adopt other option plans pertaining to any or all of

the Employees covered under this Plan or other Employees not covered under this Plan. Each Optionee shall be required to specifically acknowledged and agree that their engagement by the Company as Employee is at will, is not for any fixed or minimum time period, is subject to the mutual consent of the Company and the Optionee, and may be terminated at any time, with or without cause or notice, for any reason or no reason, and without any kind of pre- or post-termination warning, discipline or procedure.

Each Stock Option granted hereunder may be affected, with regard to both vesting schedule and termination, by leaves of absence, a reduction in the number of hours worked, partial disability, and other changes in Optionee's Employment status, as the case may be. The Company's policies in such matters shall be contained in the Plan Guidelines adopted by the Board or the Committee. The Plan Guidelines and the guidelines, rules, policies and regulations contained therein may be amended at any time and from time to time by the Board or the Committee, in its sole discretion and with or without notice. Optionee's rights hereunder or under any Stock Option granted hereunder at any time shall be governed by the Plan Guidelines in effect at the time of any change in Optionee's employment status as contemplated above.

Each Optionee must acknowledge and agree that, regardless of whether Optionee's engagement as an employee is terminated with or without cause or notice, or with or without any kind of pre- or post-termination warning, discipline or procedure, that Optionee has no right to, will not bring, and specifically waives any legal claim or action against the Company or any officer, Employee, or director thereof for any damages or losses arising from having to exercise any vested portion of any Stock Option during any defined period after termination or any cancellation of any unvested portion of any Stock Option, or of any vested by unexercised portion of any Stock Option.

#### **10. COSTS AND EXPENSES**

Except as provided herein with respect to the payment of taxes, all costs and expenses of administering this Plan shall be borne by the Company and shall not be charged to any grant or any Employee receiving a grant.

#### **11. PLAN UNFUNDED**

This Plan shall be unfunded. Except for the Board's reservation of a sufficient number of authorized shares to the extent required by law to meet the requirements of this Plan, the Company shall not be required to establish any special or separate fund or to make any other segregation of assets to assure payment of any grant under this Plan.

#### **12. GOVERNING LAW**

This Plan shall be governed by and construed in accordance with the laws of the State of Washington.

**ZUMIEZ INC.**  
(the "Company")

**STOCK OPTION AGREEMENT FOR PURCHASE OF STOCK**

We are pleased to inform you that the Company has granted to you, as the individual named below (the "Optionee"), this Stock Option, effective as of June 1, 2004. This Stock Option Agreement is a contract between you and the Company, and is subject in its entirety to the provisions of the Company's 2004 Stock Option Plan (the "Plan"). It warrants to you certain defined rights, at certain times, and under certain conditions, to purchase shares of the Company's common stock, and in exchange you accept certain obligations and responsibilities, as described below and in the Plan and the attached Terms and Conditions.

FOR VALUABLE CONSIDERATION, the Company does hereby grant to the Optionee, as of the Date of Option Grant specified below, the right and option to purchase the Number of Option Shares of common stock of the Company specified below (the "Option Shares") for the Exercise Price Per Share specified below, and the right to purchase the Option Shares under this Stock Option Agreement shall accrue and vest according to the Vesting Schedule specified below:

Name of Optionee:

Type of Option:

Employee Incentive Stock Option

Employee Nonqualified Stock Option

Number of Option Shares:

Exercise Price Per Share:

Date of Option Grant:

Term of Option:

\_\_\_ Years from Date of Option Grant

Vesting Schedule:

**ZUMIEZ INC.**

By

\_\_\_\_\_  
Its

By signing below and entering into this Stock Option Agreement, Optionee agrees to the terms hereof and the Plan, and all obligations and responsibilities as described in Plan and the attached Terms and Conditions, which constitute a part of this Stock Option Agreement.

**OPTIONEE**

By \_\_\_\_\_, as Optionee

## TERMS AND CONDITIONS OF STOCK OPTION AGREEMENT

Stock Options are subject to the terms thereof and of the Company's 2004 Stock Option Plan ("Plan"). Capitalized Terms used in this Stock Option Agreement (this "Agreement"), if not otherwise defined, have the meanings given them in the Plan.

1.
  - a. Any Option Shares which become purchasable ("vest") but are not purchased on a vesting date or anniversary date, as the case may be, may be purchased on any subsequent date, provided all options for the purchase of Option Shares must be exercised within the time periods specified in Section 2 below.
  - b. Optionees shall have conditional purchase rights in the event of any Change in Control as described in the Plan.
2. All unvested options shall expire upon any termination of Optionee's employment with the Company, whether voluntary or involuntary, or upon the death or disability of Optionee.  
Subject to the terms hereof, all vested options (i.e., options for which the right to purchase has accrued) shall expire at the earliest of the following:
  - a. The earlier of the end of the Term of Option specified on the first page of this Agreement or ten (10) years from the Date of Option Grant specified on the first page of this Agreement;
  - b. Ninety (90) days after voluntary or involuntary termination of Optionee's employment other than termination as described in Paragraphs (c) or (d) below;
  - c. Upon discharge of Optionee for misconduct, willfully or wantonly harmful to the Company;
  - d. Twelve (12) months after Optionee's death or disability; or
  - f. As provided in Section 2.5(a) of the Plan in connection with a Change in Control.
3. This Stock Option may be exercised at different time for portions of the total number of Option Shares for which the right to purchase shall have accrued and vested hereunder, provided that such portions are in multiples of ten (10) shares if the Optionee holds vested portions for ninety-nine (99) or fewer shares and otherwise in multiples of one hundred (100) shares.
4. This Stock Option shall be adjusted for recapitalizations, stock splits, stock dividends, and the like as described in the Plan.
5. This is not an employment contract and while the benefits, if any, of this Stock Option may be an incident of the Optionee's employment with Company, the terms and conditions of such employment are otherwise wholly independent hereof.
6. Neither this Stock Option nor any right under this Agreement is assignable by the Optionee, and rights under this Agreement might be exercised only by the Optionee or a person to whom the rights under this Agreement shall pass by will or the laws of descent and distribution.
7. The Optionee shall indicate Optionee's intention to exercise this Stock Option with respect to vested Option Shares by notifying the Company in writing of such intention, indicating the number of Option Shares Optionee intends to purchase, and, within three (3) days thereafter, paying to the Company an amount sufficient to cover the total option price of such Option Shares. Payment of the Exercise Price Per Share specified on the first page of this Agreement shall be made in cash or if provided by the Company, in accordance with such procedures for a "cashless exercise" as may be established from time to time by the Company and the brokerage firm, if any, designated by the Company to facilitate exercises of Stock Options and sales of Optioned Shares under the Plan.
8. If the Optionee, immediately prior to the grant of an Incentive Stock Option hereunder, owns stock in the Company representing more than ten percent (10%) of the voting power of all classes

of stock of the Company, the Exercise Price Per Share specified on the first page of this Agreement for Incentive Stock Options granted hereunder shall be not less than one hundred ten percent (110%) of the fair market value of the Company's common stock on the Date of Option Grant specified on the first page of this Agreement, and such Incentive Stock Option shall not be exercisable after the expiration of five (5) years from said Date of Option Grant, and notwithstanding any pricing or vesting terms hereof which appear at variance with the foregoing, all pricing and vesting terms hereof shall be deemed hereby to conform with the foregoing limitations. In lieu of the foregoing, the Optionee may elect to have a Stock Option that purports to be an Incentive Stock Option treated as a Non-Qualified Stock Option pursuant to the original terms of this Agreement.

9. Notwithstanding the foregoing, no Stock Option shall be exercisable, and rights under this Agreement are not enforceable, unless and until all requirements imposed by or pursuant to Section 2.17 of the Plan are satisfied.

SECTION 2.17 OF PLAN DESCRIBES CERTAIN IMPORTANT CONDITIONS RELATING TO FEDERAL AND STATE SECURITIES LAWS THAT MUST BE SATISFIED BEFORE THIS OPTION CAN BE EXERCISED AND BEFORE THE COMPANY CAN ISSUE ANY OPTION SHARES TO THE OPTIONEE. AT THE PRESENT TIME THE PLAN IS NOT REGISTERED AND, ALTHOUGH SHARES MAY BE ISSUED UPON EXERCISE, THE SHARES SO ISSUED ARE NOT FREELY TRADABLE.

THERE CAN BE NO ASSURANCE THAT THE EXEMPTION(S) ALLOWING ISSUANCE OF THE SHARES UPON EXERCISE WILL REMAIN AVAILABLE, NOR IS THEIR ASSURANCE THAT ISSUED SHARES WILL BE REGISTERED OR THAT ONCE REGISTERED THE REGISTRATION WILL BE MAINTAINED. IF THE SHARES ARE NOT REGISTERED OR IF THE REGISTRATION IS NOT MAINTAINED, THE OPTIONEE WILL NOT BE ABLE TO TRADE SHARES OBTAINED UPON EXERCISE OF THIS STOCK OPTION UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE. AT THE PRESENT TIME, EXEMPTIONS FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS ARE VERY LIMITED AND MIGHT BE UNAVAILABLE TO THE OPTIONEE PRIOR TO THE EXPIRATION OF THIS OPTION. AS A CONSEQUENCE OF THE FOREGOING, THE OPTIONEE MIGHT NOT HAVE AN OPPORTUNITY TO EXERCISE THIS OPTION AND TO RECEIVE OPTION SHARES UPON SUCH EXERCISE, AND, IF THE OPTIONEE IS ABLE TO EXERCISE THIS OPTION AND TO RECEIVE OPTION SHARES UPON SUCH EXERCISE, THE OPTIONEE MIGHT NOT HAVE THE OPPORTUNITY TO TRADE SUCH OPTION SHARES.

10. NO RIGHTS TO STOCK OPTIONS RESTRICTIONS; NO DAMAGES OR EMPLOYMENT; NO DAMAGES

Neither Optionee nor any other person shall have any claim or right to be granted a Stock Option under the Plan. Having received a Stock Option under the Plan shall not give Optionee any right to receive any other grant or option under the Plan. Optionee agrees that continuation of the engagement of Optionee as an Employee or Consultant of the Company, as the case may be, is, in the absence of any written and signed contract to the contrary, terminable at the will of the Company. Optionee shall have no rights to or interest in any Option except as set forth herein, in the Plan, or in another Option specifically granted by the Company to Optionee. Neither this Option, the Plan, nor any action taken hereunder or under the Plan shall be construed as giving any Employee or Consultant any right to be retained in the employ of, or be engaged as a Consultant to, the Company, as the case may be. Nothing in the Plan restricts the Company's rights to adopt other option plans pertaining to any or all of the Employees, Consultants or

Directors covered under the Plan or other Employees, Consultants or Directors not covered under the Plan.

Optionee specifically acknowledges and agrees that Optionee's engagement by the Company as an Employee or Consultant is "at will," is not for any fixed or minimum time period, is subject to the mutual consent of the Company and the Optionee, and may be terminated by the Company at any time, with or without cause or notice, for any reason or no reason, and without any kind of pre- or post-termination warning, discipline or procedure.

This Agreement and the Stock Option represented hereby may be affected, with regard to both vesting schedule and termination, by leaves of absence, a reduction in the number of hours worked, partial disability, and other changes in Optionee's Employee or Consultant status, as the case may be. The Company's policies in such matters, if any, shall be contained in the Plan Guidelines adopted by the Board. The Plan Guidelines and the guidelines, rules, policies and regulations contained therein may be amended at any time and from time to time by the Board of Directors of the Company, or the Committee appointed by such Board, in its sole discretion and with or without notice. Optionee's rights hereunder or under the Plan at any time shall be governed by the Plan Guidelines in effect at the time of any change in Optionee's employment status as contemplated above.

11. This Agreement and the Stock Option represented hereby is granted pursuant to and is controlled by the Plan and by the Plan Guidelines, if any, as adopted by the Board and amended from time to time. Optionee, by execution hereof, acknowledges receipt of the Plan and the Plan Guidelines as they currently exist and acceptance of the terms and conditions of the Plan, the Plan Guidelines and of this Agreement.

## QuickLinks

[Exhibit 10.6](#)

[ZUMIEZ INC. 2004 STOCK OPTION PLAN](#)  
[ZUMIEZ INC. \(the "Company"\)](#)  
[STOCK OPTION AGREEMENT FOR PURCHASE OF STOCK](#)  
[TERMS AND CONDITIONS OF STOCK OPTION AGREEMENT](#)

[QuickLinks](#) -- Click here to rapidly navigate through this document

**Exhibit 23.1**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the use in this Registration Statement on Form S-1 of our report dated June 2, 2004 relating to the financial statements of Zumiez Inc., which appears in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

PricewaterhouseCoopers LLP

Seattle, WA  
February 16, 2005

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QuickLinks

[Exhibit 23.1](#)

[CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM](#)

February 17, 2005

Securities and Exchange Commission  
450 5th Street, N.W.  
Washington, D.C. 20549

Re: Zumiez Inc.  
Registration Statement on Form S-1

Ladies and Gentlemen:

The undersigned registrant will be making an oral request for acceleration of the Registration Statement on Form S-1 filed by Zumiez Inc. in accordance with Rule 461 under the Securities Act of 1933, as amended (the "Securities Act"). Such request may be made by an officer or employee of any of the undersigned or by any lawyer with Preston Gates & Ellis LLP. The undersigned registrant confirms that it is aware of its obligations under the Securities Act.

Very truly yours,

ZUMIEZ INC.

By: /s/ BRENDA I. MORRIS

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Brenda I. Morris,  
Chief Financial Officer

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