

06-19-2002

Form PTO 1594  
8-17-01 (modified)



U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

102126714

To the Honorable Commissioner of Pat. and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Lorick Enterprises, Inc.  
315 East Fifth Street  
Charlotte, NC 28232

6-14-02

- Individual(s)                       Association
- General Partnership               Limited Partnership
- Other Corporation

Additional name(s) of conveying party(ies) attached? Yes  No

3. Nature of conveyance:

- Assignment                               Merger
- Security Agreement                   Change of Name
- Other Stock Purchase Agreement

Execution Date: October 30, 2000

2. Name and address of receiving party(ies)

Name: Regis Corporation

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

Street Address: 7201 Metro Boulevard

City: Minneapolis State: MN ZIP 55439-2103

Individual Citizenship \_\_\_\_\_

Association, State \_\_\_\_\_

General Partnership \_\_\_\_\_

Limited Partnership \_\_\_\_\_

Other Corporation \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached. Yes  No   
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached? Yes  No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,692,236

Additional numbers attached? Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Malcolm L. Moore

Internal Address: MOORE & HANSEN

Street Address: 2900 Wells Fargo Center

90 South Seventh Street

City: Minneapolis State: MN ZIP 55402

6. Total number of applications and registrations involved:(1)

7. Total fee (37 CFR 3.41): \$ 40.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

13-4300

(Attach duplicate copy of this page if paying by deposit account)

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40.00 DP

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Malcolm L. Moore  
Name of Person Signing

June 5, 2002  
Date

Total number of pages including cover sheet, attachments, and documents (40)

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents and Trademarks, Box Assignments  
Washington, D.C. 20231

TRADEMARK  
REEL: 002528 FRAME: 0070

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**STOCK PURCHASE AGREEMENT**

**BETWEEN**

**THE**

**SHAREHOLDERS**

**OF**

**LORICK ENTERPRISES, INC.**

**AND**

**REGIS CORPORATION**

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Exhibits to Stock Purchase Agreement

Exhibit A	Ownership of Shares
Exhibit B	Escrow Agreement
Exhibit C	Non-Competition and Consulting Agreement
Exhibit D	List of Distributed Assets
Exhibit E	Legal Opinion of Seller's Counsel (Parker Poe Adams & Bernstein L.L.P.)
Exhibit F	Legal Opinion of Buyer's General Counsel

Disclosure Schedule

“**Business**” means the business conducted by the Company in providing beauty salon services and distributing and selling beauty products.

“**Business Day**” means any day on which banks are open for business in Charlotte, North Carolina.

“**Closing**” means the consummation and effectuation of the transactions contemplated herein pursuant to the terms and conditions of this Agreement which shall be held on the 31st day of October 2000, or on such other date or at such other time or place as is mutually agreed by the parties hereto. The parties shall consummate the Closing, to the extent possible, via facsimile and overnight courier.

“**Closing Balance Sheet**” shall have the meaning given to such term in Section 2.2 hereof.

“**Closing Date**” means the date on which the Closing actually occurs.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidentiality Agreement**” means the Confidentiality Agreement dated July 25, 2000 between Lorick and Buyer.

“**Contracts**” shall have the meaning given to such term in Section 3.13 hereof.

“**Current Assets**” shall mean the current assets of the Company as set forth on the Closing Balance Sheet, not including the Distributed Assets.

“**Current Liabilities**” shall mean the current liabilities of the Company as set forth on the Closing Balance Sheet.

“**Disclosure Schedule**” means the disclosure schedule document executed by Sellers and Buyer as of the date hereof.

“**Distributed Assets**” shall have the meaning given to such term in Section 2.4 below.

“**Employee Benefit Plan**” means, with respect to LEI employees, any plan described in Section 3(3) of ERISA.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Financial Statements**” means the financial statements of LEI as identified and defined in Section 3.5 hereof.

“**GAAP**” means United States generally accepted accounting principles.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“**Intangible Property**” shall have the meaning given to such term in Section 3.10 hereof.

“**Inventory**” shall mean the inventory of the Company as set forth on the Closing Balance sheet.

“**Material Adverse Effect**” means an effect that is reasonably likely to have a material adverse effect on the Business or the financial condition of the Company, taken as a whole.

“**Medical Plan**” means the medical and health care benefits program(s) under the Company’s Group Insurance Plan.

“**Net Working Capital**” shall mean the Current Assets of the Company (excluding Inventory) as of the Closing Date, minus the Current Liabilities of the Company as of the Closing Date, all determined in accordance with GAAP consistently applied.

“**Permitted Encumbrances**” means each of the following: (i) liens for property taxes, special assessments and governmental charges with respect to the personal property owned by the Company with respect to 2000 and subsequent years; (ii) mechanic's, builders' and materialmen's liens arising in the ordinary course of business; (iii) such imperfections of title and encumbrances as do not materially impair the use in the Business of any properties or assets of the Company; (iv) zoning ordinances, restrictions, prohibitions and other requirements imposed by governmental authority; (v) chattel mortgages or financing leases securing payment of unpaid purchase price or rentals and associated fees and interest; and (vi) deposits of cash or securities with third parties to secure the performance of obligations.

“**Person**” means any individual, partnership, corporation, limited liability company, trust, unincorporated organization, association, joint venture or other entity or a government, agency, political subdivision or instrumentality thereof.

“**Purchase Price**” means the sum of Seven Million Four Hundred Thousand Dollars (\$7,400,000.00 (US)), as adjusted pursuant to Article II below.

“**Retained Plans**” shall have the meaning given to such term in Section 5.15 hereof.

“**Salon Business Employees**” means, except as named in Section 5.15 of the Disclosure Schedule, all salon employees of the Company, including (i) all active Salon Business employees of LEI as of the Closing Date, and (ii) all Salon Business employees on FMLA or other approved leave as of the Closing Date.

“**Shares**” shall have the meaning given to such term in the Recitals to this Agreement.

“**Taxes**” means all taxes, assessments, and charges imposed by any federal, state, local, or foreign taxing authority, including interest, penalties and additions thereto.

## **ARTICLE II**

### **PURCHASE AND SALE OF SHARES**

**Section 2.1. Agreement of Purchase and Sale.** Upon the terms and subject to the conditions hereof, at the Closing Sellers shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase and accept from Sellers, all of Sellers’ right, title and interest in and to the Shares for the Purchase Price free and clear of all pledges, security interests, liens, claims, options, charges, encumbrances and restrictions.

#### **Section 2.2. The Purchase Price.**

(a) *The Purchase Price.* The purchase price to be paid by the Buyer for the Shares (the “**Purchase Price**”) shall be an aggregate amount consisting of the sum of (i) Seven Million Four Hundred Thousand Dollars (\$7,400,000), plus (ii) the Net Working Capital Excess (as defined in Section 2.2(c)(iii) below), if any, minus (iii) the Net Working Capital Shortfall (as defined in Section 2.2(c)(iv) below), if any, plus (iv) the Inventory Excess (as defined in Section 2.2(c)(v) below), if any, minus the (v) Inventory Shortfall (as defined in Section 2.2(c)(vi) below), if any.

(b) *Payment of the Purchase Price.* The Purchase Price shall be paid as follows:

(i) At the Closing, the Buyer shall pay an amount equal to the sum of Six Million Four Hundred Thousand Dollars (\$ 6,400,000) to the Sellers, in the respective amounts set forth opposite their names on **Exhibit A** hereto, by wire transfer to an account or accounts designated to the Buyer by the F.W. Lorick, Jr., as agent for the Sellers (the “**Sellers’ Agent**”), at least one Business Day prior to the Closing Date.

(ii) At the Closing, the Buyer shall place into escrow with First Union National Bank or another escrow agent mutually acceptable to the parties hereto (the “**Escrow Agent**”) the sum of One Million Dollars (\$ 1,000,000) (the “**Escrow Amount**”), all in accordance with the escrow agreement in the form of **Exhibit B** hereto, with such other changes thereto as the Escrow Agent shall reasonably request (the “**Escrow Agreement**”). The term of the Escrow Agreement shall be for a period of ninety (90) days from the Closing Date (or such shorter or longer period of time as shall be necessary to complete the determination of the Closing Balance Sheet and Net Working Capital pursuant to Section 2.2(c) below).



(iii) Any net adjustment to the Purchase Price pursuant to this Section 2.2 shall be paid by the Buyer to the Sellers, or by the Sellers to the Buyer, as appropriate, not later than five (5) Business Days after the final determination of the Closing Balance Sheet and the Net Working Capital. Accordingly, the Buyer and the Sellers' Agent shall promptly execute and deliver to the Escrow Agent a joint instruction to deliver the appropriate amount of the Escrow Amount, to the party entitled to such payment. Additional payments (in excess of the Escrow Amount) by Buyer to Sellers in the form of Net Working Capital Excess and/or Inventory Excess, if any, shall be made by wire transfer to the Sellers in the manner specified in Section 2.2(b)(i) above. Interest accrued on the Escrow Amount shall be paid to the Sellers.

(c) *Adjustment Procedures.*

(i) Not later than 45 days after the Closing Date, the Sellers' Accountants, Bullard, Blanchard, Johns, P.L.L.C. will prepare and deliver to the Sellers' Agent a compiled balance sheet (the "**Closing Balance Sheet**") of the Company as of the Closing Date, including a computation of the Net Working Capital of the Company, all in accordance with GAAP, subject to the additional principles set forth below.

(ii) If within 15 days following receipt by Buyer of the Closing Balance Sheet (or the next Business Day if such 15th day is not a Business Day), the Buyer has not given the Sellers' Agent notice of the Buyer's objection to the computation of the Net Working Capital as set forth in the Closing Balance Sheet (such notice to contain a statement in reasonable detail of the nature of the Buyer's objection), then the Net Working Capital reflected in the Closing Balance Sheet will be deemed mutually agreed by the Buyer and the Sellers. If the Buyer shall have given such notice of objection in a timely manner, then the parties hereto shall negotiate in good faith for a period of ten (10) days to resolve any such dispute as to the Net Working Capital and Closing Balance Sheet. If the dispute is not resolved within such ten-day period, then such remaining issues in dispute will be submitted to PricewaterhouseCoopers, LLP (the "**Independent Accountants**") for resolution. If issues in dispute are submitted to the Independent Accountants for resolution: (A) each party will furnish to the Independent Accountants such work papers and other documents and information relating to the disputed issues as the Independent Accountants may request and are available to the party or its subsidiaries (or its independent public accountants), and will be afforded the opportunity to present to the Independent Accountants any material relating to the determination and to discuss the determination with the Independent Accountants; (B) the Independent Accountants will be instructed to prepare the Closing Balance Sheet and to determine the Net Working Capital based upon their resolution of the issues in dispute; (C) such determination by the Independent Accountants of the Closing Balance Sheet and Net Working Capital, as set forth in a notice delivered to both parties by the Independent Accountants, will be binding and conclusive on the parties; and (D) the Buyer and the Sellers shall each bear 50% of the fees and expenses of the Independent Accountants for such determination.

(iii) To the extent that Net Working Capital, as deemed mutually agreed by the parties or as determined by the Independent Accountants, as aforesaid, exceeds zero (the "Net Working Capital Excess"), the Purchase Price will be increased by the Net Working Capital Excess.

(iv) To the extent that the Net Working Capital, as deemed mutually agreed by the parties or as determined by the Independent Accountants, as aforesaid, is less than zero (the "Net Working Capital Shortfall"), the Purchase Price will be reduced by the Net Working Capital Shortfall;

(v) The Purchase Price shall be increased by the amount that Inventory exceeds Three Hundred Thousand Dollars (\$300,000)(the "Inventory Excess"); and

(vi) The Purchase Price shall be reduced by the amount that Inventory is less than Three Hundred Thousand Dollars (\$300,000)(the "Inventory Shortfall").

**Section 2.3 Non-Competition and Consulting Agreements.** At the Closing, each of F. W. Lorick, Jr. and Gayrie P. Case will enter into a non-competition and consulting agreement with the Buyer and the Company substantially in the form of Exhibit C-1 hereto (the "Non-Competition and Consulting Agreement"). At the Closing, each of Forrest W. Lorick III and Leigh Allyson Lorick shall enter into a non-competition agreement with the Buyer and the Company substantially in the form of Exhibit C-2 hereto.

**Section 2.4 Certain Distributions Prior to Closing.** Prior to the Closing, the Company shall distribute to the Sellers, or a newly-formed entity owned by the Sellers, the Distributed Assets, which assets are described on Exhibit D hereto.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF SELLER

Each of the Sellers hereby represents and warrants to Buyer as follows:

**Section 3.1. Corporate Organization.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina and has the full corporate right, power and authority to own, lease and operate all of its properties and assets and to carry out its business as it is presently conducted. The Company is duly licensed or qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the ownership of property or the conduct of its business requires such qualification or license except to the extent that the failure to be so qualified would not result in a Material Adverse Effect. Except as identified in Section 3.1 of the Disclosure Schedule, the Company has no subsidiaries and there are no corporations, joint ventures, partnerships or other entities or arrangements in which the Company, directly or indirectly, owns any capital stock or an equity interest.

**Section 3.2. Capitalization of the Company.** The authorized capital stock of the Company consists solely of five hundred thousand (500,000) shares of voting common stock, par value of \$1.00 per share, of which 228,830 shares are issued and outstanding and owned by Sellers. Such 228,830 shares constitute the Shares. All issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued, are fully paid and nonassessable, and were issued without violation of any preemptive rights. Except for this Agreement and as set forth in Section 3.2 of the Disclosure Schedule, there are no options, warrants or other rights, nor any agreements, commitments or arrangements of any kind, relating to the subscription to or the issuance, voting, acquisition, sale, repurchase, transfer or disposition of (i) any capital stock of the Company or securities convertible into or exchangeable for capital stock of the Company, or (ii) any options, warrants or subscription rights relating to any such capital stock or securities of the Company. The consummation of the transactions contemplated hereby will convey to Buyer good title to the Shares free and clear of all claims, liens, encumbrances, security interests, charges or restrictions on transfer of any nature whatsoever, except as created by Buyer.

**Section 3.3. Authority.** Each of the Sellers has all requisite right, power and authority to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Sellers has been duly and validly authorized and approved by all necessary action. This Agreement has been duly and validly executed and delivered by Sellers and, assuming this Agreement has been duly authorized, executed and delivered by Buyer, constitutes the legal, valid and binding obligation of Sellers, enforceable against each Seller in accordance with its terms.

**Section 3.4. Consents and Approvals; No Violations.** Except as set forth on Section 3.4 of the Disclosure Schedule, the execution, delivery and performance of this Agreement by Sellers will not (with or without the giving of notice or the passage of time, or both) (i) violate any applicable provision of law or any rule or regulation of any administrative agency or governmental authority applicable to any of the Sellers or the Company, or any order, writ, injunction, judgment or decree of any court, administrative agency or governmental authority applicable to any of the Seller or the Company, (ii) violate the Articles of Incorporation or Bylaws of the Company, (iii) require any consent under or constitute a default under any material agreement, indenture, mortgage, deed of trust, lease, license, or other instrument to which Sellers or the Company is a party or by which any of them is bound, or any material license, permit or certificate held by any of them, (iv) require any material consent or approval by, notice to or registration with any governmental authority other than the appropriate filings, if any, pursuant to the HSR Act and the expiration of the applicable waiting period thereunder or (v) result in the creation of any lien, claim, encumbrance or charge upon any of the Shares or any property or assets of the Company, except as may be created by Buyer.

**Section 3.5. Financial Statements.** Section 3.5 of the Disclosure Schedule contains (i) the audited balance sheet and the related audited statement of income, changes in stockholders' equity and cash flow of the Company as of and for the fiscal year ended December 31, 1999; and (ii) the unaudited balance sheet and the related unaudited statement of income for the Salon Business, of the Company as of and for the six-month period ended June 30, 2000 (the financial statements identified in

subparagraphs (i) and (ii) in this Section 3.5 are hereinafter collectively referred to as the "**Financial Statements**"). Except as set forth on Section 3.5 of the Disclosure Schedule and subject to normal year end adjustments, if applicable, the Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and fairly present (i) the financial condition of the Company as of the respective dates thereof; and (ii) the results of operations, changes in stockholders' equity, and cash flow, respectively, of the Company for the fiscal year ended December 31, 1999 and for the six-month period ended June 30, 2000.

**Section 3.6. Taxes.** Except as set forth in Section 3.6 of the Disclosure Schedule, the Company has timely filed all material returns, declarations, reports, information returns and statements required to be filed by it in respect of any Taxes and paid all Taxes currently due and payable. Except as set forth in Section 3.6 of the Disclosure Schedule, no notice of any material proposed tax deficiency, assessment or levy has been received by the Company. The Company has duly withheld from each payment from which such withholding is required by law the amount of all Taxes required to be withheld therefrom and has paid the same (to the extent due), together with the employer's share of the same, if any, to the proper tax receiving officers.

**Section 3.7. Title to Properties.** Except for Permitted Encumbrances and as set forth in Section 3.7 of the Disclosure Schedule, the Company has good and marketable title to the personal property and assets (tangible and intangible) reflected as owned by it on the balance sheet as of June 30, 2000 or acquired since June 30, 2000 (except for properties and assets disposed of since such date in the ordinary course of business), and has such title free and clear of all liens, charges, security interests or other encumbrances of any nature whatsoever.

**Section 3.8. Absence of Changes.** Except as set forth in Section 3.8 of the Disclosure Schedule, since June 30, 2000 there has not been:

- (i) any change in the business, financial condition, results of operations or assets or liabilities of the Company, other than changes in the ordinary course of business and any change which will not, singularly or in the aggregate, result in a Material Adverse Effect;
- (ii) any damage or destruction, loss or other casualty, however arising and whether or not covered by insurance, which will, singularly or in the aggregate, result in a Material Adverse Effect;
- (iii) any material labor dispute;
- (iv) any indebtedness incurred by the Company for borrowed money (except by endorsement for collection or for deposit of negotiable instruments received in the ordinary course of business), or any agreement to incur any such indebtedness;

(v) any material change in the accounting methods or practices of the Company or any change in depreciation or amortization policies or rates theretofore adopted;

(vi) any amendment, entering into or termination by the Company of any material contract, agreement, lease, franchise or license, except in the ordinary course of business;

(vii) any amendment of the Articles of Incorporation or Bylaws of the Company;

(viii) except for Permitted Encumbrances and other than in the ordinary course of business, any mortgage, pledge or other encumbering of any material assets of the Company;

(ix) any sale, transfer, lease, abandonment or other disposal of any material portion of the assets of the Company (real, personal or mixed, tangible or intangible), except in the ordinary course of business;

(x) any transfer, disposal or grant of any rights under any patent, trademark, trade name, copyright, service mark, invention or license owned by the Company, or any disposal of or disclosure to any Person other than representatives of Buyer of any material trade secret, formula, process or know-how owned by the Company not theretofore a matter of public knowledge; except, in each case, in the ordinary course of business;

(xi) any grant by the Company of any increase in the compensation of its officers, employees or directors; or any grant by the Company of any increase in compensation payable to or to become payable to any of its officers, employees or directors; or any agreement by the Company entered into with any of its officers, employees or directors; except, in each case, in the ordinary course of business;

(xii) any single capital expenditure made, or any commitment to make any capital expenditure by the Company, in excess of Fifty Thousand Dollars (\$50,000 (US)) for any tangible or intangible capital assets, additions or improvements, except in the ordinary course of business;

(xiii) except for distributions since June 30, 2000 of the type contemplated by Section 5.16 hereof, any declaration, payment or reservation for payment of any dividend or other distribution in respect of the capital stock or other securities of the Company or any redemption, purchase or other acquisition, directly or indirectly, of any shares of capital stock or other securities of the Company;

(xiv) except in the ordinary course of business, any grant or extension of any power-of-attorney or guaranty in respect of the obligation of any Person by the Company; or

(xv) any entry by the Company into any binding agreement, whether in writing or otherwise, to take any action described in this Section 3.8.

**Section 3.9. Patents, Trademarks, Trade Names.** Section 3.9 of the Disclosure Schedule lists and indicates the ownership of all material patents and patent applications owned by the Company and all material copyrights, trademarks, trade names, and service marks for which registrations have been obtained or applications therefor have been filed by the Company (collectively, the "**Intangible Property**"). Except as set forth in Section 3.9 of the Disclosure Schedule, (i) no Person other than the Company has the right to use any of the Intangible Property, and the Company has all right, title and interest to all Intangible Property, without any conflict known to any of the Sellers with the rights of others, and (ii) documentation for the continuance of registration and applications for registration have been timely filed with the appropriate authorities for the patents, trademarks, trade names, and service marks included in the Intangible Property. Except as set forth on Section 3.9 of the Disclosure Schedule, none of the Sellers or the Company has received within the immediately preceding two (2) years any written notice that (a) any operation of the Company infringes on the asserted rights of others or requires payment for the use of, or infringes or otherwise interferes with, any patent, trade name, trademark, or service mark of another, or any such right which might be so infringed has been applied for by another, or (b) any of the Intangible Property has been legally declared invalid or is the subject of a pending or threatened action for opposition or cancellation or a declaration of invalidity, or is infringed by the activities of another.

**Section 3.10. Leases.** Section 3.10 of the Disclosure Schedule contains an accurate and complete list of all real property leases and all material personal property leases pursuant to which the Company leases real or personal property. Except as set forth in Section 3.10 of the Disclosure Schedule, all such leases are in full force and effect and are valid, binding and enforceable in accordance with their terms. Except as set forth in Section 3.10 of the Disclosure Schedule, there are no existing defaults or events which, with the giving of notice or the lapse of time or both, would constitute a default thereunder by the Company.

**Section 3.11. Bank Accounts.** Section 3.11 of the Disclosure Schedule sets forth the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company maintains safe deposit boxes or accounts of any nature and the names of all persons authorized to draw thereon, make withdrawals therefrom or have access thereto.

**Section 3.12. Material Contracts.** Section 3.12 of the Disclosure Schedule contains a true and correct list of each contract, agreement and commitment to which the Company is a party: (i) calling for payment or receipt by the Company of more than Fifty Thousand Dollars (\$50,000) during the term thereof, which contract, agreement or commitment is not terminable by the Company on less than ninety (90) days' notice without penalty (except for agreements relating to the acquisition or disposition of inventory in the ordinary course of business), (ii) containing covenants limiting, in any material respect, the freedom of the Company to compete with any Person in any line of business or in any territory, or (iii) evidencing or relating to indebtedness for borrowed money not to be repaid on or before the Closing Date (collectively, the "**Contracts**"). True and complete copies of each of the Contracts have been made available to Buyer by Seller. Except as set forth in Section 3.12 of the Disclosure Schedule, each of the Contracts is in full force and effect and is valid, binding and

enforceable against the Company in accordance with its terms. Except as set forth in Section 3.12 of the Disclosure Schedule, there exists no default or event which, with the giving of notice or lapse of time or both, would constitute a default thereunder by the Company. Except as set forth in Section 3.12 of the Disclosure Schedule, no written notice of termination or nonrenewal has been received or given under any Contract. The dollar amounts set forth in this Section 3.12 with respect to the Contracts shall not be deemed to represent any standard of "materiality" with respect to the Contracts or otherwise for any other purpose and shall have no application to any other Section of this Agreement.

**Section 3.13. Related Transactions.**

(a) Except as set forth in Section 3.13 of the Disclosure Schedule, no director or officer has any material financial interests, direct or indirect, in any Person which (i) is a material competitor, customer, subcontractor or supplier of the Company, or (ii) has an existing material financial relationship with, or a material financial interest in, the Company, including but not limited to lessors of real or personal property and Persons against which rights or options are exercisable by the Company.

(b) Except as set forth in Section 3.13(b) of the Disclosure Schedule, to the best knowledge of the Sellers, there are no outstanding contractual obligations between the Company, on the one hand, and any affiliate of the Company, on the other hand.

**Section 3.14. Insurance.** Section 3.14 of the Disclosure Schedule contains an accurate and complete list of all policies of insurance presently maintained with respect to the Company. All such policies are in full force and effect and no notice of cancellation or termination has been received with respect to any such policy and there is, and has been, no material default by the Company with respect to its obligations under any such policy.

**Section 3.15. Labor Matters.** Except to the extent set forth in Section 3.15 of the Disclosure Schedule: (a) there is no unfair labor practice charge or complaint against the Company pending before the National Labor Relations Board; (b) there is no labor strike or stoppage pending against the Company; (c) the Company is not a party to any collective bargaining agreement or contract with any labor union and, to the knowledge of any of the Sellers, no union representation question or application for certification exists respecting the employees of the Company; (d) no material grievance nor any arbitration proceeding arising out of or under collective bargaining agreements has been filed or is pending; and (e) no event has occurred, and the Company has not taken any action prior to the Closing, which would require notification to employees under the Worker Adjustment and Retraining Act of 1988 and the regulations promulgated thereunder.

**Section 3.16. Employee Benefit Plans.**

(a) Set forth in Section 3.16 of the Disclosure Schedule is an accurate and complete list of each Employee Benefit Plan established, maintained, or contributed to by the Company during the immediately preceding five (5) year period.

(b) Except as required by Chapter 6 of Title 1 of ERISA and any applicable state continuation or conversion laws and except as set forth in Section 3.16 of the Disclosure Schedule, no Employee Benefit Plan that is a “welfare plan” as defined in Section 3(1) of ERISA provides any medical or life insurance coverage to any individual for events occurring, or expenses incurred, after termination of employment.

(c) Except as set forth in Section 3.16 of the Disclosure Schedule, each Employee Benefit Plan is in material compliance with ERISA and the Code and neither the Company nor any such Employee Benefit Plan is liable for any material fine, excise tax or loss of income tax deduction with respect to the operation of any such Employee Benefit Plan.

(d) None of the Employee Benefit Plans of the Company is, or has been, at any time during the immediately preceding five (5) year period, a “defined benefit pension plan” as defined in Section 3(35) of ERISA.

(e) Except as set forth in Section 3.16 of the Disclosure Schedule, no waiver of the funding standards under ERISA or the Code has been requested or received for any such Employee Benefit Plan and all amounts that the Company is required to have contributed to any such Employee Benefit Plan have been contributed within the time prescribed by applicable law.

(f) Except as set forth in Section 3.16 of the Disclosure Schedule, there are no material claims (other than routine claims for benefits) or lawsuits pending with respect to any Employee Benefit Plan of the Company.

(g) Except as set forth in Section 3.16 of the Disclosure Schedule, the Sellers have previously delivered to Buyer true and complete copies of: (i) all Employee Benefit Plans identified in Section 3.16 of the Disclosure Schedule, and (ii) to the extent applicable for each such Employee Benefit Plan, the most recent Internal Revenue Service determination letters, annual reports and accompanying schedules, actuarial reports or valuations, and Pension Benefit Guaranty Corporation Forms 1.

**Section 3.17. Litigation.** Except as set forth in Section 3.17 of the Disclosure Schedule, there are no material claims, actions, suits, or proceedings pending or, to the best knowledge of the Sellers, threatened, against the Company relating to this Agreement, the transactions contemplated hereby, the Business or the property of the Company, at law or in equity or before or by any federal, state, local, or foreign court or other governmental department, commission, board, agency, instrumentality or authority, nor any arbitration proceeding relating to the same. Except as set forth in Section 3.17 of the Disclosure Schedule, the Company is not is subject to any judgment, order, writ, injunction or decree of any court or governmental body which will have a Material Adverse Effect.

**Section 3.18. Compliance with Laws.** Except as set forth in Section 3.18 of the Disclosure Schedule, the Company is not in violation of, nor has it received any written notice claiming it is in



violation of, any order, law, ordinance, statute, rule or regulation applicable to it or any of its assets, except such violations which, in the aggregate, will not have a Material Adverse Effect. Except as set forth in Section 3.18 of the Disclosure Schedule, the Company has all material licenses, permits, certificates of occupancy and authorizations (governmental and otherwise) necessary to conduct the Business.

**Section 3.19. Environmental Matters.** Except as set forth in Section 3.19 of the Disclosure Schedule:

(a) all properties currently owned or used by the Company in connection with its operation of the Business and all activities of the Company are in compliance with all applicable federal, state and local environmental laws, rules and regulations, except where the failure to be in compliance would not have a Material Adverse Effect;

(b) none of the Sellers nor the Company has received written notification within the immediately preceding three (3) years from any governmental authority with respect to current, existing material violations relating to the Business of any of the laws referred to in clause (a) of this Section 3.19, or pursuant to any of the respective implementing regulations or state analogues to such laws, rules or regulations; and

(c) The Company has not (i) received written notification within the immediately preceding three (3) years from the United States Environmental Protection Agency that it is a Potentially Responsible Party under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for "removal" or "remedial" action at a waste site listed on the National Priorities List to which it sent or arranged for the transportation or disposal of hazardous waste, or (ii) received written notification that it is liable for contribution for costs incurred by another Person in taking "removal" or "remedial" action under CERCLA.

**Section 3.20. Books and Records.** The books, accounts and records of the Company have been maintained in accordance with good business practice.

**Section 3.21 Undisclosed Liabilities.** Except as set forth in Schedule 3.21 of the Disclosure Schedule, the Company has no liabilities or obligations of any nature (whether known or unknown and whether absolute, accrued, contingent, or otherwise) except for liabilities or obligations reflected or reserved against in the Financial Statements and current liabilities incurred in the ordinary course of business since the respective dates thereof.

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to each of the Sellers as follows:

**Section 4.1. Corporate Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of Minnesota and has the full corporate right, power and authority to own, lease and operate all of its properties and assets and to carry out its business as it is presently conducted.

**Section 4.2. Authority.** Buyer has all requisite corporate right, power and authority to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly and validly authorized and approved by all necessary corporate action. This Agreement has been duly and validly executed and delivered by Buyer and, assuming this Agreement has been duly authorized, executed and delivered by all of the Sellers, constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

**Section 4.3. Consents and Approvals; No Violations.** Except as set forth in Section 4.3 of the Disclosure Schedule, the execution, delivery and performance of this Agreement by Buyer will not (with or without the giving of notice or the passage of time, or both), (i) violate any applicable provision of law or any rule or regulation of any administrative agency or governmental authority applicable to Buyer, or any order, writ, injunction, judgment or decree of any court, administrative agency or governmental authority applicable to Buyer, (ii) violate the Articles of Incorporation or Bylaws of Buyer, or any agreement of Buyer or its shareholders, (iii) require any consent under or constitute a default under any material agreement, indenture, mortgage, deed of trust, lease, license, or other instrument to which Buyer is a party or by which it is bound, or any material license, permit or certificate held by Buyer, or (iv) require any material consent or approval by, notice to or registration with any governmental authority other than the appropriate filings, if any, pursuant to the HSR Act, and the expiration of the applicable waiting period thereunder.

**Section 4.4. Litigation.** Buyer is not engaged in, nor is there pending or, to the best knowledge of Buyer, threatened, any action, dispute, claim, litigation, arbitration, investigation or other proceeding at law or in equity or before any governmental or other administrative agency which could materially and adversely affect the ability of Buyer to perform any of its payment or other obligations hereunder or the transactions contemplated by this Agreement.

**Section 4.5. Investment Intent.** Buyer is purchasing the Shares for its own account for investment and not with a view to, or for resale in connection with, the distribution thereof, nor with any present intention of distributing or selling any such Shares. Buyer agrees that the Shares may not be sold, transferred, or offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act of 1933, as amended, and/or any applicable state securities laws, except pursuant to an exemption from such registration under the Securities Act of 1933, as amended, and any applicable state securities laws.

**Section 4.6. Buyer's Investigation.** Buyer is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of companies such as the Company. Buyer has undertaken such investigation as it has deemed necessary to enable it to make an

informed and intelligent decision with respect to this Agreement and the transactions contemplated hereby and Buyer acknowledges that Seller and the Company have allowed Buyer such access as has been reasonably requested by Buyer to the personnel, properties, premises and records of the Company for this purpose. To the extent expressly permitted hereafter under this Agreement, Buyer will undertake such further investigation as it deems necessary. Buyer acknowledges that in entering into this Agreement, in acquiring the Shares and in consummating the other transactions contemplated herein, Buyer has relied solely upon its own investigation analysis and, to the extent expressly permitted by this Agreement, the representations and warranties contained in this Agreement, and that the Company (and any of its respective agents, officers, directors, employees, affiliates or representatives) has not made any representation or warranty as to the Sellers, the Company, the Shares, this Agreement or the Business, except as expressly set forth in this Agreement.

**Section 4.7. Ability to Perform.** Buyer currently has available to Buyer sufficient funding to enable Buyer to consummate the purchase of the Shares from the Sellers and otherwise to perform all of Buyer's obligations under this Agreement.

## ARTICLE V

### FURTHER COVENANTS AND AGREEMENTS

**Section 5.1. Covenants of the Sellers Pending the Closing.** Each of the Sellers covenants and agrees that, pending the Closing and prior to the termination of this Agreement, and except as otherwise agreed to in writing by Buyer (including the distribution of the Distributed Assets), each of the Sellers shall, or as appropriate shall cause the Company to:

- (a) conduct the Business solely in the ordinary course and consistent with the past practices of the Company;
- (b) not take or intentionally omit to take any action which would result in a breach of any of Sellers' representations and warranties hereunder in any material respect;
- (c) continue to maintain and service the physical assets used by the Company in the conduct of the Business consistently with its past practices;
- (d) promptly disclose to Buyer any information relating to Sellers' representations and warranties hereunder which, because of an event occurring after the date hereof, is incomplete or is no longer correct in any material respect;
- (e) use its reasonable efforts to cause all of the conditions to the obligations of Buyer under Article VII hereof to be satisfied on or prior to the Closing Date and to obtain, prior to the Closing, all consents of all third parties (excluding landlord consents with respect to the real property leases which

will be obtained by Buyer post-Closing) and governmental authorities necessary for the consummation by the Sellers of the transactions contemplated hereby. Subject to Section 7.1(vii), all such consents will be in writing and executed counterparts will be delivered to Buyer at or prior to the Closing;

(f) provide Buyer's officers, employees, counsel, accountants and other representatives with reasonable access to, during normal business hours, all of the books and records of the Company, make available to representatives of Buyer members of senior management of the Company for reasonable periods of time to answer inquiries of such representatives with respect to Buyer's investigation of the Company and permit such representatives of Buyer to consult with the officers, accountants and counsel of Seller; provided that no such activities unreasonably interfere with normal operation of the Business.

**Section 5.2. Covenants of Buyer Pending the Closing.** Buyer covenants and agrees that, pending the Closing and prior to the termination of this Agreement, and except as otherwise agreed to in writing by the Sellers, Buyer shall:

(a) not take or intentionally omit to take any action which would result in a breach of any of Buyer's representations and warranties hereunder in any material respect;

(b) have available, as of the Closing Date, sufficient funding to enable Buyer to consummate the purchase of the Shares from the Sellers and otherwise to perform all of Buyer's obligations under this Agreement;

(c) use its reasonable efforts to cause all of the conditions to the obligations of the Sellers under Article VIII hereof to be satisfied on or prior to the Closing Date and to obtain, prior to the Closing, all consents of all third parties and governmental authorities necessary for the consummation by Buyer of the transactions contemplated hereby. All such consents will be in writing and executed counterparts thereof will be delivered to Seller at or prior to the Closing; and

(d) promptly disclose to the Sellers any information relating to Buyer's representations and warranties hereunder which, because of an event occurring after the date hereof, is incomplete or is no longer correct in any material respect.

**Section 5.3. Filings.** Promptly after the execution of this Agreement, each of the parties hereto shall prepare and make or cause to be made any required filings, submissions and notifications under the laws of any domestic or foreign jurisdictions to the extent that such filings are necessary to consummate the transactions contemplated hereby and will use its reasonable efforts to take all other actions necessary to consummate the transactions contemplated hereby in a manner consistent with applicable law. Each of the parties hereto will furnish to the other party such necessary information and reasonable assistance as such other party may reasonably request in connection with the foregoing.

**Section 5.4. Effective Time of Closing.** The Closing shall be effective for all purposes as of the close of business on the Closing Date.

**Section 5.5. Announcements.** Except as expressly contemplated by this Agreement, at all times on or before the Closing Date, the parties will mutually agree as to the time, form and content before issuing any press releases or otherwise making any public statements or statements to third parties with respect to transactions contemplated hereby and shall not issue any press release or, except as necessary to perform their respective obligations hereunder, discuss the transactions contemplated hereby with any third party prior to reaching mutual agreement with respect thereto, except as may be required by law. Notwithstanding the foregoing, in the event prior to the Closing any party hereto or any Affiliate of such party is required by law, the Securities Exchange Commission or the rules of any stock exchange on which such party's securities are traded to make a statement with respect to the transactions contemplated herein, such party shall notify in writing the other party hereto as to the time, form and content of such statement.

**Section 5.6. Costs and Expenses.** Whether or not the transactions contemplated by this Agreement are consummated, each party hereto shall pay its own costs and expenses (including legal fees, consultant fees and expenses) incurred in connection with due diligence reviews, the preparation, negotiation and execution of this Agreement and all other agreements, certificates, instruments and documents delivered hereunder, and all other matters relating to the transactions contemplated hereby. All transfer and intangible taxes, if any, in connection with the sale and delivery of the Shares hereunder shall be paid by Buyer. Notwithstanding the above, each of the parties hereto shall bear one-half of the expenses incurred in obtaining the consent of the respective landlords with respect to the real property leases set forth in Section 3.10 of the Disclosure Schedule; provided, however, Sellers shall only be responsible for such expenses up to a maximum amount of \$30,000.00. The Buyer shall provide a reasonably detailed accounting of all such fees and expenses prior to requesting any payment by Sellers.

**Section 5.7. Further Assurances.** Subject to the terms and conditions herein provided, each of the parties hereto agrees to use its reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. If at any time after the Closing Date any further action is reasonably necessary to carry out the purposes of this Agreement, the parties hereto shall take or cause to be taken all necessary action, including, without limitation, the execution and delivery of such further instruments and documents as may be reasonably requested by the other party for such purposes or otherwise to consummate and give effect to the transactions contemplated hereby.

**Section 5.8. Cooperation and Preservation of Records.**

(a) The parties covenant that they will cooperate with each other after the Closing to provide each other with reasonable information relating to the Business. From and after the Closing

Date, all books, records and documents, if any, which were not acquired by Buyer as a result of the consummation of the transactions contemplated by this Agreement and which directly relate to the Business shall be available during regular business hours, upon reasonable notice, to the officers, attorneys, accountants and other authorized representatives of Buyer. The Sellers shall, for a period of four (4) years from and after the Closing Date, maintain and preserve all such books, records and documents and, during such four (4) year period, Buyer may copy, at Buyer's expense, any such books, records and documents. Each of the Sellers acknowledges and agrees that the books and records of the Company relating to the employees of the Company shall be acquired by Buyer as a result of the consummation of the transactions contemplated by this Agreement; provided, that Buyer acknowledges and agrees that the Sellers may make and retain a copy of such books and records relating to such employees.

(b) From and after the Closing Date, all books, records and documents which were acquired by Buyer as a result of the consummation of the transactions contemplated by this Agreement and/or which relate to the operation of the Business up to the Closing shall be available during regular business hours, upon reasonable notice, to the officers, attorneys, accountants and other authorized representatives of the Sellers. Subject to the following, Buyer shall for a period of at least four (4) years from and after the Closing Date, maintain and preserve all such books, records and documents. If upon or prior to the end of such four (4) years Buyer desires to dispose of any such records, Buyer shall give the Sellers not less than sixty (60) days' prior written notice specifying the categories desired to be destroyed and shall give the Sellers reasonable access to inspect such records, and the Sellers shall have the right to remove, at Sellers' expense, any records covered by such notice it may desire to retain. Any records not removed within one hundred twenty (120) days after the date of the mailing of the notice to the Sellers by Buyer may be disposed of, without further obligation to the Sellers under this subparagraph (b).

(c) In the event any of the Sellers is required to defend any action, suit or proceeding arising out of a claim pertaining to the Business which involves actions or events occurring prior to the Closing Date, Buyer shall provide assistance and cooperation to such Seller, including witnesses and documentary or other evidence, as may reasonably be requested by such Seller in connection with its defense. The Seller shall reimburse Buyer for its reasonable out-of-pocket expenses (including attorneys' fees and expenses) incurred in providing such assistance and cooperation.

(d) In the event Buyer is required to defend against any action, suit or proceeding arising out of a claim pertaining to the business conducted by Buyer as a result of the consummation of the transactions contemplated by this Agreement, the Sellers shall provide assistance and cooperation to Buyer, including witnesses and documentary or other evidence, as may reasonably be requested by Buyer in connection with its defense. Buyer shall reimburse the Seller for Sellers' reasonable out-of-pocket expenses (including attorneys' fees and expenses) incurred in providing such assistance.

(e) For such periods as may be stipulated by applicable law, and in any event until the final adjudication or settlement of any dispute or investigation involving Taxes arising out the Business or the operations or affairs of the Company prior to the Closing Date, Buyer will cause the Company to maintain all tax books and records of the Company relating to the Business or to the operations and affairs of the Company before the Closing on a basis consistent with past practice, but in any event until final closing or remedy is reached with respect to any such tax year.

(f) Without the prior written consent of the Seller, Buyer shall take no action, and Buyer shall cause the Company to refrain from taking any action, that affects the federal or state income tax return or tax liability of any of the Sellers, including without limitation amending any federal or state tax return of the Company covering any period or periods ending on or prior to the Closing Date, or settling any examination, administrative appeal or judicial action with respect to any such return. In the event the Company shall receive any notice of examination, proposed deficiency, statutory notice of deficiency or other communication from the Internal Revenue Service with respect to any federal income tax liability or return of the Company for any period through the Closing Date, Buyer shall cause such communication to be immediately forwarded to the Sellers and shall cause the Company to cooperate with the Sellers in permitting the Sellers to control the response to and defense of any matter reflected on such communication that could affect the federal or state income tax return or tax liability of any of the Sellers.

**Section 5.9. Survival.** The representations and warranties of the Sellers or the Buyer contained in this Agreement, including those contained in any Schedule or certificate delivered hereunder or in connection herewith, shall survive the Closing for a period of one year, except for the representations and warranties contained in Section 3.6, which shall survive the Closing for a period of three years. As to each representation and warranty of the parties hereto, the date to which such representation and warranty shall survive is hereinafter referred to as the “**Survival Date**”. The Survival Date shall not apply to the indemnification obligations set forth below in Section 5.10 and 5.11, other than 5.10(a) and 5.11(a).

**Section 5.10. Agreement to Indemnify by the Sellers.** Subject to the terms and conditions of Sections 5.12 and 5.13 hereof, the Sellers hereby agree to indemnify and save the Buyer, the Company, their respective shareholders, officers, directors and employees, and the successors and assigns of each of the foregoing (each, a “**Buyer Indemnitee**”) harmless from and against, for and in respect of, any and all damages, losses, obligations, liabilities, demands, judgments, injuries, penalties, claims, actions or causes of action, encumbrances, costs, and expenses (including, without limitation, reasonable attorneys’ fees and expert witness fees), suffered, sustained, incurred or required to be paid by any Buyer Indemnitee (collectively, “**Buyer’s Damages**”) arising out of, based upon, in connection with, or as a result of:

(a) the untruth, inaccuracy or breach of any representation and warranty of the Sellers contained in this Agreement, including in any Schedule or certificate delivered hereunder or in

connection herewith; provided, however, the Sellers shall have no obligation to pay Buyer's Damages pursuant to this Subsection 5.10(a) unless and until (and only to the extent that) all claims with respect to Buyer's Damages pursuant to this Subsection 5.10(a) exceed a cumulative aggregate total of Fifty Thousand Dollars (\$50,000); provided, further, that the above threshold shall not be applicable to any adjustments to the Purchase Price set forth in Article II or the costs and expenses set forth in Section 5.6.

(b) the breach or nonfulfillment of any covenant or agreement of any Seller contained in this Agreement or in any other agreement, document or instrument delivered hereunder or pursuant hereto;

(c) any and all tax liabilities arising out of or based upon the Distributed Assets or the distribution thereof;

(d) any and all liabilities related to the Salon Business incurred prior to the Closing; and

(e) any and all liabilities incurred by Buyer related to the Distributed Assets prior to or after the Closing.

**Section 5.11. Agreement to Indemnify by Buyer.** Subject to the terms and conditions of Sections 5.12 and 5.13 hereof, the Buyer hereby agrees to indemnify and save the Sellers and their successors and assigns (each, a "Seller Indemnitee") harmless from or against, for and in respect of, any and all damages, losses, obligations, liabilities, demands, judgments, injuries, penalties, claims, actions or causes of action, encumbrances, costs, and expenses (including, without limitation, reasonable attorneys' fees and expert witness fees) suffered, sustained, incurred or required to be paid by any Seller Indemnitee arising out of, based upon or in connection with or as a result of:

(a) the untruth, inaccuracy or breach of any representation and warranty of the Buyer contained in or this Agreement;

(b) the breach or nonfulfillment of any covenant or agreement of the Buyer contained in this Agreement or in any other agreement, document or instrument delivered hereunder or pursuant hereto;

(c) any and all liabilities incurred by Sellers related to the Company and the Salon Business after the Closing.

**Section 5.12 Claims for Indemnification; Insurance.**

(a) No claim for indemnification with respect to a breach of a representation and warranty shall be made under this Agreement after the applicable Survival Date unless prior to such Survival Date the Buyer Indemnitee or the Seller Indemnitee, as the case may be, shall have given the Sellers or the Buyer, as the case may be, written notice of such claim for indemnification based upon actual loss



sustained, or potential loss anticipated, as a result of the existence of any claim, demand, suit, or cause of action against such Buyer Indemnitee or Seller Indemnitee, as the case may be.

(b) The amount of damages otherwise recoverable by either party under this Article shall be reduced to the extent that the party seeking indemnification receives insurance proceeds with respect to the matter for which indemnification is sought.

**Section 5.13 Procedures Regarding Third Party Claims.** The procedures to be followed by the Buyer and the Sellers with respect to indemnification hereunder regarding claims by third persons which could give rise to an indemnification obligation hereunder shall be as follows:

(a) Promptly after receipt by any Buyer Indemnitee or Seller Indemnitee, as the case may be, of notice of the commencement of any action or proceeding (including, without limitation, any notice relating to a tax audit) or the assertion of any claim by a third person which the person receiving such notice has reason to believe may result in a claim by it for indemnity pursuant to this Agreement, such person (the “**Indemnified Party**”) shall give a written notice of such action, proceeding or claim to the party against whom indemnification pursuant hereto is sought (the “**Indemnifying Party**”), setting forth in reasonable detail the nature of such action, proceeding or claim, including copies of any documents and written correspondence from such third person to such Indemnified Party.

(b) The Indemnifying Party shall be entitled, at its own expense, to participate in the defense of such action, proceeding or claim, and, if the Indemnifying Party confirms, in writing, its obligation hereunder to indemnify and hold harmless the Indemnified Party with respect to such remedies in their entirety pursuant to Sections 5.10 or 5.11 hereof, as the case may be, then the Indemnifying Party shall be entitled to assume and control such defense with counsel chosen by the Indemnifying Party and approved by the Indemnified Party, which approval shall not be unreasonably withheld or delayed. The Indemnified Party shall be entitled to participate therein after such assumption, the costs of such participation following such assumption to be at its own expense. Upon assuming such defense, the Indemnifying Party shall have full rights to enter into any compromise or settlement which is dispositive of the matters involved; provided, that such settlement is paid in full by the Indemnifying Party and will not have any direct or indirect continuing material adverse effect upon the Indemnified Party. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay, settle or compromise any such action, proceeding or claim, provided that in such event the Indemnified Party shall waive any right to indemnity therefor hereunder unless the Indemnified Party shall have sought the consent of the Indemnifying Party to such payment, settlement or compromise and such consent was unreasonably withheld or delayed, in which event no claim for indemnity therefor hereunder shall be waived.

(c) With respect to any action, proceeding or claim as to which (i) the Indemnifying Party does not have the right to assume the defense or (ii) the Indemnifying Party shall not have exercised its right to assume the defense, the Indemnified Party shall assume and control the defense of and contest such action, proceeding or claim with counsel chosen by it and approved by the Indemnifying Party, which

approval shall not be unreasonably withheld. The Indemnifying Party shall be entitled to participate in the defense of such action, proceeding or claim, the cost of such participation to be at its own expense. The Indemnifying Party shall be obligated to pay the reasonable attorneys' fees and expenses of the Indemnified Party to the extent that such fees and expenses relate to claims as to which indemnification is due under Sections 5.10 or 5.11 hereof, as the case may be. The Indemnified Party shall have full rights to dispose of such action, proceeding or claim and enter into any monetary compromise or settlement; provided, however, in the event that the Indemnified Party shall settle or compromise any action, proceeding or claim for which indemnification is due under Sections 5.10 or 5.11 hereof, as the case may be, it shall act reasonably and in good faith in doing so.

(d) Both the Indemnifying Party and the Indemnified Party shall cooperate fully with one another in connection with the defense, compromise or settlement of any such action, proceeding or claim, including, without limitation, by making available to the other all pertinent information and witnesses within its control.

**Section 5.14 Effectiveness.** The provisions of this Section 5.9 through 5.13 shall be effective upon consummation of the Closing, and prior to the Closing, shall have no force and effect.

**Section 5.15. Employees and Employee Benefit Plans.**

(a) General Employment, Medical Plans, Unions.

(1) Service Credit. Buyer agrees that Salon Business Employees' service with the Company, or any predecessor of the Company shall be credited in determining eligibility and vesting under any employee benefit plans, programs, policies or arrangements covering such Salon Business Employees established, continued, or otherwise sponsored by the Company or by Buyer or any of its Affiliates after the Closing Date.

(2) Retained Plans; Medical Plans, COBRA. On and after the Closing Date, the Company shall remain and be responsible and liable for the Medical Plan, Cafeteria Plan, Life Insurance and Long-term Disability Plan and all other employee benefit plans and insurance coverages (the "**Retained Plans**") for the Company employees, except for the Lorick Retirement Savings Plan. The Medical Plan shall provide continuation coverage as applicable and mandated by Sections 601-609 of ERISA or Section 4980B of the Code to any Salon Business Employees and any other former employees (and their eligible spouses and dependents) of the Company. Salon Business Employees will be provided ongoing medical, life insurance and disability coverage to the same extent as Buyer provides such coverages for its other similarly situated employees, without the imposition of new deductibles or pre-existing conditions.

(b) Lorick Savings Plans. The Sellers shall terminate the Lorick Savings Plan which is a plan under Section 401(k) of the Code (the "**401(k) Plan**") prior to or effective prior to the Closing

Date and in connection therewith shall amend the 401(k) Plan to fully vest all accounts of all employees actively employed on the date of Plan termination in the 401(k) Plan and to provide for the distribution of all such accounts. The Buyer acknowledges that such termination may involve some post-Closing wind-up activities. The Sellers shall deliver to the Buyer at Closing a duly executed plan amendment and resolutions of the Board of Directors of the Company reflecting the termination of the 401(k) Plan and related amendments to the 401(k) Plan. The Sellers shall, on the Company's behalf, promptly take any and all actions necessitated by or related to the amendment and/or termination of the 401(k) Plan, including but not limited to liquidation of plan assets and processing distributions to participants; filing of determination letter applications, final Forms 5500, and/or other notices with governmental authorities, and the Sellers shall be responsible for any deficiencies related thereto.

(c) Nonqualified Plans and Related Liabilities. Buyer agrees that as of the Closing Date and thereafter, the Company shall continue to have responsibility for (and future liability with respect to) the nonqualified retirement plans, welfare plans, severance agreements and other benefit arrangements listed in Section 5.15 of the Disclosure Schedule ("Nonqualified Plans"), with respect to any Salon Business Employee or former employee of the Company. Buyer further agrees that none of the Sellers shall have any responsibility or liability with respect to the Nonqualified Plans regarding any Transferred Employee or former employee of the Company, except for the Deferred Compensation obligations which shall be included in the Distributed Assets.

(d) Certain Employment Agreements. Buyer acknowledges that the Company shall remain fully responsible for all payments and obligations under the written employment agreements identified in Section 5.15 of the Disclosure Schedule.

(e) Cooperation and Temporary Support. Sellers will cooperate with Buyer to transfer employee records as may be necessary to implement this Agreement. Buyer agrees to maintain such records in confidence as required by applicable law. Buyer shall reimburse Sellers for all costs (including the cost of employer time and reasonable overhead) incurred by Sellers in transferring such records.

(f) No Claims Based on Agreement. No Person (other than parties to this Agreement), including without limitation Salon Business Employees, former employees of the Company, and their spouses and beneficiaries, shall be entitled to assert any claim based on any of the provisions of this Section against any party to this Agreement (or any of their Affiliates).

(g) Wage Reports. The Sellers shall prepare and mail to Buyer prior to January 15, 2001 all Form W-2's for Salon Business Employees for the period from January 1, 2000 to October 31, 2000, and Form 1099's for all required parties.

**Section 5.16. Distributions in the Ordinary Course.** Notwithstanding any other provision of this Agreement to the contrary, from and after the date hereof, the Company shall be entitled to

accordance with applicable tax laws and the terms of this Agreement. Sellers shall execute and deliver to Buyer such documents or forms as are reasonably requested and are required by any tax laws properly to complete the Code § 338 Forms at least twenty days prior to the date such Code § 338 Forms are required to be filed.

(f) In connection with the Election, Buyer and Sellers agree that the (i) computation of the Modified Aggregate Deemed Sale Price (as defined under applicable Treasury Regulations) of the assets of the Company and (ii) allocation of such Modified Aggregate Deemed Sale Price among the Company's assets shall be as set forth in Section 5.18 of the Disclosure Schedule.

## ARTICLE VI

### TERMINATION

**Section 6.1. Termination.** This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written agreement executed by the Sellers and Buyer;
- (b) by the Sellers or Buyer at any time after December 31, 2000, if, through no fault of the party seeking termination, the Closing shall not have occurred;
- (c) by Sellers or Buyer, if any governmental or regulatory authority, agency or commission, including courts of competent jurisdiction, domestic or foreign, shall have issued an order, decree, or ruling or taken other action, restraining, enjoining or otherwise prohibiting the transfer of the Shares contemplated hereby and such order, decree, ruling or other action shall have become final and nonappealable;
- (d) by Buyer, if there has been a material violation or breach by Sellers of any agreement or, subject to Section 7.2 hereof, any representation or warranty contained in this Agreement which (i) has rendered the satisfaction of any condition to the obligations of Buyer impossible or is not curable or, if curable, has not been cured within thirty (30) days following receipt by the non-terminating party of notice of such breach from the terminating party, and (ii) has not been waived by Buyer; or
- (e) by Sellers, if there has been a material violation or breach by Buyer of any agreement, representation or warranty contained in this Agreement which (i) or has rendered the satisfaction of any condition to the obligations of Sellers impossible or is not curable or, if curable, has not been cured within thirty (30) days following receipt by the non-terminating party of notice of such breach from the terminating party, and (ii) has not been waived by Sellers.

(f) by Buyer, if it is not reasonably satisfied with its due diligence review of the real property leases of the Company listed on Section 3.10 of the Disclosure Schedule.

**Section 6.2. Procedure and Effect of Termination.** In the event of termination of this Agreement pursuant to Section 6.1 hereof, written notice thereof shall forthwith be given to the other parties hereto and this Agreement (other than Section 5.6 hereof and as provided in paragraph (b) below) shall terminate and the transactions contemplated hereby shall be abandoned without further action by the parties hereto. If this Agreement is terminated as provided herein:

(a) all information received by Buyer with respect to the Business or the Company shall be held subject to and returned or destroyed in accordance with the terms of the Confidentiality Agreement, which agreement shall continue to be in full force and effect notwithstanding the termination of this Agreement and all copies of such information in Buyer's possession or in the possession of any of its representatives shall be returned to the Sellers or destroyed by Buyer;

(b) except as otherwise expressly provided in this Agreement, any termination pursuant to Section 6.1 hereof shall not relieve any party from any liability for any material breach prior to such termination of such party's covenants or agreements set forth in the Agreement; and

(c) all filings, applications and other submissions made pursuant to Section 5.3 hereof or prior to the execution of this Agreement in contemplation thereof shall, to the extent practicable, be withdrawn from the agency or other Person to which made.

## ARTICLE VII

### CONDITIONS TO BUYER'S OBLIGATIONS

Each and every obligation of Buyer to consummate the transactions described in this Agreement shall be subject to the fulfillment, on or before the Closing Date, of the following conditions precedent:

**Section 7.1. Sellers' Closing Deliveries.** Sellers shall have delivered, or caused to be delivered, to Buyer at the Closing each of the following:

(i) stock certificates representing the Shares, duly endorsed in blank, or accompanied by duly endorsed stock transfer powers;

(ii) a copy of the Articles of Incorporation of the Company as in effect on the Closing Date;

(iii) a certificate of good standing with respect to the Company issued by the Secretary of State of the State of North Carolina and a certificate of qualification of good standing or

**Section 7.6. No Injunction or Proceeding.** No governmental or regulatory authority, agency or commission, including courts of competent jurisdiction, domestic or foreign, shall have issued an order, decree, or ruling or taken other action, restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, which order, decree, ruling or other action remains in effect.

**Section 7.7 Non-Competition and Consulting Agreements.** Each of the F.W. Lorick, Jr. and Gayrie P. Case shall have executed and delivered to the Company his or her respective Non-Competition and Consulting Agreement. Each of Forrest W. Lorick III and Leigh Allyson Schilb shall have executed and delivered to the Company his or her respective Non-Competition Agreement.

## **ARTICLE VIII**

### **CONDITIONS TO SELLER'S OBLIGATIONS**

Each and every obligation of the Sellers to consummate the transactions described in this Agreement shall be subject to the fulfillment, on or before the Closing Date, of the following conditions precedent:

**Section 8.1. Payment of Purchase Price.** Buyer shall have satisfied and paid the Purchase Price pursuant to Article II hereof.

**Section 8.2. Buyer's Closing Deliveries.** Buyer shall deliver, or cause to be delivered, to the Sellers at the Closing each of the following:

- (i) valid and binding consents of all Persons, if any, whose consent or approval is required to be set forth in Section 4.3 of the Disclosure Schedule;
- (ii) a certified copy of the resolutions of the Board of Directors of Buyer authorizing the execution, delivery and performance of this Agreement;
- (iii) the certificates referenced in Sections 8.3 and 8.4 hereof;
- (iv) the Escrow Agreement duly executed by the Buyer; and
- (v) all documents, including without limitation, appropriate resolutions necessary to effect a change of name of the Company to a name not including the term "Lorick". The Buyer shall file such documents promptly after the Closing, but in no event more than thirty (30) days after the Closing Date.

**Section 8.3. Representations and Warranties.** The representations and warranties of Buyer contained in this Agreement, as modified by the Disclosure Schedule, shall have been true on the date hereof in all material respects and shall be true on the Closing Date in all material respects, with the

same effect as though such representations were made as of such date or, in case of representations and warranties made as of a specified date earlier than the Closing Date, on and as of such earlier date, and Buyer shall have delivered to the Sellers on the Closing Date a certificate, dated as of the Closing Date, to such effect.

**Section 8.4. Performances.** Buyer shall have, in all material respects, performed and complied with all covenants required by this Agreement to be performed or complied with by it prior to or at the Closing and Buyer shall have delivered to Seller on the Closing Date a certificate, dated as of the Closing Date, to such effect.

**Section 8.5. Legal Opinion.** Counsel for Buyer shall have delivered to the Sellers its opinion dated the Closing Date and substantially in the form of **Exhibit F** attached hereto.

**Section 8.6. Governmental Consents and Approvals.** All necessary and appropriate governmental consents, approvals and filings, including those pursuant to the HSR Act, if applicable, shall have been obtained or made and all applicable waiting periods (including any extensions thereof) relating thereto shall have expired or otherwise terminated.

**Section 8.7. No Injunction or Proceeding.** No governmental or regulatory authority, agency or commission, including courts of competent jurisdiction, domestic or foreign, shall have issued an order, decree, or ruling or taken other action, restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, which order, decree, ruling or other action remains in effect.

**Section 8.8. Non-Competition and Consulting Agreements.** Buyer shall have executed and delivered to each of F.W. Lorick, Jr. and Gayrie P. Case its respective Non-Competition and Consulting Agreement. Buyer shall have executed and delivered to each of Forrest W. Lorick, III and Leigh Allyson Schilb its respective Non-Competition Agreement.

## **ARTICLE IX**

### **MISCELLANEOUS**

**Section 9.1. Entire Understanding, Waiver, Etc.** This Agreement and the Confidentiality Agreement set forth the entire understanding of the parties and supersede any and all prior or contemporaneous agreements, arrangements and understandings relating to the subject matter hereof, and the provisions hereof may not be changed, modified, waived or altered except by an agreement in writing signed by the party entitled to the benefit of the provision(s) to be changed, modified or waived hereto. A waiver by any party of any of the terms or conditions of this Agreement, or of any breach thereof, shall not be deemed a waiver of such term or condition for the future, or of any other term or condition hereof, or of any subsequent breach thereof.

**Section 9.2. Severability.** If any provision of this Agreement or the application of such provision shall be held by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

**Section 9.3. Captions.** The captions herein are for convenience only and shall not be considered a part of this Agreement for any purpose, including, without limitation, the constructions or interpretation of any provision hereof.

**Section 9.4. Notices.** All notices, requests, demands and other communications (collectively, "**Notices**") that are required or may be given under this Agreement shall be in writing. All Notices shall be deemed to have been duly given or made: if by hand, immediately upon delivery if it is a Business Day during the hours of 9:00 a.m. and 5:00 p.m. in the place of receipt and otherwise at the beginning of the first Business Day thereafter; if by telecopier or similar device, immediately upon sending, provided notice is sent on a Business Day during the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, but if not, then immediately upon the beginning of the first Business Day after being sent; if by Fed Ex, Express Mail or any other reputable overnight delivery service, one day after being placed in the exclusive custody and control of said courier; and if mailed by certified mail, return receipt requested, five (5) Business Days after mailing. Notwithstanding the foregoing, with respect to any Notice given or made by telecopier or similar device, such Notice shall not be effective unless and until (i) the telecopier or similar device being used prints a written confirmation of the successful completion of such communication by the party sending the Notice, and (ii) a copy of such Notice is deposited in first class mail to the appropriate address for the party to whom the Notice is sent. In addition, notwithstanding the foregoing, a Notice of a change of address by a party hereto shall not be effective until received by the party to whom such notice of a change of address is sent. All Notices are to be given or made to the parties at the following addresses (or to such other address as either party may designate by Notice in accordance with the provisions of this Section):

(a) If to Seller:

Mark Lorick  
Lorick Enterprises, Inc.  
315 East Fifth Street  
P. O. Box 32668  
Charlotte, NC 28232  
Fax Number: (704) 358-0237

with a copy (which shall not constitute Notice) to:

Parker Poe Adams & Bernstein L.L.P.  
2500 Charlotte Plaza  
Charlotte, NC 28244  
Attention: Fred C. Thompson, Jr., Esq.  
Fax Number: (704) 334-4706



(b) If to Buyer:

Regis Corporation  
7201 Metro Boulevard  
Minneapolis, Minnesota 55439  
Attention: Eric Bakken, Esq.  
Fax Number: 952-947-7200

**Section 9.5. Successors and Assigns.** Neither this Agreement nor any of the rights or obligations arising hereunder shall be assignable without the prior written consent of the parties hereto. Provided, however, that notwithstanding the foregoing Buyer may assign its rights and obligations under this Agreement to any wholly owned subsidiary of Buyer which agrees in writing to be bound by and to perform fully all of Buyer's obligations hereunder and, provided that in the event of any such assignment by Buyer, Buyer shall remain liable hereunder for the performance of Buyer's obligations hereunder notwithstanding such assignment.

**Section 9.6. Parties in Interest.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as otherwise expressly provided herein, nothing in this Agreement and nothing implied by this Agreement shall confer upon any Person, other than the parties hereto, and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

**Section 9.7. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

**Section 9.8. Construction of Terms.** Any reference herein to the masculine or neuter shall include the masculine, the feminine and the neuter, and any reference herein to the singular or plural shall include the opposite thereof. The parties to this Agreement acknowledge that each party and counsel to each party has participated in the drafting of this Agreement and agree that this Agreement shall not be interpreted against one party or the other based upon who drafted it.

**Section 9.9. Governing Law.** This Agreement shall be controlled, construed and enforced in accordance with the laws of the State of North Carolina applicable to agreements made and to be performed in that State.

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year first above written.

**SELLERS:**

THE F.W. LORICK, JR. 1997 TWO YEAR  
GRANTOR RETAINED ANNUITY TRUST

By: Max Justice  
Max Justice, Trustee

THE F.W. LORICK, JR. 1997 THREE YEAR  
GRANTOR RETAINED ANNUITY TRUST

By: Max Justice  
Max Justice, Trustee

THE F.W. LORICK, JR. 1997 FIVE YEAR  
GRANTOR RETAINED ANNUITY TRUST

By: F.W. Lorick, Jr.  
F.W. Lorick, Jr., Trustee

THE MIRIAM H. LORICK, 1997 THREE YEAR  
GRANTOR RETAINED ANNUITY TRUST

By: Max Justice  
Max Justice, Trustee

THE MIRIAM H. LORICK, 1997 FIVE YEAR  
GRANTOR RETAINED ANNUITY TRUST

By: Max Justice  
Max Justice, Trustee

THE MIRIAM H. LORICK, 1997 SEVEN YEAR  
GRANTOR RETAINED ANNUITY TRUST

By: Max Justice  
Max Justice, Trustee

TRUST AGREEMENT DATED APRIL 28, 1976,  
AS AMENDED, F/B/O LEIGH ALLYSON SCHILB

By: Max Justice  
Max Justice, Trustee

Forrest W. Lorick III  
Forrest W. Lorick III

**BUYER:**

REGIS CORPORATION

By: Paul D. Finkelstein  
Name: Paul D. Finkelstein  
Title: President

**EXHIBIT A**

Ownership of Shares

	<b><u>Number of Shares</u></b>	<b><u>% Ownership</u></b>
The F. W. Lorick, Jr. 1997 Two Year Grantor Retained Annuity Trust, Max Justice, Trustee	15,188	6.64%
The F. W. Lorick, Jr. 1997 Three Year Grantor Retained Annuity Trust, Max Justice, Trustee	15,189	6.64%
The F. W. Lorick, Jr. 1997 Five Year Grantor Retained Annuity Trust, F. W. Lorick, Jr. , Trustee	15,189	6.64%
The Miriam H. Lorick 1997 Three Year Grantor Retained Annuity Trust, Max Justice, Trustee	23,412	10.23%
The Miriam H. Lorick 1997 Five Year Grantor Retained Annuity Trust, Max Justice, Trustee	25,694	11.23%
The Miriam H. Lorick 1997 Seven Year Grantor Retained Annuity Trust, Max Justice, Trustee	27,879	12.18%
Trust Agreement dated April 28, 1976, as amended, F/B/O Leigh Allyson Schilb, Max Justice, Trustee	53,139	23.22%
Forrest W. Lorick III	53,140	23.22%

**SECTION 3.9 OF DISCLOSURE SCHEDULE****Patents, Trademarks, Trade Names**

1. LaMarick
2. Hair Plus
3. Shear Pleasure
4. Beauty Unlimited
5. Beauty Unlimited Express
6. Cuts Plus
7. Southeastern College of Beauty Culture (will be assigned to Lorick & Schilb, LLC prior to the Closing as a Distributed Asset)
8. Belk Hair Design (will be assigned to Lorick & Schilb, LLC prior to the Closing as a Distributed Asset)