

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CONTRIBUTION AGREEMENT ASSIGNING THE ENTIRE INTEREST AND THE GOODWILL

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Hearts On Fire Company		08/01/2001	CORPORATION: DELAWARE

**RECEIVING PARTY DATA**

Name:	Hearts On Fire Company, LLC
Street Address:	99 SUMMER STREET
Internal Address:	FOURTH FLOOR
City:	BOSTON
State/Country:	MASSACHUSETTS
Postal Code:	02110
Entity Type:	LIMITED LIABILITY COMPANY: MASSACHUSETTS

**PROPERTY NUMBERS Total: 1**

Property Type	Number	Word Mark
Serial Number:	76541070	BELOVED

**CORRESPONDENCE DATA**

Fax Number: (212)335-4501  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Email: nytrademarks@dlapiper.com  
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ATTORNEY DOCKET NUMBER:	358833-4
NAME OF SUBMITTER:	Monica P. McCabe
Signature:	/monicamccabe/

CH \$40.00 76541070

Date:

08/14/2006

**Total Attachments: 9**

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## CONTRIBUTION AGREEMENT

This Contribution Agreement (this "**Agreement**") is entered into as of this 1st day of August, 2001 (the "**Contribution Date**") by and between Hearts On Fire Company, a Delaware corporation ("**HOF**"), and Hearts On Fire Company, LLC, a Massachusetts limited liability company ("**LLC**").

WHEREAS, HOF is in the business of buying, acquiring, owning, selling, marketing, branding, consulting, disposing of and otherwise dealing with precious stones, and manufacturing jewelry, directly or indirectly through joint ventures, partnerships or other entities (the "**Business**");

WHEREAS, HOF wishes to contribute the Business to LLC in exchange for ninety-nine (99) Shares (as defined in the Operating Agreement of the LLC), in a nontaxable exchange of property for an equity interest under the provisions of the Internal Revenue Code of 1986, as amended; and

WHEREAS, LLC wishes to acquire the Business and said assets and assume said liabilities and wishes to issue the Shares to HOF as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreements herein contained, and for other good and valuable consideration mutually exchanged by the parties hereto, the receipt and sufficiency of which are hereby acknowledged, HOF and LLC agree as follows:

### ARTICLE I CONTRIBUTION OF ASSETS BY HOF

#### SECTION 1.1 Contribution of the Assets.

(a) Upon the terms and subject to the conditions set forth in this Agreement, HOF hereby assigns, transfers, and delivers to LLC, as a contribution, free and clear of all title defects, objections, liens, pledges, claims, rights of first refusal, options, charges, security interests, mortgages, or other encumbrances of any nature whatsoever (collectively, "**Encumbrances**") other than "**Permitted Encumbrances**" (as defined in Section 1.1(b) of this Agreement), all of its right, title and interest in the assets of every kind and description, real, personal or mixed, tangible or intangible, owned by HOF and used primarily in the conduct of the Business by HOF as the same shall exist on the Contribution Date (the "**Assets**") including, without limitation, all right, title, and interest of HOF in, to, and under:

(i) The leases of certain real property, as described on Schedule 1.1(a)(i) hereto, together with all fixtures, office equipment, furnishings, furniture, and other tangible property located at such offices (collectively, the "**Leased Premises**");

(ii) The machinery, equipment, and other tangible property (including, without limitation, maintenance and operating supplies, and spare parts for such machinery and

equipment) located on, or used at, the Leased Premises (as defined in Section 3.7) or otherwise used in connection with the Business (collectively, the "Equipment");

(iii) The merchandise, goods, supplies, and inventories, with respect to the Business (collectively, the "Inventory");

(iv) All inventions, know-how, show-how, designs, trade secrets, trademarks, manufacturing processes, formulae, technology or the like, and any applications for any of the foregoing, owned by HOF used in connection with the Business (collectively, the "Intellectual Property").

(v) all contracts, agreements, leases, licenses, and other instruments, arrangements, and commitments relating to the Assets or the Business (collectively, "Rights");

(vi) All certificates of occupancy and other transferable licenses, permits, registrations, authorizations, use agreements, orders, or approvals of governmental or quasi-governmental agencies and authorities (whether federal, state, local, municipal, or foreign) or private parties relating to the construction, use, operation, or enjoyment of the Assets (collectively, "Permits");

(vii) All contracts and accounts receivable arising out of sales of inventory of the Business prior to the close of business on the Contribution Date;

(viii) All prepaid rentals and other prepaid expenses arising from payments made by HOF related to the Assets prior to the close of business on the Contribution Date for goods or services;

(ix) Originals or copies of all books, records, files, and papers, whether in hard copy or computer format, used in the Business, including without limitation, engineering information, manuals and data, sales and advertising materials, sales and purchase correspondence, lists of present and former suppliers, and personnel and employment records and, with respect to information relating to "taxes", only information that is necessary for the preparation of any tax returns to be filed by LLC after the Contribution Date or the determination of the tax basis of the Assets; and

(x) All lists of present customers (including information with regard to products purchased by such customers) and goodwill associated with the Assets.

HOF intends, by this instrument, to transfer all of its assets to LLC with HOF retaining as its sole asset its investment in LLC.

(b) For purposes of this Agreement, "Permitted Encumbrances" shall mean (i) the "Assumed Liabilities," as defined in Section 1.2 of this Agreement; (ii) liens for current

taxes not yet due and payable; and (iii) building or use restrictions, exceptions, variances, reservations, or similar Encumbrances of record affecting, but not materially interfering with the present use of, any Leased Premises.

SECTION 1.2            Assumed Liabilities. Subject to the terms and conditions of this Agreement, in reliance on the representations, warranties, covenants, and agreements of the parties contained herein, LLC hereby assumes and agrees to pay, discharge, or fulfill the following liabilities and obligations relating to the Business: any and all liabilities of HOF which arose out of the Business, including, without limitation, all debts and obligations to Wells Fargo Business Credit, Inc. and to all vendors of HOF or to third parties (with the exception of the Excluded Liabilities as defined below), regardless of when or how such liabilities were incurred, whether or not such liabilities are contingent, known or unknown (collectively, the "Assumed Liabilities").

SECTION 1.3            Excluded Liabilities. Notwithstanding any provision of this Agreement or any Conveyance Instrument (as defined below) to the contrary, the LLC is not assuming the liabilities described in Schedule 1.3 hereto.

SECTION 1.4            Conveyance Instruments. In order to effectuate the contribution, conveyance, transfer and delivery of the Assets as contemplated by this Article I, HOF has, or will hereafter, execute and deliver, or cause to be executed and delivered, deeds, bills of sale, endorsements, assignments (including, but not limited to, assignments of leases, accompanied by all requisite landlord consents, and assignments of all rights of HOF under any agreements and other instruments of transfer, all in such form as the LLC reasonably requests (collectively, the "Conveyance Instruments"). In the event that an assignment for any Leased Premises is not readily available, HOF shall diligently pursue such assignment and HOF shall continue to hold such lease exclusively for the Business and the Business shall bear all economic costs with respect thereto.

SECTION 1.5            Consideration for Contributed Assets. In consideration for the contributed Assets, upon the terms and subject to the conditions set forth in this Agreement, on the Contribution Date, LLC shall issue to HOF ninety-nine (99) Shares and shall assume the Assumed Liabilities set forth in Section 1.2.

SECTION 1.6            Transfer "As Is." The contribution, transfer, conveyance and delivery of the Assets by HOF to the LLC shall be made "AS IS," "WHERE IS" and "WITH ALL FAULTS." HOF makes no representation or warranty of any kind to the LLC respecting the Assets. HOF HEREBY DISCLAIMS ANY AND ALL IMPLIED, STATUTORY AND REGULATORY WARRANTIES WITH RESPECT TO THE PROPERTY, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

ARTICLE II  
EVENTS OCCURRING ON THE CONTRIBUTION DATE; POST-CLOSING  
COVENANTS

SECTION 2.1      Deliveries by HOF. Simultaneously with the execution hereof, HOF has delivered to LLC the following:

(a)      The Conveyance Instruments to effect the contribution of the Assets to LLC and the assumption of the Assumed Liabilities; such Conveyance Instruments to be those reasonably deemed necessary by, and to be in form and substance reasonably satisfactory to LLC;

(b)      A copy of the resolutions of HOF's Board of Directors and shareholders, certified by its Secretary, authorizing or ratifying its execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby; and

(c)      The executed counterpart copies of all consents, approvals, authorizations, and Permits, if any, from third parties.

SECTION 2.2      Deliveries by LLC. Simultaneously with the execution hereof, LLC has delivered to HOF the following:

(a)      A copy of the Operating Agreement which shall indicate that HOF owns 99.5 Shares (HOF owned .5 Shares prior to this transaction, and as the result of the transaction contemplated by this Agreement, HOF shall own 99.5 Shares), certified by the Secretary of LLC as being in full force and effect; and

(b)      A copy of the resolutions of LLC's Board of Managers and Members, certified by its Secretary, authorizing or ratifying its execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby.

SECTION 2.3      Use of Names. After the date hereof, HOF shall not use in any manner the name "Hearts on Fire" (or any variation of such name or tradename, trademark, logo or service mark included in the Assets). HOF shall promptly after the date of this Agreement change its name.

SECTION 2.4      Post-Closing Account Receivables. If HOF receives payments on any of LLC's accounts receivable after the Closing, HOF shall receive such payments in trust for the LLC and shall deliver such payments to the LLC within fifteen (15) days after receipt. The parties agree to cooperate in good faith with one another in connection with their respective obligations set forth in this Section 2.4.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF HOF

HOF represents and warrants to LLC as follows:

SECTION 3.1           Organization and Good Standing. HOF is a corporation duly organized, validly existing, and in good standing under the corporate laws of the State of Delaware. HOF is duly licensed or qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the nature of the Business or the character of the properties owned or leased by HOF and is used in the Business requires such licensing or qualification, except where the failure to so qualify would not have a material effect on LLC.

SECTION 3.2           Authorization and Enforceability. HOF has full capacity, power, and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement is binding upon HOF and is enforceable against HOF in accordance with the terms of this Agreement , except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (whether applied in a proceeding at law or in equity). The signing, delivery, and performance of this Agreement have been duly authorized by all necessary action of the directors and shareholders of HOF.

ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF LLC

LLC represents and warrants to HOF as follows:

SECTION 4.1           LLC Organization and Good Standing. LLC is duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts.

SECTION 4.2           Authorization and Enforceability. LLC has the power and authority to execute, deliver and perform this Agreement and the other documents and instruments contemplated hereby. The execution, delivery and performance of this Agreement and the documents contemplated hereby, and the consummation of the transactions contemplated hereby and thereby have been duly authorized and approved by LLC and its Members. This Agreement, and each of the other agreements, documents and instruments to be executed and delivered by LLC have been duly executed and delivered by, and constitute the valid and binding obligation of LLC enforceable against LLC in accordance with their terms , except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (whether applied in a proceeding at law or in equity).

ARTICLE V  
INDEMNIFICATION

5.1 Survival. All representations and warranties of in this Agreement, or in any instrument or document furnished in connection with this Agreement or the transactions contemplated hereby, shall survive the execution of this Agreement. All such representations and warranties shall expire six (6) months after the date of this Agreement, except that (a) claims, if any, asserted in writing to the other party prior to such period identified as a claim for indemnification pursuant to this Section 5.1 shall survive until finally resolved and satisfied in full. All covenants and agreements of HOF contained herein shall survive for a period of six (6) months. All covenants and agreements of the LLC shall survive for the applicable statute of limitations.

5.2 Indemnification by HOF. Subject to Section 5.1 above and provided that any claim for indemnification hereunder shall be asserted prior to the expiration of the survival period set forth in Section 5.1, HOF, as Indemnifying Party, shall indemnify and hold harmless the LLC and its officers, directors, employees and shareholders, as Indemnified Party, against and from any Damages suffered or incurred by them arising out of or in any manner attributable to (i) any inaccuracy or breach by the HOF of any representation or warranty of HOF contained herein, and (ii) any Excluded Liability.

5.3 Indemnification by LLC. Subject to Section 5.1 above and provided that any claim for indemnification hereunder shall be asserted prior to the expiration of the survival period set forth in Section 5.1, LLC, as Indemnifying Party, shall indemnify and hold harmless HOF and its officers, directors, employees and shareholders, as Indemnified Party, for, against and from any Damages suffered or incurred by them arising out of or in any manner attributable to (i) any inaccuracy or breach by LLC of any representation or warranty of LLC contained herein, or (ii) any Assumed Liabilities.

5.4 Procedures Relating to Indemnification.

(a) Notice. In order for an Indemnified Party to be entitled to any indemnification, defense or hold harmless provided for in this Section 5, such Indemnified Party must notify the Indemnifying Party in writing, and in reasonable detail, of the claim. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, within 5 business days after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the claim.

(b) Participation. If a claim is made by a third party is made against an Indemnified Party, the Indemnifying Party will be entitled to participate in the defense thereof and, if it so chooses, to assume the defense thereof with counsel selected by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. Should the Indemnifying Party be entitled to, and so elect to, assume the defense of a claim by a third party, the Indemnifying Party will not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party is



entitled to assume and does assume such defense, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, separate from the counsel employed by the Indemnifying Party, it being understood that the Indemnifying Party shall control such defense but the fees and expenses of such counsel shall be the expense of such Indemnified Party. If the Indemnifying Party is entitled to, and chooses to, defend or prosecute any claim by a third party, all the parties hereto shall cooperate in the defense or prosecution thereof. Such cooperation shall include the retention and, upon the Indemnifying Party's request, the provision to the Indemnifying Party of records and information which are reasonably relevant to such claim, and making personnel available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Whether or not the Indemnifying Party shall have assumed the defense of such a claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such claim without the Indemnifying Party's prior written consent (which consent shall not be unreasonably withheld or delayed). The Indemnifying Party, without the written consent of the Indemnified Party, shall not settle or compromise or consent to the entry of any judgment with respect to any action or claim of any third party if the effect thereof is to admit any criminal liability by, or to permit any injunctive relief or other order providing non-monetary relief to be entered against, the Indemnified Party.

(c) Acceptance or Dispute. Upon receipt of notice of any claim of indemnity hereunder, the Indemnifying Party, within 30 days after such receipt, shall notify the Indemnified Party that such Indemnifying Party either (i) acknowledges and accepts its obligation and agrees to accept liability for the Damages specified in such claim or (ii) disputes such claim. Failure to give such notice will be deemed to constitute acknowledgment and acceptance by the Indemnifying Party.

5.5 Payment of Indemnity Payments. If any payment is due to an Indemnified Party, such payment shall be made to such Indemnified Party within 10 days of such payment becoming due, and any payment that is made after such 10th day shall bear interest from and including the date due to but excluding the date of payment, at a rate equal to the base or prime rate published by *the Wall Street Journal* from time to time in effect on the date such payment became due, provided that no payment shall be due so long as it is the subject of any reasonable contest by the Indemnifying Party.

## ARTICLE VI MISCELLANEOUS

SECTION 6.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts (without regard to its conflicts of law doctrines).

SECTION 6.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and

the same instrument and shall become a binding Agreement when the counterparts have been signed by each of the parties and delivered to the other party.

SECTION 6.3 Headings. The article and section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 6.4 Entire Agreement. This Agreement, including the exhibits, schedules, and other documents and instruments referred to herein, embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

SECTION 6.5 Severability. If any one or more provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

SECTION 6.6 Modifications and Amendments. The terms and provisions of this Agreement may be modified or amended only by written agreement executed by all parties hereto.

SECTION 6.7 Schedules. All Schedules attached hereto are hereby incorporated in and made a part as if set forth in full herein.

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

HEARTS ON FIRE COMPANY

By: 

HEARTS ON FIRE COMPANY, LLC

By: 

SCHEDULE 1.1(a)(i)

The following leases of real property are being transferred by HOF to LLC:

1. A lease agreement, as amended, dated February 1, 2000, between Hearts On Fire Company and Susan Rothman, for the premises contained at 333 Washington Street, Suite 430, Boston, MA 02108.
2. A lease agreement dated June 1, 1999, between Hearts On Fire Company and Joseph K. Kelley, for the premises contained at 333 Washington Street, Suite 851, Boston, MA 02108.