

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re: ) Chapter 11  
)  
MERVYN'S LLC, ET. AL. )  
) Case No. \_\_\_\_\_  
Debtors. )  
)

**EXHIBIT SUPPLEMENT TO DEBTORS' MOTION FOR ORDER (A) AUTHORIZING DEBTORS TO OBTAIN INTERIM POST-PETITION FINANCING AND GRANT SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS PURSUANT TO 11 U.S.C. §§ 105 AND 364(c); (B) MODIFYING THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362; (C) AUTHORIZING DEBTORS TO ENTER INTO AGREEMENTS WITH WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN), IN ITS CAPACITY AS ADMINISTRATIVE AND COLLATERAL AGENT FOR ITSELF AND CERTAIN OTHER LENDERS; (D) AUTHORIZING DEBTORS TO USE COLLATERAL SUBJECT TO LIENS AND SECURITY INTERESTS INCLUDING CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION IN RESPECT THEREOF AND  
(E) SCHEDULING A FINAL HEARING  
PURSUANT TO BANKRUPTCY RULE 4001**

A. Loan Agreement.

Loan and Security Agreement, dated September 2, 2004, by and among Wachovia Capital Finance Corporation (Western), in its capacity as administrative agent and collateral agent (in such capacity, "Agent") for itself and the lenders from time to time party thereto (collectively with Agent, the "Lenders"), Mervyn's LLC ("Borrower") and Mervyn's Brands, LLC ("Guarantor"), together with Amendment No. 1 to Loan and Security Agreement, dated October 25, 2004, Amendment No. 2 to Loan and Security Agreement, dated December 22, 2005, Amendment No. 3 to Loan and Security Agreement, dated June 8, 2006, Amendment No. 4 to Loan and Security Agreement, dated March 14, 2007, and Amendment No. 5 to Loan and Security Agreement, dated October 5, 2007.

B. Loan Documents.

1. Pledge and Security Agreement, dated September 2, 2004, by Borrower in favor of Agent, with respect to 100% of the ownership interests of Guarantor.
2. Guarantee, dated September 2, 2004, by Guarantor in favor of Agent.
3. Trademark Collateral Assignment and Security Agreement, dated September 2, 2004, by and between Guarantor and Agent, as recorded



8. Deposit Account Control Agreement, dated June 5, 2008, by and among Borrower, Agent and Bank of America, N.A.
9. Account Control Agreement, dated May 31, 2005, by and among Borrower, Agent and Evergreen Service Company, LLC.

[Execution]

LOAN AND SECURITY AGREEMENT

by and among

MERVYN'S LLC  
as Borrower

and

MERVYN'S BRANDS, LLC  
as Guarantor

CONGRESS FINANCIAL CORPORATION (WESTERN)  
as Administrative Agent and Collateral Agent

CONGRESS FINANCIAL CORPORATION (WESTERN)  
and GOLDMAN SACHS CREDIT PARTNERS L.P.  
as Joint Lead Arrangers and Joint Bookrunners

GOLDMAN SACHS CREDIT PARTNERS L.P.  
as Syndication Agent

GENERAL ELECTRIC CAPITAL CORPORATION  
THE CIT GROUP/BUSINESS CREDIT, INC.  
as Documentation Agents

and

THE LENDERS FROM TIME TO TIME PARTY HERETO  
as Lenders

Dated: September 2, 2004

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS.....	1
SECTION 2. CREDIT FACILITIES.....	36
2.1 Loans.....	36
2.2 Letter of Credit Accommodations.....	36
2.3 Commitments.....	41
2.4 Bank Products.....	42
SECTION 3. INTEREST AND FEES.....	42
3.1 Interest.....	42
3.2 Fees.....	43
3.3 Changes in Laws and Increased Costs of Loans.....	43
SECTION 4. CONDITIONS PRECEDENT.....	46
4.1 Conditions Precedent to Initial Loans and Letter of Credit Accommodations.....	46
4.2 Conditions Precedent to All Loans and Letter of Credit Accommodations.....	50
SECTION 5. GRANT AND PERFECTION OF SECURITY INTEREST.....	50
5.1 Grant of Security Interest.....	50
5.2 Perfection of Security Interests.....	52
5.3 Special Provisions Regarding Collateral.....	56
SECTION 6. COLLECTION AND ADMINISTRATION.....	56
6.1 Borrower' Loan Accounts.....	56
6.2 Statements.....	56
6.3 Collection of Accounts.....	57
6.4 Payments.....	59
6.5 Authorization to Make Loans.....	60
6.6 Use of Proceeds.....	61
6.7 Pro Rata Treatment.....	61
6.8 Sharing of Payments, Etc.....	61
6.9 Settlement Procedures.....	62
6.10 Obligations Several; Independent Nature of Lenders' Rights.....	64
6.11 Taxes.....	65



SECTION 7.	COLLATERAL REPORTING AND COVENANTS .....	67
7.1	Collateral Reporting .....	67
7.2	Accounts Covenants.....	69
7.3	Inventory Covenants.....	70
7.4	Equipment and Real Property Covenants. ....	71
7.5	Power of Attorney.....	71
7.6	Bills of Lading and other Documents of Title .....	72
7.7	Right to Cure.....	73
7.8	Access to Premises.....	73
SECTION 8.	REPRESENTATIONS AND WARRANTIES.....	74
8.1	Corporate Existence, Power and Authority. ....	74
8.2	Name; State of Organization; Chief Executive Office; Collateral Locations.....	74
8.3	Financial Statements; No Material Adverse Change.....	75
8.4	Priority of Liens; Title to Properties. ....	75
8.5	Tax Returns.....	75
8.6	Litigation.....	76
8.7	Compliance with Other Agreements and Applicable Laws.....	76
8.8	Environmental Compliance. ....	76
8.9	Employee Benefits.....	77
8.10	Bank Accounts.....	78
8.11	Intellectual Property.....	78
8.12	Subsidiaries; Affiliates; Capitalization; Solvency.....	79
8.13	Labor Disputes.....	79
8.14	Restrictions on Subsidiaries.....	80
8.15	Material Contracts.....	80
8.16	Credit Card Agreements. ....	80
8.17	Payable Practices. ....	81
8.18	Acquisition of Purchased Securities. ....	81
8.19	Accuracy and Completeness of Information.....	82
8.20	Transition Services Agreement; AMC Agreement and Other Agreements .....	82
8.21	Unitary Leases. ....	82
8.22	Survival of Warranties; Cumulative. ....	83
SECTION 9.	AFFIRMATIVE AND NEGATIVE COVENANTS.....	83
9.1	Maintenance of Existence .....	83
9.2	New Collateral Locations. ....	83
9.3	Compliance with Laws, Regulations, Etc. ....	84
9.4	Payment of Taxes and Claims.....	85
9.5	Insurance.....	86
9.6	Financial Statements and Other Information. ....	86

9.7	Sale of Assets, Consolidation, Merger, Dissolution, Etc.....	88
9.8	Encumbrances.....	93
9.9	Indebtedness.....	95
9.10	Loans, Investments, Etc.....	99
9.11	Dividends and Redemptions.....	101
9.12	Transactions with Affiliates.....	103
9.13	Credit Card Agreements.....	104
9.14	Compliance with ERISA.....	105
9.15	End of Fiscal Years; Fiscal Quarters.....	105
9.16	Change in Business.....	105
9.17	Limitation of Restrictions Affecting Subsidiaries.....	105
9.18	Financial Covenant.....	106
9.19	License Agreements.....	106
9.20	After Acquired Real Property.....	107
9.21	Liquidation Cooperation.....	107
9.22	Unitary Leases.....	108
9.23	Costs and Expenses.....	109
9.24	Further Assurances.....	110
SECTION 10. EVENTS OF DEFAULT AND REMEDIES.....		110
10.1	Events of Default.....	110
10.2	Remedies.....	113
SECTION 11. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW.....		116
11.1	Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.....	116
11.2	Waiver of Notices.....	118
11.3	Amendments and Waivers.....	118
11.4	Waiver of Counterclaims.....	120
11.5	Indemnification.....	120
SECTION 12. THE AGENT.....		121
12.1	Appointment, Powers and Immunities.....	121
12.2	Reliance by Agent.....	122
12.3	Events of Default.....	122
12.4	Congress in its Individual Capacity.....	122
12.5	Indemnification.....	123
12.6	Non-Reliance on Agent and Other Lenders.....	123
12.7	Failure to Act.....	124
12.8	Additional Loans.....	124
12.9	Concerning the Collateral and the Related Financing Agreements.....	124
12.10	Field Audit, Examination Reports and other Information;	

	Disclaimer by Lenders.....	124
12.11	Collateral Matters.....	125
12.12	Agency for Perfection.....	127
12.13	Successor Agent.....	127
SECTION 13.	TERM OF AGREEMENT; MISCELLANEOUS .....	128
13.1	Term.....	128
13.2	Interpretative Provisions.....	129
13.3	Notices.....	130
13.4	Partial Invalidity.....	132
13.5	Confidentiality.....	132
13.6	Successors.....	133
13.7	Assignments; Participations.....	133
13.8	Entire Agreement.....	135
13.9	USA Patriot Act.....	136
13.10	Counterparts, Etc.....	136

INDEX TO  
EXHIBITS AND SCHEDULES

Exhibit A	Form of Assignment and Acceptance
Exhibit B	Information Certificate
Exhibit C	Form of Compliance Certificate
Schedule 1.104	Minimum Rent Reductions
Schedule 1.105	Monthly Restricted Lease Dividend
Schedule 1.113	Permitted Holders
Schedule 8.16	Credit Card Agreements
Schedule 8.18(e)	Certain Assumed Liabilities under Employee Benefit Plans

## LOAN AND SECURITY AGREEMENT

This Loan and Security Agreement dated September 2, 2004 is entered into by and among Mervyn's LLC, a California limited liability company ("Borrower"), Mervyn's Brands, LLC, a Minnesota limited liability company ("Guarantor"), the parties hereto from time to time as lenders, whether by execution of this Agreement or an Assignment and Acceptance (each individually, a "Lender" and collectively, "Lenders"), Congress Financial Corporation (Western), a California corporation ("Congress"), in its capacity as administrative agent and collateral agent for Lenders (in such capacity "Agent"), Congress and Goldman Sachs Credit Partners L.P., a Bermuda limited partnership ("GSCP"), in their capacity as joint lead arrangers and joint bookrunners for the credit facility (in such capacities, each a "Co-Lead Arranger" and, collectively, "Co-Lead Arrangers"), GSCP in its capacity as syndication agent for the credit facility and General Electric Capital Corporation, a Delaware corporation and The CIT Group/Business Credit, Inc., a New York corporation, as documentation agents.

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

WHEREAS, Borrower and Guarantor have requested that Agent and Lenders enter into financing arrangements with Borrower pursuant to which Lenders (or Agent on behalf of Lenders) may make loans and provide other financial accommodations to Borrower; and

WHEREAS, each Lender is willing to agree (severally and not jointly) to make such loans and provide such financial accommodations to Borrower on a pro rata basis according to its Commitment (as defined below) on the terms and conditions set forth herein and Agent is willing to act as agent for Lenders on the terms and conditions set forth herein and the other Financing Agreements;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **SECTION 1. DEFINITIONS**

For purposes of this Agreement, the following terms shall have the respective meanings given to them below:

1.1 "Accounts" shall mean, as to each of Borrower and Guarantor, all present and future rights of Borrower and Guarantor to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card, including, without limitation Credit Card Receivables.

1.2 "ACH Transactions" shall mean any overdrafts, cash management or related services, including the automatic clearing house transfer of funds by Agent or any of its

Affiliates for the account of Borrower or its Subsidiaries, in each case pursuant to agreements entered into with Borrower or any of its Subsidiaries.

1.3 "Adjusted Eurodollar Rate" shall mean, with respect to each Interest Period for any Eurodollar Rate Loan, the rate per annum (rounded upwards, if necessary, to the next one-thousandth (1/1000) of one (1%) percent) determined by dividing (a) the Eurodollar Rate for such Interest Period by (b) a percentage equal to: (i) one (1) minus (ii) the Reserve Percentage. For purposes hereof, "Reserve Percentage" shall mean the reserve percentage, expressed as a decimal, prescribed by any United States or foreign banking authority for determining the reserve requirement which is or would be applicable to deposits of United States dollars in a non-United States or an international banking office of Reference Bank used to fund a Eurodollar Rate Loan or any Eurodollar Rate Loan made with the proceeds of such deposit, whether or not the Reference Bank actually holds or has made any such deposits or loans. The Adjusted Eurodollar Rate shall be adjusted on and as of the effective day of any change in the Reserve Percentage.

1.4 "Affiliate" shall mean, with respect to a specified Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, and without limiting the generality of the foregoing, includes (a) any Person which beneficially owns or holds fifteen (15%) percent or more of any class of Voting Stock of such Person or other equity interests in such Person, (b) any person of which such Person beneficially owns or holds fifteen (15%) percent or more of any class of Voting Stock or in which such Person beneficially owns or holds fifteen (15%) percent or more of the equity interests and (c) any director or executive officer of such Person. For the purposes of this definition, the term "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by agreement or otherwise.

1.5 "Agent" shall mean Congress Financial Corporation (Western), in its capacity as agent on behalf of Lenders pursuant to the terms hereof and any replacement or successor agent hereunder.

1.6 "Agent Payment Account" shall mean account no. 5000000030321 of Agent at Wachovia Bank, National Association, or such other account of Agent as Agent may from time to time designate to Borrower as the Agent Payment Account for purposes of this Agreement and the other Financing Agreements.

1.7 "AMC Agreement" shall mean the Buyer Agency Agreement, dated as of February 1, 1999, by and between The Associated Merchandising Corporation and Borrower, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.8 "Applicable Margin" shall mean, at any time, as to the Interest Rate for the applicable percentage (on a per annum basis) set forth below if the Quarterly Average Excess

Availability for the immediately preceding fiscal quarter is at or within the amounts indicated for such percentage:

Quarterly Average Excess Availability	Applicable Margin	
	Prime Rate Loans	Eurodollar Rate Loans
Greater than \$100,000,000	½%	1 ½%
Greater than \$75,000,000 but less than or equal to \$100,000,000	¾%	1 ¾%
Greater than \$50,000,000 but less than or equal to \$75,000,000	1%	2%
Less than or equal to \$50,000,000	1¼%	2¼%

provided, that, the Applicable Margin shall be calculated and established once each fiscal quarter (commencing with the fiscal quarter ending on or about January 29, 2005 in accordance with the terms of Section 1.75 hereof) and shall remain in effect until adjusted thereafter during the next fiscal quarter.

1.9 “Assignment and Acceptance” shall mean an Assignment and Acceptance substantially in the form of Exhibit A attached hereto (with blanks appropriately completed) delivered to Agent in connection with an assignment of a Lender’s interest hereunder in accordance with the provisions of Section 13.7 hereof.

1.10 “Authorized Officer” shall mean, as to any Person, the chief executive officer, chief financial officer, president, vice president, controller or other senior financial officer, in each case, duly authorized to act on behalf of such Person.

1.11 “Bank Products” shall mean any one or more of the following types of services or facilities extended to Borrower or its Subsidiaries by a Bank Product Provider: (a) credit cards, (b) ACH Transactions, and (c) Hedging Transactions, if and to the extent provided hereunder.

1.12 “Bank Product Providers” shall mean each Co-Lead Arranger and any of its Affiliates that may, from time to time, provide any Bank Products to Borrower, Guarantor or any of their respective Subsidiaries.

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

1.14 “Borrower LLC Agreement” shall mean the Amended and Restated Limited Liability Company Operating Agreement, dated on or about September 2, 2004, by Parent, as the

same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.15 "Borrowing Base" shall mean, at any time, the amount equal to:

(a) the lesser of:

(i) the amount equal to: (A) eighty-five (85%) percent of the amount of Eligible Credit Card Receivables, plus (B) the lesser of (1) seventy (70%) percent (or eighty (80%) percent during the Seasonal Period) multiplied by the Value of the Eligible Inventory or (2) eighty-five (85%) percent (or ninety (90%) percent during the Seasonal Period) of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory, or

(ii) the Maximum Credit,

minus

(b) Reserves.

1.16 "Business Day" shall mean any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the laws of the State of New York or the State of North Carolina, and a day on which Agent is open for the transaction of business, except that if a determination of a Business Day shall relate to any Eurodollar Rate Loans, the term Business Day shall also exclude any day on which banks are closed for dealings in dollar deposits in the London interbank market or other applicable Eurodollar Rate market.

1.17 "Capital Expenditures" shall mean, for any period, as to any Person and its Subsidiaries, all expenditures by such Person and its Subsidiaries for, or contracts for expenditures (other than contracts for such expenditures where payments for such expenditures are to be made in any subsequent period) for, any fixed or capital assets or improvements, or for replacements, substitutions or additions thereto, which have a useful life of more than one (1) year, including, but not limited to, the direct or indirect acquisition of such assets by way of offset items or otherwise and obligations under Capital Leases incurred in respect of such fixed or capital assets during such period.

1.18 "Capital Leases" shall mean, as applied to any Person, any lease of (or any agreement conveying the right to use) any property (whether real, personal or mixed) by such Person as lessee which in accordance with GAAP, is required to be reflected as a liability on the balance sheet of such Person.

1.19 "Capital Stock" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person's capital stock or partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock).



1.20 “Cash Equivalents” shall mean, at any time, (a) any evidence of Indebtedness with a maturity date of one hundred eighty (180) days or less issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof; provided, that, the full faith and credit of the United States of America is pledged in support thereof; (b) certificates of deposit or bankers' acceptances with a maturity of one hundred eighty (180) days or less of any financial institution that is a member of the Federal Reserve System having combined capital and surplus and undivided profits of not less than \$500,000,000; (c) commercial paper (including variable rate demand notes) with a maturity of one hundred eighty (180) days or less issued by a Person (except an Affiliate of Borrower or Guarantor) organized under the laws of any State of the United States of America or the District of Columbia and rated at least A-1 by Standard & Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc. or at least P-1 by Moody's Investors Service, Inc.; (d) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clause (a) above entered into with any financial institution having combined capital and surplus and undivided profits of not less than \$500,000,000; (e) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States of America or issued by any governmental agency thereof and backed by the full faith and credit of the United States of America, in each case maturing within one hundred eighty (180) days or less from the date of acquisition; provided, that, the terms of such agreements comply with the guidelines set forth in the Federal Financial Agreements of Depository Institutions with Securities Dealers and Others, as adopted by the Comptroller of the Currency on October 31, 1985; and (f) investments in money market funds and mutual funds which invest substantially all of their assets in securities of the types described in clauses (a) through (e) above.

1.21 “Cerberus” shall mean collectively, together with their respective successors and assigns: (a) Cerberus Capital Management, L.P., a New York limited partnership, and (b) Cerberus Mervyn's Investors, LLC, a Delaware limited liability company.

1.22 “Change of Control” shall mean, except as expressly permitted in Section 9.7 hereof, (a) the transfer (in one transaction or a series of transactions) of all or substantially all of the assets of Borrower or Guarantor to any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act); (b) the liquidation or dissolution of Borrower or Guarantor or the adoption of a plan by the stockholders of Borrower or Guarantor relating to the dissolution or liquidation of Borrower or Guarantor; (c) the acquisition by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), except for one or more Permitted Holders, of beneficial ownership, directly or indirectly, of a majority of the voting power of the total outstanding Voting Stock of Borrower or Guarantor or the Board of Directors of Borrower or Guarantor; (d) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Borrower or Guarantor (together with any new directors who have been appointed by any Permitted Holder, or whose nomination for election by the stockholders of Borrower or Guarantor, as the case may be, was approved by a vote of at least fifty-one and 1/10 (51.1%) percent of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of

Borrower or Guarantor then still in office; unless the new directors have been appointed by a Permitted Holder; (e) the failure of the Permitted Holders to directly own and control, directly or indirectly, more than fifty (50%) percent of the voting power of the total outstanding Voting Stock of Parent, or (f) the failure of Parent to directly own and control one hundred (100%) percent of the voting power of the total outstanding Voting Stock of Borrower; or (g) the failure of Borrower to directly own and control one hundred (100%) percent of the voting power of the total outstanding Voting Stock of Guarantor.

1.23 “Co-Branded Card” shall mean a revolving Visa or Mastercard issued by a Credit Card Issuer which account is co-branded by Borrower.

1.24 “Code” shall mean the Internal Revenue Code of 1986, as the same now exists or may from time to time hereafter be amended, modified, recodified or supplemented, together with all rules, regulations and interpretations thereunder or related thereto.

1.25 “Collateral” shall have the meaning set forth in Section 5 hereof.

1.26 “Collateral Access Agreement” shall mean an agreement in writing, in form and substance reasonably satisfactory to Agent, from any lessor of premises to Borrower or Guarantor, or any other person to whom any Collateral (including Inventory, Equipment, bills of lading or other documents of title) is consigned or who has custody, control or possession of any such Collateral or is otherwise the owner or operator of any premises on which any of such Collateral is located, in favor of Agent with respect to the Collateral at such premises or otherwise in the custody, control or possession of such lessor, consignee or other person.

1.27 “Commitment” shall mean, at any time, as to each Lender, the principal amount set forth below such Lender’s signature on the signature pages hereto designated as the Commitment or on Schedule 1 to the Assignment and Acceptance Agreement pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 13.7 hereof, as the same may be adjusted from time to time in accordance with the terms hereof; sometimes being collectively referred to herein as “Commitments”.

1.28 “Compliance Period” shall mean the period commencing on any date on which Excess Availability has been less than the amount equal to the lesser of: (a) \$50,000,000 or (b) the Minimum Amount, for three (3) consecutive Business Days and ending on a subsequent date on which Excess Availability has been equal to or greater than the amount equal to the lesser of: (i) \$50,000,000 or (ii) the Minimum Amount for sixty (60) consecutive days.

1.29 “Congress” shall mean Congress Financial Corporation (Western), a California corporation, in its individual capacity, and its successors and assigns.

1.30 “Consolidated Net Income” shall mean, with respect to any Person for any period, the aggregate of the net income (loss) of such Person and its Subsidiaries, on a consolidated basis, for such period (excluding to the extent included therein any extraordinary and/or one time or unusual and non-recurring gains or any non-cash losses) after deducting all charges which should be deducted before arriving at the net income (loss) for such period and, without

duplication, after deducting the Provision for Taxes for such period, all as determined in accordance with GAAP; provided, that, (a) the net income of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid or payable to such Person or a Subsidiary of such Person; (b) except to the extent included pursuant to the foregoing clause, the net income of any Person accrued prior to the date it becomes a Subsidiary of such Person or is merged into or consolidated with such Person or any of its Subsidiaries or that Person's assets are acquired by such Person or by its Subsidiaries shall be excluded; and (c) the net income (if positive) of any Subsidiary (other than Borrower or an Obligor) to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to such Person or to any other wholly-owned Subsidiary of such Person is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary shall be excluded. For the purposes of this definition, net income excludes any gain or non-cash loss, together with any related Provision for Taxes for such gain or non-cash loss, realized upon the sale or other disposition of any assets that are not sold in the ordinary course of business (including, without limitation, dispositions pursuant to sale and leaseback transactions) or of any Capital Stock of such Person or a Subsidiary of such Person and any net income realized or loss incurred as a result of changes in accounting principles or the application thereof to such Person.

1.31 "Cost" shall mean, as to the Inventory as of any date, the cost of such Inventory as of such date, determined on a first-in-first-out basis in accordance with GAAP.

1.32 "Credit Card Acknowledgments" shall mean, collectively, the agreements by Credit Card Issuers or Credit Card Processors who are parties to Credit Card Agreements in favor of Agent acknowledging Agent's first priority security interest in the monies due and to become due to Borrower (including, without limitation, credits and reserves) under the Credit Card Agreements, and agreeing to transfer all such amounts to the Blocked Accounts, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced; sometimes being referred to herein individually as a "Credit Card Acknowledgment".

1.33 "Credit Card Agreements" shall mean all agreements now or hereafter entered into by Borrower with any Credit Card Issuer or any Credit Card Processor, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, including, but not limited to, the agreements set forth on Schedule 8.16 hereto; sometimes being referred to herein individually as a "Credit Card Agreement".

1.34 "Credit Card Issuer" shall mean any person (other than Borrower) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., Novus Services, Inc. and Monogram Credit Card Bank of Georgia.

1.35 "Credit Card Processor" shall mean any servicing or processing agent or any factor or financial intermediary who services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of Borrower's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

1.36 "Credit Card Receivables" shall mean, collectively, (a) all present and future rights of Borrower to payment from any Credit Card Issuer, Credit Card Processor or other third party arising from sales of goods or rendition of services to customers who have purchased such goods or services using a credit or debit card and (b) all present and future rights of Borrower to payment from any Credit Card Issuer, Credit Card Processor or other third party in connection with the sale or transfer of Accounts arising pursuant to the sale of goods or rendition of services to customers who have purchased such goods or services using a credit card or a debit card, including, but not limited to, all amounts at any time due or to become due from any Credit Card Issuer or Credit Card Processor under the Credit Card Agreements or otherwise.

1.37 "Credit Facility" shall mean the Loans and Letter of Credit Accommodations provided to or for the benefit of Borrower pursuant to Sections 2.1 and 2.2 hereof.

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

1.39 "Defaulting Lender" shall have the meaning set forth in Section 6.9 hereof.

1.40 "Deposit Account Control Agreement" shall mean an agreement in writing, in form and substance satisfactory to Agent in good faith, by and among Agent, the Borrower or Guarantor with a deposit account at any bank and the bank at which such deposit account is at any time maintained which provides that such bank will comply with instructions originated by Agent directing disposition of the funds in the deposit account without further consent by Borrower or Guarantor and has such other terms and conditions as Agent may require.

1.41 "Discretionary Management Fee" shall mean a discretionary management fee payable to Sun, Cerberus or Lubert-Adler under the terms of each of the Management Services Agreements, dated of even date herewith, by and between Borrower and each of Sun, Cerberus and Lubert-Adler in an aggregate amount not to exceed \$4,500,000 in any year which may be paid in accordance with Section 9.12(b)(v) hereof.

1.42 "EBITDA" shall mean, as to any Person, with respect to any period, an amount equal to (without duplication): (a) the Consolidated Net Income of such Person and its Subsidiaries for such period, plus (b) depreciation, amortization and other non-cash charges (including, but not limited to, imputed interest, deferred compensation and charges associated with impairment of goodwill pursuant to FASB 142) for such period (to the extent deducted in the computation of Consolidated Net Income of such Person), all in accordance with GAAP, plus (c) Interest Expense for such period (to the extent deducted in the computation of Consolidated Net Income of such Person), plus (d) the Provision for Taxes for such period (to the extent deducted in the computation of Consolidated Net Income of such Person), plus (e) management

fees paid or accrued during such period in accordance with Section 9.12(b)(ii) and (iii) (to the extent deducted in the computation of Consolidated Net Income of such Person) plus (f) up to \$91,000,000 in the aggregate in respect of the following charges and expenses incurred on or after the date hereof to the extent each such expense was reserved and/or capitalized on the projected balance sheet delivered to Agent prior to the date hereof: (i) cash restructuring charges, (ii) expenses incurred in respect of retention bonuses, (iii) transaction expenses with respect to the consummation of the Purchase Agreements and the Financing Agreements, and (iv) expenses associated with the acquisition and implementation of a new information processing systems (to the extent such charges and expenses are deducted in the computation of Consolidated Net Income of such Person).

1.43 "Eligible Credit Card Receivables" shall mean the Credit Card Receivables of Borrower which are and continue to be acceptable to Agent based on the criteria set forth below. Credit Card Receivables shall be Eligible Credit Card Receivables if:

(a) such Credit Card Receivables arise from the actual and bona fide sale and delivery of goods or rendition of services by Borrower in the ordinary course of the business of Borrower which transactions are completed in accordance with the terms and provisions contained in any agreements binding on Borrower or the other party or parties related thereto;

(b) such Credit Card Receivables are not past due (beyond any stated applicable grace period, if any, therefor) pursuant to the terms set forth in the Credit Card Agreements with the Credit Card Issuer or Credit Card Processor of the credit card or debit card used in the purchase which give rise to such Credit Card Receivables;

(c) such Credit Card Receivables are not unpaid more than five (5) Business Days after the date of the sale of Inventory giving rise to such Credit Card Receivables;

(d) all procedures required by the Credit Card Issuer or the Credit Card Processor of the credit card or debit card used in the purchase which gave rise to such Credit Card Receivables shall have been followed in all material respects by Borrower and all documents required for the authorization and approval by such Credit Card Issuer or Credit Card Processor shall have been obtained in connection with the sale giving rise to such Credit Card Receivables;

(e) the required authorization and approval by such Credit Card Issuer or Credit Card Processor shall have been obtained for the sale giving rise to such Credit Card Receivables;

(f) Borrower shall have submitted all sales slips, drafts, charges and other reports and other materials required by the Credit Card Issuer or Credit Card Processor obligated in respect of such Credit Card Receivables in order for Borrower to be entitled to payment in respect thereof;

(g) such Credit Card Receivables comply with the applicable terms and conditions contained in Section 7.2 of this Agreement;

(h) the Credit Card Issuer or Credit Card Processor with respect to such Credit Card Receivables has not asserted a counterclaim, defense or dispute and does not have any right of setoff against such Credit Card Receivables (other than transactions in the ordinary course of the business of Borrower) and such Credit Card Issuer or Credit Card Processor has not setoff against amounts otherwise payable by such Credit Card Issuer or Credit Card Processor to Borrower for the purpose of establishing a reserve or collateral for obligations of Borrower to such Credit Card Issuer or Credit Card Processor (notwithstanding that the Credit Card Issuer or Credit Card Processor may have setoffs for fees and chargebacks consistent with the practices of such Credit Card Issuer or Credit Card Processor with Borrower as of the date hereof or as such practices may hereafter change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstances of Borrower);

(i) there are no facts, events or occurrences which would impair in any material respect the validity, enforceability or collectability of such Credit Card Receivables or reduce the amount payable or delay payment thereunder (other than for setoffs for fees and chargebacks consistent with the practices of such Credit Card Issuer or Credit Card Processor with such Borrower as of the date hereof or as such practices may hereafter change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstances of Borrower);

(j) such Credit Card Receivables are subject to the first priority, valid and perfected security interest and lien of Agent, for and on behalf of Lenders, as to such Credit Card Receivables of Borrower and any goods giving rise thereto are not, and were not at the time of the sale thereof, subject to any encumbrances permitted under the terms hereof;

(k) Agent shall have received, in form and substance satisfactory to Agent in good faith, a Credit Card Acknowledgment duly authorized, executed and delivered by the Credit Card Issuer (except in the case of American Express) or Credit Card Processor for the credit card or debit card used in the sale which gave rise to such Credit Card Receivable, such Credit Card Acknowledgment shall be in full force and effect and the Credit Card Issuer or Credit Card Processor party thereto shall be in compliance with the terms thereof, as of the earlier to occur of (i) the date of the termination of the Transition Services Agreement with respect to Credit Services (as such term is defined therein) or (ii) the date which is one hundred eighty (180) days after the date hereof;

(l) there are no proceedings or actions which are pending or to the best of Borrower's knowledge threatened, against the Credit Card Issuers or Credit Card Processors with respect to such Credit Card Receivables which would reasonably be expected to result in any material adverse change in the continued collectability of the Credit Card Receivables with respect to the Credit Card Issuers or Credit Card Processors;

(m) such Credit Card Receivables are owed by Credit Card Issuers or Credit Card Processors deemed creditworthy at all times by Agent in good faith;

(n) no material default or material event of default has occurred under the Credit Card Agreement of Borrower with the Credit Card Issuer or Credit Card Processor who has issued the credit card or debit card or handles payments under the credit card or debit card used in the sale which gave rise to such Credit Card Receivables which default gives such Credit Card Issuer or Credit Card Processor the right to cease or suspend payments to Borrower and no material default or material event of default shall have occurred which gives such Credit Card Issuer or Credit Card Processor the right to setoff against amounts otherwise payable to Borrower (other than for then current fees and chargebacks consistent with the current practices of such Credit Card Issuer or Credit Card Processor as of the date hereof or as such practices may hereafter change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstances of Borrower) or the right to establish reserves or establish or demand collateral and such Credit Card Agreements are otherwise in full force and effect and constitute the legal, valid, binding and enforceable obligations of the parties thereto;

(o) the terms of the sale giving rise to such Credit Card Receivables and all practices of Borrower with respect to such Credit Card Receivables comply in all material respects with applicable Federal, State, and local laws and regulations;

(p) the Credit Card Issuer or Credit Card Processor has not sent any notice of default and/or notice of its intention to cease or suspend payments to Borrower in respect of such Credit Card Receivables or to establish reserves or cash collateral for obligations of Borrower to such Credit Card Issuer or Credit Card Processor (other than for then current fees and chargebacks consistent with the current practices of such Credit Card Issuer or Credit Card Processor as of the date hereof or as such practices may hereafter change as a result of changes to the policies of such Credit Card Issuer or Credit Card Processor applicable to its customers generally and unrelated to the circumstances of Borrower);

(q) the customer using the credit card or debit card giving rise to such Credit Card Receivable shall not have returned the merchandise purchased giving rise to such Credit Card Receivable; and

(r) such Credit Card Receivable does not arise from a customer's use of the Mervyn's Card or any Co-Branded Card, except, that, after the date hereof, if such Credit Card Receivable arises from the customer's use of the Mervyn's Card and such Credit Card Receivable is otherwise an Eligible Credit Card Receivable, such Credit Card Receivable shall be deemed to an Eligible Credit Card Receivable so long as Agent shall have received, in form and substance satisfactory to Agent, each of the following: (i) a Credit Card Acknowledgement, duly authorized executed and delivered by the Credit Card Issuer for the Mervyn's Card, (ii) a Private Label Credit Card Agreement with respect to the Mervyn's Card including any amendments thereto requested by Agent in good faith, and (iii) such other amendments or modifications to this Agreement as Agent may request in good faith including, without limitation, additional reporting requirements and a lower advance rate with respect to such Eligible Credit Card Receivables.

General criteria for Eligible Credit Card Receivables may only be changed and any new criteria for Eligible Credit Card Receivables may only be established by Agent in good faith, based on either: (i) an event, condition or other circumstance arising after the date hereof, or (ii) existing on the date hereof to the extent Agent has no written notice thereof from a Borrower prior to the date hereof, in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the collectability of the Credit Card Receivables in the good faith determination of Agent. Any Credit Card Receivables which are not Eligible Credit Card Receivables shall nevertheless be part of the Collateral.

1.44 "Eligible Inventory" shall mean, as to Borrower, Inventory of Borrower consisting of finished goods held for resale in the ordinary course of the business of Borrower, that are acceptable to Agent based on the criteria set forth below. In general, Eligible Inventory shall not include:

- (a) work-in-process;
- (b) raw materials;
- (c) spare parts for equipment;
- (d) packaging and shipping materials;
- (e) supplies used or consumed in Borrower's business;

(f) Inventory at premises other than those owned or leased and controlled by Borrower; provided, that, (i) as to retail store locations which are leased by Borrower, Agent may, at its option, establish Reserves in respect of rental payments and other amounts in respect of such leased location of the type and to the extent Agent shall determine in accordance with the definition of the term Reserves herein, (ii) as to all other locations leased by Borrower, if Agent shall not have received a Collateral Access Agreement from the owner and lessor with respect to such location, duly authorized, executed and delivered by such owner and lessor (or Agent shall determine to accept a Collateral Access Agreement that does not include all required provisions or provisions in the form otherwise required by Agent), Agent may, at its option, establish such Reserves in respect of amounts at any time due or to become due to the owner and lessor thereof as Agent shall determine and (iii) as to all locations owned and operated by a person other than Borrower and not covered by clause (i) or (ii) hereof, if Agent shall not have received a Collateral Access Agreement from the owner and operator with respect to such location, duly authorized, executed and delivered by such owner and operator (or Agent shall determine to accept a Collateral Access Agreement that does not include all required provisions or provisions in the form otherwise required by Agent), Agent may, at its option, establish such Reserves in respect of amounts at any time due or to become due to the owner and operator thereof as Agent shall determine; provided, that, in addition, if required by Agent, in order for such Inventory at locations owned and operated by a third person to be Eligible Inventory, Agent shall have received: (A) UCC financing statements between the owner and operator, as consignee or bailee and Borrower, as consignor or bailor, in form and substance satisfactory to Agent in good faith, which are duly assigned to Agent and the written authorization to file such financing statements



in a form satisfactory to Agent and (B) a written notice to any lender to the owner and operator of the first priority security interest in such Inventory of Agent;

(g) Inventory subject to a security interest or lien in favor of any Person other than Agent except those permitted in this Agreement that are subordinate to the security interest of Agent pursuant to an intercreditor agreement in form and substance satisfactory to Agent in good faith between the holder of such security interest or lien and Agent;

(h) bill and hold goods;

(i) obsolete or slow moving Inventory;

(j) Inventory that is not subject to the first priority, valid and perfected security interest of Agent;

(k) damaged and/or defective Inventory;

(l) returned Inventory which is not saleable and held for sale in the ordinary course of business;

(m) Inventory purchased or sold on consignment; and

(n) Inventory located outside the United States of America except for In-Transit Open Account Inventory or In-Transit LC Inventory; provided, that, in the case of In-Transit Open Account Inventory or In-Transit LC Inventory (i) title to such Inventory has passed to Borrower, (ii) such Inventory either (A) is the subject of a negotiable bill of lading (1) that is consigned to Agent (either directly or by means of endorsements), (2) that was issued by the carrier respecting the subject Inventory, and (3) that is in the possession of Agent or a customs broker or other bailee, in all cases, acting on Agent's behalf, or (B) is the subject of a cargo receipt and such cargo receipt was issued by a consolidator respecting the subject Inventory and is either (1) consigned to Agent (either directly or by means of endorsements), or (2) is in the possession of Agent or a customs broker or other bailee, in all cases, acting on Agent's behalf, (iii) such Inventory is insured against types of loss, damage, hazards, and risks, and in amounts, satisfactory to Agent in its discretion, and Agent shall have received a copy of the certificate of marine cargo insurance in connection therewith in which it has been named as an additional insured and loss payee in a manner acceptable to Agent, (iv) Borrower has provided the following to Agent: (A) a Collateral Access Agreement, duly authorized, executed and delivered by a customs broker or other bailee handling the shipping and delivery of such Inventory, and (B) a copy of the invoice, packing slip and manifest with respect thereto or other documents acceptable to Agent, (v) such Inventory shall not have been in transit for more than forty-five (45) days, (vi) the aggregate amount of the Value of such Eligible Inventory consisting of In-Transit LC Inventory shall not at any time exceed the lesser of: (A) \$30,000,000 or (B) ten (10%) percent of the net book value of the Inventory as determined by Agent, and (vii) the aggregate amount of the Value of such Eligible Inventory consisting of In-Transit Open Account Inventory shall not at any time exceed the lesser of: (A) \$30,000,000 or (B) ten (10%) percent of

the net book value of the Inventory as determined by Agent and (viii) such In-Transit Open Account Inventory or In-Transit LC Inventory is otherwise Eligible Inventory.

The criteria for Eligible Inventory set forth above may only be changed and any new criteria for Eligible Inventory may only be established by Agent in good faith based on either: (i) an event, condition or other circumstance arising after the date hereof, or (ii) an event, condition or other circumstance existing on the date hereof to the extent Agent has no written notice thereof from Borrower prior to the date hereof, in either case under clause (i) or (ii) which adversely affects or could reasonably be expected to adversely affect the Inventory in the good faith determination of Agent. Any Inventory that is not Eligible Inventory shall nevertheless be part of the Collateral.

1.45 “Eligible Transferee” shall mean (a) any Lender; (b) the parent company of any Lender and/or any Affiliate of such Lender which is at least fifty (50%) percent owned by such Lender or its parent company; (c) any person (whether a corporation, partnership, trust or otherwise) that is engaged in the business of making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is administered or managed by a Lender or with respect to any Lender that is a fund which invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor, and in each case is approved by Agent; and (d) any other commercial bank, financial institution or “accredited investor” (as defined in Regulation D under the Securities Act of 1933) approved by Agent; provided, that, (i) in the case of the approval of clauses (c) and (d) above, unless an Event of Default has occurred and is continuing at the time any assignment is effected hereunder, Borrower shall have the right to approve such assignments, such approval not to be unreasonably withheld, conditioned or delayed by Borrower, and such approval to be deemed given by Borrower if no objection from Borrower is received by the assigning Lender and Agent within five (5) Business Days after notice of such proposed assignment has been provided by the assigning Lender or Agent to Borrower, (ii) neither Borrower nor Guarantor or any Affiliate of Borrower or Guarantor shall qualify as an Eligible Transferee (other than Sponsor Affiliated Lenders) and (iii) no Person to whom any Indebtedness which is in any way subordinated in right of payment to any other Indebtedness of Borrower or Guarantor shall qualify as an Eligible Transferee, except as Agent may otherwise specifically agree.

1.46 “Environmental Laws” shall mean all foreign, Federal, State and local laws (including common law), legislation, rules, codes, licenses, permits (including any conditions imposed therein), authorizations, judicial or administrative decisions, injunctions or agreements between Borrower or Guarantor and any Governmental Authority, (a) relating to pollution and the protection, preservation or restoration of the environment (including air, water vapor, surface water, ground water, drinking water, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, (b) relating to the exposure to, or the use, storage, recycling, treatment, generation, manufacture, processing, distribution, transportation, handling, labeling, production, release or disposal, or threatened release, of Hazardous Materials, or (c) relating to all laws with regard to recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials. The term

“Environmental Laws” includes (i) the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Federal Superfund Amendments and Reauthorization Act, the Federal Water Pollution Control Act of 1972, the Federal Clean Water Act, the Federal Clean Air Act, the Federal Resource Conservation and Recovery Act of 1976 (including the Hazardous and Solid Waste Amendments thereto), the Federal Solid Waste Disposal and the Federal Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the Federal Safe Drinking Water Act of 1974, (ii) applicable state counterparts to such laws and (iii) any common law or equitable doctrine that may impose liability or obligations for injuries or damages due to, or threatened as a result of, the presence of or exposure to any Hazardous Materials.

1.47 “Equipment” shall mean, as to each of Borrower and Guarantor, all of Borrower's and Guarantor's now owned and hereafter acquired equipment, wherever located, including machinery, data processing and computer equipment (whether owned or licensed and including embedded software), vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof, wherever located.

1.48 “Equity Purchase Agreement” shall mean the Equity Purchase Agreement, dated July 29, 2004, by and between Parent and Seller, as all of the foregoing now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.49 “ERISA” shall mean the United States Employee Retirement Income Security Act of 1974, as in effect from time to time, together with all rules, and regulations thereunder or related thereto.

1.50 “ERISA Affiliate” shall mean any person required to be aggregated with Borrower, Guarantor or any of its or their respective Subsidiaries under Sections 414(b), 414(c), 414(m) or 414(o) of the Code.

1.51 “ERISA Event” shall mean the occurrence of any of the following: (a) any “reportable event”, as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan for which the Pension Benefit Guaranty Corporation notice requirement has not been waived; (b) the adoption of any amendment to a Plan that would require the provision of security pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA; (c) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (d) the filing pursuant to Section 412 of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the occurrence of a non-exempt “prohibited transaction” (within the meaning of Section 4975 of the Code) or with respect to which Borrower, Guarantor or any of its or their respective Subsidiaries could be reasonably expected to have liability in excess of \$5,000,000; (f) a complete or partial withdrawal by Borrower, Guarantor or any ERISA Affiliate from a Multiemployer Plan or a cessation of operations which is treated as such a withdrawal or notification that a Multiemployer Plan is in reorganization, which could reasonably be expected to result in liability to Borrower, Guarantor

or any ERISA Affiliate in excess of \$5,000,000; (g) the filing of a notice of intent to terminate a Plan (other than a Multiemployer Plan), the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the Pension Benefit Guaranty Corporation to terminate a Plan which in each case could reasonably be expected to result in liability to Borrower, Guarantor or any ERISA Affiliate in excess of \$5,000,000 or (h) the appointment by the Pension Benefit Guaranty Corporation of a trustee to administer any Plan.

1.52 "Eurodollar Rate" shall mean with respect to the Interest Period for a Eurodollar Rate Loan, the interest rate per annum equal to the arithmetic average of the rates of interest per annum (rounded upwards, if necessary, to the next one-thousandth (1/1000th) of one (1%) percent) at which Reference Bank is offered deposits of United States dollars in the London interbank market (or other Eurodollar Rate market selected by Borrower on behalf of Borrower and approved by Agent) on or about 9:00 a.m. (New York time) two (2) Business Days prior to the commencement of such Interest Period in amounts substantially equal to the principal amount of the Eurodollar Rate Loans requested by and available to Borrower in accordance with this Agreement, with a maturity of comparable duration to the Interest Period selected by or on behalf of Borrower.

1.53 "Eurodollar Rate Loans" shall mean any Loans or portion thereof on which interest is payable based on the Adjusted Eurodollar Rate in accordance with the terms hereof.

1.54 "Event of Default" shall mean the occurrence or existence of any event or condition described in Section 10.1 hereof (after giving effect to applicable cure periods, if any, expressly set forth in Section 10.1 hereof).

1.55 "Excess Availability" shall mean the amount, as determined by Agent, calculated at any date of determination, equal to: (a) the sum of (i) the Borrowing Base (after giving effect to any Reserves other than any Reserves in respect of Letter of Credit Accommodations), plus (ii) Qualified Cash minus (b) the sum of: (i) the amount of all then outstanding and unpaid Loans plus, (ii) the amount of all Reserves then established in respect of Letter of Credit Accommodations.

1.56 "Excess Closing Availability" shall mean the amount, as determined by Agent, calculated as of the date hereof, equal to: (a) Borrowing Base (after giving effect to any Reserves other than Reserves in respect of Letter of Credit Accommodations) minus (b) the sum of: (i) the amount of all then outstanding and unpaid Loans plus (ii) the amount of all Reserves then established in respect of Letter of Credit Accommodations plus (iii) the aggregate amount of all then outstanding and unpaid trade payables and other obligations of Borrower which are outstanding more than sixty (60) days past the original due date as of such time (other than trade payables or other obligations being contested or disputed by Borrower in good faith), plus (iv) without duplication, the amount of checks issued by Borrower to pay trade payables and other obligations which are more than sixty (60) days past the original due date as of such time (other than trade payables or other obligations being contested or disputed by Borrower in good faith), but not yet sent.

1.57 “Exchange Act” shall mean the Securities Exchange Act of 1934, together with all rules, regulations and interpretations thereunder or related thereto.

1.58 “Extension Amendment” shall mean the Extension Amendment, dated as of September 1, 2004, by and between Seller and Parent, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.59 “Fee Letter” shall mean the letter agreement, dated of even date herewith, by and among Borrower and Agent, setting forth certain fees payable by Borrower to Agent for the benefit of itself and Lenders, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.60 “Fifteen Month Unitary Lease” shall mean the Unitary Lease Agreement, dated of even date herewith, by and between MDS Realty I, MDS Realty II, MDS Realty III, MDS Realty IV, MDS Texas Realty I and MDS Texas Realty II, as lessors and Borrower, as lessee, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.61 “Final Maturity Date” shall the meaning set forth in Section 13.1 hereof.

1.62 “Financing Agreements” shall mean, collectively, this Agreement and all notes, guarantees, security agreements, deposit account control agreements, investment property control agreements, intercreditor agreements and all other agreements, documents and instruments now or at any time hereafter executed and/or delivered by Borrower or Obligor in connection with this Agreement; provided, that, the Financing Agreements shall not include any agreements with respect to Hedging Transactions.

1.63 “Fixed Charge Coverage Ratio” shall mean, as to Borrower and its Subsidiaries on a consolidated basis, the ratio of as of any date of determination, calculated either for a trailing twelve-month period ending on such date of determination or, if such date of determination occurs prior to the first anniversary of the date hereof, on an annualized basis in the case of clause (b) below, of (a) the amount equal to the EBITDA to (b) the Fixed Charges.

1.64 “Fixed Charges” shall mean, as to Borrower and its Subsidiaries (on a consolidated basis), with respect to any period, the sum of, without duplication, (a) all Interest Expense paid in cash during such period, plus (b) all Capital Expenditures during such period (other than any Capital Expenditures financed with purchase money Indebtedness to the extent permitted by Section 9.9(b) hereof), plus (c) all regularly scheduled (as determined at the beginning of the respective period) principal payments in respect of Indebtedness for borrowed money (other than any Indebtedness under this Credit Facility) and Indebtedness with respect to Capital Leases (and without duplicating items (a) and (c) of this definition, the interest component with respect to Indebtedness under Capital Leases) during such period, plus (d) any dividends paid to Parent pursuant to Section 9.11(f)(i) hereof to the extent not deducted from the calculation of EBITDA, plus (e) management fees paid in accordance with Sections 9.12(b)(ii) and 9.12(b)(v) hereof during such period in cash, plus (f) taxes paid during such period in cash.

1.65 "GAAP" shall mean generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board which are applicable to the circumstances as of the date of determination consistently applied, except that, if any change in such generally accepted accounting principles after the date hereof affects the calculation of compliance with the covenants set forth in Section 9.18 hereof or any component thereof, Borrower may by notice to Agent, or Agent may by notice to Borrower, require that such covenants thereafter be calculated in accordance with generally accepted accounting principles as in effect and applied by Borrower and Guarantor immediately before such change in generally accepted accounting principles occurred, until such time as Agent and Borrower shall have agreed upon a mutually acceptable basis upon which to amend such covenants to preserve the original intent and effect thereof in light of any such change in generally accepted accounting principles. If such notice is given by Borrower (or if such notice is given by Agent, then only upon Agent's request), the compliance certificate delivered pursuant to Section 9.6 hereof after such change occurs shall be accompanied by a calculation of such covenants made in accordance with generally accepted accounting principles as in effect from time to time after such change occurs.

1.66 "Governmental Authority" shall mean any nation or government, any state, province, or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

1.67 "Guarantor" shall mean, Mervyn's Brands LLC, a Minnesota limited liability company and its respective successors and assigns.

1.68 "Hazardous Materials" shall mean any hazardous, toxic or dangerous substances, materials and wastes, including petroleum and hydrocarbons, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Law (including any that are or become classified as hazardous or toxic under any Environmental Law).

1.69 "Hedging Transactions" shall mean (a) any and all rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options, forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transaction, currency options or any other similar transactions or any combination of any of the foregoing (including any

options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, or (b) any and all transactions of any kind, and the related confirmations, that are subject to the terms or conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement, as amended, restated, extended, supplemented or otherwise modified in writing from time to time, including but not limited to, any such obligations or liabilities under any such agreement.

1.70 "Indebtedness" shall mean, with respect to any Person, any liability of such Person, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (except any such balance that constitutes an account payable to a trade creditor (whether or not an Affiliate) created, incurred, assumed or guaranteed by such Person in the ordinary course of business of such Person in connection with obtaining goods, materials or services that is not overdue by more than ninety (90) days, unless the trade payable is being contested in good faith); (c) representing all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) representing any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; (e) representing all obligations with respect to redeemable stock and redemption or repurchase obligations under any Capital Stock or other equity securities issued by such Person (excluding redemption or repurchase obligations that may be triggered solely at the option of such Person); (f) representing all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Person's account; (g) representing all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any assets of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time; provided, that, for the purposes hereof, to the extent such Indebtedness referred to in this clause (g) is non-recourse to such Person, the amount of such Indebtedness shall not be deemed to exceed the lesser of (i) the principal amount of such Indebtedness or (ii) the value of asset securing such Indebtedness; (h) representing all obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements and collar agreements and other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency or commodity values; and (i) representing all obligations owed by such Person under License Agreements with respect to non-refundable, advance or minimum guarantee royalty payments.

1.71 “Information Certificate” shall mean, collectively, the Information Certificate of Borrower and Guarantor constituting Exhibit B hereto containing material information with respect to Borrower and Guarantor, their respective businesses and assets provided by or on behalf of Borrower and Guarantor to Agent in connection with the preparation of this Agreement and the other Financing Agreements and the financing arrangements provided for herein.

1.72 “Intellectual Property” shall mean, as to Borrower and Guarantor, Borrower's and Guarantor's now owned and hereafter arising or acquired: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright applications, copyright registrations, trademarks, servicemarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing and all applications, registrations and recordings relating to any of the foregoing as may be filed in the United States Copyright Office, the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country or jurisdiction, together with all rights and privileges arising under applicable law with respect to Borrower's or Guarantor's use of any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or servicemark, or the license of any trademark or servicemark); customer and other lists in whatever form maintained; trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registration; source codes, object code, executable codes, data, databases and other physical manifestations or embodiments of any of the foregoing; software and contract rights relating to computer software programs, in whatever form created or maintained.

1.73 “Interest Expense” shall mean, for any period, as to any Person, as determined in accordance with GAAP, the total interest expense of such Person, whether paid or accrued during such period (including the interest component of Capital Leases for such period), including, without limitation, discounts in connection with the sale of any Accounts and bank fees, commissions, discounts and other fees and charges owed with respect to letters of credit, banker's acceptances or similar instruments to the extent treated as interest expense under GAAP.

1.74 “Interest Period” shall mean for any Eurodollar Rate Loan, a period of approximately one (1), two (2), three (3) or six (6) months duration as Borrower may elect, the exact duration to be determined in accordance with the customary practice in the applicable Eurodollar Rate market; provided, that, Borrower may not elect an Interest Period which will end after the last day of the then-current term of this Agreement.

1.75 “Interest Rate” shall mean,

- (a) Subject to clauses (b) and (c) of this definition below:



(i) as to Prime Rate Loans, a rate equal to three-quarters ( $\frac{3}{4}\%$ ) percent per annum in excess of the Prime Rate, and

(ii) as to Eurodollar Rate Loans, a rate equal to one and three-quarters ( $1\frac{3}{4}\%$ ) percent per annum in excess of the Adjusted Eurodollar Rate (in each case, based on the Eurodollar Rate applicable for the Interest Period selected by Borrower, as in effect three (3) Business Days after the date of receipt by Agent of the request of or on behalf of Borrower for such Eurodollar Rate Loans in accordance with the terms hereof, whether such rate is higher or lower than any rate previously quoted to Borrower or Guarantor).

(b) Subject to clause (c) of this definition below, effective as of the first (1st) day of the second month of each fiscal quarter (commencing with the fiscal quarter ending on or about January 29, 2005), the Interest Rate payable by Borrower in respect of Loans shall be increased or decreased, as the case may be, in accordance with the definition of Applicable Margin, (i) as to Loans which are Prime Rate Loans, to the rate equal to the Applicable Margin on a per annum basis in excess of the Prime Rate, and (ii) as to Loans which are Eurodollar Rate Loans, to the rate equal to the Applicable Margin on a per annum basis in excess of the Adjusted Eurodollar Rate.

(c) Notwithstanding anything to the contrary contained in clauses (a) or (b) of this definition, the Interest Rate shall mean the per annum rates set forth above plus (in each case) two (2%) percent per annum, at Agent's option or upon the written request of Required Lenders, without notice, (i) either (A) for the period on and after the date of termination or non-renewal hereof until such time as all of the Obligations are paid and satisfied in full in immediately available funds, or (B) from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Agent in good faith and (ii) on the Loans to Borrower at any time outstanding in excess of the Borrowing Base or the Maximum Credit (whether or not such excess(es) arise or are made with or without Agent's or any Lender's knowledge or consent and whether made before or after an Event of Default). Upon the request of Borrower, Agent shall promptly notify such Borrower in writing if the Interest Rate specified in this clause (c) is in effect.

1.76 "In-Transit LC Inventory" shall mean Inventory which is located outside of the continental United States of America which is in transit to either the premises of a customs broker or other bailee in the United States or the premises of Borrower in the United States, in each case, either owned and controlled by Borrower or leased by Borrower (but only if Agent has received a Collateral Access Agreement duly authorized, executed and delivered by such a customs broker, shipper or other bailee or the owner and lessor of such leased premises (other than with respect to retail stores) as the case may be; provided, that, the Inventory was the subject of a Letter of Credit Accommodation issued under Section 2.2(d)(iii)(A) of this Agreement to purchase such Inventory and the Letter of Credit Accommodation or the Post-Presentation Letter of Credit has been paid.

1.77 "In-Transit Open Account Inventory" shall mean Inventory which is located outside of the continental United States of America which is in-transit to either the premises of a customs

broker or other bailee in the United States or the premises of Borrower in the United States, in each case, either owned and controlled by Borrower or leased by Borrower (but only if Agent has received a Collateral Access Agreement duly authorized, executed and delivered by such a customs broker, shipper or other bailee or the owner and lessor of such leased premises (except no such agreement shall be required for any retail store locations) as the case may be); provided, that, such Inventory was not and is not subject to any letter of credit or Letter of Credit Accommodation.

1.78 "Inventory" shall mean, as to each of Borrower and Guarantor, all of Borrower's and Guarantor's now owned and hereafter existing or acquired goods (including inventory), wherever located, which (a) are leased by Borrower or Guarantor as lessor; (b) are held by Borrower or Guarantor for sale or lease or to be furnished under a contract of services; (c) are furnished by Borrower or Guarantor under a contract of service; or (d) consist of raw materials, work in process, finished goods or materials used or consumed in its business.

1.79 "Investment Property Control Agreement" shall mean an agreement in writing, in form and substance satisfactory to Agent in good faith, by and among Agent, Borrower or Guarantor (as the case may be) and any securities intermediary, commodity intermediary or other person who has custody, control or possession of any investment property of Borrower or Guarantor acknowledging that such securities intermediary, commodity intermediary or other person has custody, control or possession of such investment property on behalf of Agent, that it will comply with entitlement orders originated by Agent with respect to such investment property, or other instructions of Agent, and has such other terms and conditions as Agent may require in good faith.

1.80 "Lenders" shall mean the financial institutions who are signatories hereto as Lenders and other persons made a party to this Agreement as a Lender in accordance with Section 13.7 hereof, and their respective successors and assigns; each sometimes being referred to herein individually as a "Lender".

1.81 "Letter of Credit Accommodations" shall mean, collectively, the letters of credit, merchandise purchase, bankers acceptances or other guaranties which are from time to time either (a) provided or arranged by Agent or any Lender (at the request of Agent) for the account of Borrower or Obligor under this Credit Facility or (b) with respect to which Agent or Lenders have agreed to indemnify the issuer or guaranteed to the issuer the performance by Borrower or Obligor of its obligations to such issuer; sometimes being referred to herein individually as "Letter of Credit Accommodation".

1.82 "License Agreements" shall have the meaning set forth in Section 8.11 hereof.

1.83 "Loans" shall mean the loans now or hereafter made by or on behalf of any Lender or by Agent for the account of any Lender on a revolving basis pursuant to the Credit Facility (involving advances, repayments and readvances) as set forth in Section 2.1 hereof.

1.84 "Lubert-Adler" shall mean collectively, together with their respective successors and assigns: (a) Lubert-Adler Real Estate Fund IV, L.P., a Delaware limited partnership, (b)

Lubert-Adler Real Estate Parallel Fund IV, L.P., a Delaware limited partnership, and (c) Lubert-Adler Capital Real Estate Fund IV, L.P., a Delaware limited partnership.

1.85 “Material Adverse Effect” shall mean a material adverse effect on (a) the financial condition, business, performance or operations of Borrower or of Borrower and Guarantor (taken as a whole); (b) the legality, validity or enforceability of any material provision of this Agreement or any material provision of any other Financing Agreements; (c) the legality, validity, enforceability, perfection or priority of the security interests and liens of Agent upon the Collateral having an aggregate value in excess of \$10,000,000; (d) the Collateral having an aggregate value in excess of \$10,000,000; (e) the ability of Borrower or Guarantor (taken as a whole) to repay the Obligations or of Borrower to perform its obligations under this Agreement or any of the other Financing Agreements as and when to be performed; or (f) the ability of Agent or any Lender to enforce the Obligations or realize upon the Collateral having an aggregate value in excess of \$10,000,000 or otherwise with respect to the rights and remedies of Agent and Lenders under this Agreement or any of the other Financing Agreements.

1.86 “Material Contract” shall mean (a) any written contract or other written agreement (other than the Financing Agreements), of Borrower or Guarantor involving monetary liability of or to any Person in an amount in excess of \$5,000,000, in any fiscal year (other than purchase orders issued in the ordinary course of business of such Person and other than written contracts that by their terms may be terminated by such Person in the ordinary course of its business upon less than 60 days notice without penalty or premium) and, (b) any written contract or other written agreement (other than the Financing Agreements), to which Borrower or Guarantor is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect.

1.87 “Maximum Credit” shall mean the amount of \$550,000,000.

1.88 “MDS Realty I” shall mean MDS Realty I, LLC, a Delaware limited liability company and its successors and assigns.

1.89 “MDS Realty II” shall mean MDS Realty II, LLC, a Delaware limited liability company and its successors and assigns.

1.90 “MDS Realty III” shall mean MDS Realty III, LLC, a Delaware limited liability company and its successors and assigns.

1.91 “MDS Realty IV” shall mean MDS Realty IV, LLC, a Delaware limited liability company and its successors and assigns.

1.92 “MDS Texas GP I” shall mean MDS Texas Realty I, LLC, a Texas limited liability company and its successors and assigns.

1.93 “MDS Texas GP II” shall mean MDS Texas Realty II, LLC, a Texas limited liability company and its successors and assigns.

1.94 “MDS Texas Prop I” shall mean MDS Texas Properties I, LLC, a Texas limited liability company and its successors and assigns.

1.95 “MDS Texas Prop II” shall mean MDS Texas Properties II, LLC, a Texas limited liability company and its successors and assigns.

1.96 “MDS Texas Realty I” shall mean MDS Texas Realty I, LP, a Texas limited partnership and its successors and assigns.

1.97 “MDS Texas Realty II” shall mean MDS Texas Realty II, LP, a Texas limited partnership and its successors and assigns.

1.98 “Mervyn’s Card” shall mean the private label credit card or private label credit cards issued by Monogram Credit Card Bank of Georgia (or any subsequent Credit Card Issuer replacing Monogram Credit Card Bank of Georgia with respect to such private label credit card or private label credit cards to customers or prospective customers of Borrower).

1.99 “Mezzanine RE Loan Agreement” shall mean the Mezzanine Loan Agreement, dated of even date herewith, by and among Mezzanine RE Loan Lenders, Realco Holdings I, Realco Holdings II, MDS Texas Prop I and MDS Texas Prop II, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.100 “Mezzanine RE Loan Debt” shall mean all obligations, liabilities and indebtedness of every kind, nature and description owing by Realco Holdings I, Realco Holdings II, MDS Texas Prop I and MDS Texas Prop II to Mezzanine RE Loan Lenders, including principal, interest, charges, fees, premiums, indemnities, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under or in connection with the Mezzanine RE Loan Documents.

1.101 “Mezzanine RE Loan Documents” shall mean, collectively, the following (as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced): (a) the Mezzanine RE Loan Agreement; and (b) all other agreements, documents and instruments at any time executed and/or delivered by Realco Holdings I, Realco Holdings II, MDS Texas Prop I and MDS Texas Prop II or any Obligor with, to or in favor of Mezzanine RE Loan Lenders in connection therewith or related thereto; sometimes being referred to herein individually as a “Mezzanine RE Loan Document”.

1.102 “Mezzanine RE Loan Lenders” shall mean, collectively, Greenwich Capital Financial Products, Inc. a Delaware corporation, and Goldman Sachs Mortgage Company, a New York limited partnership, together with their respective successors and assigns.

1.103 “Minimum Amount” shall mean the greater of: (a) ten (10%) percent of the net book value of Inventory of Borrower as of any date as determined by Agent or (b) \$25,000,000.

1.104 “Minimum Rent Reductions” shall mean, with respect to each Unrestricted Lease set forth on Schedule 1.104 hereto, the amount equal to the percentage set forth in the column

entitled “Minimum Rent Reduction” for such Unrestricted Lease on such Schedule multiplied by \$56,169,000.

1.105 “Monthly Restricted Lease Dividend” shall mean the aggregate annual cash dividend payable by Borrower to Parent in respect of each Restricted Lease as set forth on Schedule 1.105 hereto divided by 12.

1.106 “Multiemployer Plan” shall mean a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA which is or was at any time during the current year or the immediately preceding six (6) years contributed to by Borrower, Guarantor or any ERISA Affiliate.

1.107 “Net Recovery Percentage” shall mean the fraction, expressed as a percentage, (a) the numerator of which is the amount equal to the amount of the recovery in respect of the Inventory at such time on an “in-store going out of business sale” basis as set forth in the most recent acceptable appraisal of Inventory received by Agent in accordance with Section 7.3, net of operating expenses, liquidation expenses and commissions, and (b) the denominator of which is the applicable original Cost of the aggregate amount of the Inventory subject to such appraisal.

1.108 “Obligations” shall mean (a) any and all Loans, Letter of Credit Accommodations and all other obligations, liabilities and indebtedness of every kind, nature and description owing by Borrower or Guarantor to Agent or any Lender and/or any of their respective Affiliates, in each case, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under this Agreement or any of the other Financing Agreements, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of this Agreement or after the commencement of any case with respect to Borrower under the United States Bankruptcy Code or any similar statute (including the payment of interest and other amounts which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, or secured or unsecured and (b) for purposes only of Section 5.1 hereof and subject to the priority in right of payment set forth in Section 6.4 hereof, upon Borrower’s request (which request may be evidenced by its signature on the agreement referred to in clause (i) below), all obligations, liabilities and indebtedness of every kind, nature and description owing by any or all of Borrower or Guarantor to Agent or any Bank Product Provider arising under or pursuant to any Bank Products, whether now existing or hereafter arising to the extent such obligations, liabilities and indebtedness would not cause the total amount of the Obligations to exceed the value of the Collateral; provided, that, (i) as to any such obligations, liabilities and indebtedness arising under or pursuant to a Hedging Transaction, the same shall only be included within the Obligations if upon Agent’s request, Agent shall have entered into an agreement, in form and substance satisfactory to Agent, with such Bank Product Provider that is a counterparty to such Hedging Transaction, as acknowledged and agreed to by Borrower and Guarantor, providing for the delivery to Agent by such counterparty of information with respect to the amount of such obligations and providing for the other rights of Agent and such Bank Product Provider in connection with such arrangements, and (ii) in no event shall any Bank Product Provider to

whom such obligations, liabilities or indebtedness are owing be deemed a Lender for purposes hereof to the extent of and as to such obligations, liabilities or indebtedness other than for purposes of Section 5.1 hereof and other than for purposes of Sections 12.1, 12.2, 12.3(b), 12.6, 12.7, 12.9, 12.12 and 13.5 hereof and in no event shall the approval of any such person be required in connection with the release or termination of any security interest or lien of Agent.

1.109 "Obligor" shall mean Guarantor, endorser, acceptor, surety or other person (other than Borrower) liable on or for the Obligations or who is the owner of any property which is security for the Obligations (including, without limitation, Guarantor), other than Borrower.

1.110 "Other Taxes" shall mean any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement or any of the other Financing Agreements.

1.111 "Parent" shall mean Mervyn's Holdings, LLC, a Delaware limited liability company, and its successors and assigns.

1.112 "Participant" shall mean any financial institution that acquires and holds a participation in the interest of any Lender in any of the Loans and Letter of Credit Accommodations in conformity with the provisions of Section 13.7 of this Agreement governing participations.

1.113 "Permitted Holders" shall mean the persons listed on Schedule 1.113 hereto and their respective successors and assigns (including officers, directors and employees of Borrower or Guarantor that replace officers, directors and employees of Borrower or Guarantor that held membership interests on the date hereof).

1.114 "Person" or "person" shall mean any individual, sole proprietorship, partnership, corporation (including any corporation which elects subchapter S status under the Code), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

1.115 "Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) which Borrower or Guarantor sponsors, maintains, or to which it makes, is making, or is obligated to make contributions, or in the case of a Multiemployer Plan has made contributions at any time during the immediately preceding six (6) plan years.

1.116 "Post-Presentation Letters of Credit" shall have the meaning set forth in Section 2.2(b) hereof.

1.117 "Purchased Securities" shall mean all of the issued and outstanding Capital Stock of Borrower acquired by Parent from Seller pursuant to the Purchase Agreements.

1.118 "Purchase Agreements" shall mean, individually and collectively, the Equity Purchase Agreement, the Extension Amendment, together with bills of sale, quitclaim deeds, assignment and assumption agreements and such other instruments of transfer as are referred to therein and all side letters with respect thereto, and all agreements, documents and instruments executed and/or delivered in connection therewith, as all of the foregoing now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced; provided, that, the term "Purchase Agreements" as used herein shall not include any of the "Financing Agreements" as such term is defined herein.

1.119 "Prime Rate" shall mean the rate from time to time publicly announced by Wachovia Bank, National Association, or its successors, as its prime rate, whether or not such announced rate is the best rate available at such bank.

1.120 "Prime Rate Loans" shall mean any Loans or portion thereof on which interest is payable based on the Prime Rate in accordance with the terms thereof.

1.121 "Private Label Credit Card Agreement" shall mean the Private Label Consumer Credit Card Program Agreement, dated of July 29, 2004, by and among Parent, Borrower, Guarantor and Monogram Credit Card Bank of Georgia, or any other agreement by and between Borrower and a Credit Card Issuer with respect to a Mervyn's Card program, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.122 "Pro Rata Share" shall mean as to any Lender, the fraction (expressed as a percentage) the numerator of which is such Lender's Commitment and the denominator of which is the aggregate amount of all of the Commitments of Lenders, as adjusted from time to time in accordance with the provisions of Section 13.7 hereof; provided, that, if the Commitments have been terminated, the numerator shall be the unpaid amount of such Lender's Loans and its interest in the Letter of Credit Accommodations and the denominator shall be the aggregate amount of all unpaid Loans and Letter of Credit Accommodations.

1.123 "Provision for Taxes" shall mean an amount equal to all taxes imposed on or measured by net income, whether Federal, State, Provincial, county or local, and whether foreign or domestic, that are paid or payable by any Person in respect of any period in accordance with GAAP.

1.124 "Qualified Cash" shall mean, as of any date of determination, the amount of cash carried by Borrower on its balance sheet (a) which is in a savings account or investment account subject to Agent's first priority perfected security interest pursuant to a Deposit Account Control Agreement or Investment Property Control Agreement, as the case may be, and such agreement provides that no amounts may be withdrawn or disbursed from such accounts to any Person without the written consent of Agent, (b) with respect to which Agent has received statements of the available balances thereof from the bank or other financial institution at which such account is maintained which confirm such amounts, and (c) which is not pledged or deposited to secure any obligations of Borrower other than the Obligations.

1.125 "Quarterly Average Excess Availability" shall mean, at any time, the daily average of the aggregate amount of the Excess Availability for the immediately preceding fiscal quarter based as determined by Agent in good faith.

1.126 "Realco Holdings I" shall mean MDS Realty Holdings I, LLC, a Delaware limited liability company and its successors and assigns.

1.127 "Realco Holdings II" shall mean MDS Realty Holdings II, LLC, a Delaware limited liability company and its successors and assigns.

1.128 "Real Estate Intercreditor Agreement" shall mean the Intercreditor Agreement, dated of even date herewith, by and among Senior RE Loan Lenders, Mezzanine RE Loan Lenders and Agent, (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced).

1.129 "Real Estate Transfer Documents" shall mean, collectively, the following as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced all agreements, documents and instruments at any time executed and/or delivered by Borrower with, to or in favor of MDS Realty I, MDS Realty II, MDS Realty III, MDS Realty IV, MDS Texas GP I, MDS Texas GP II, MDS Texas Prop I, MDS Texas Prop II, MDS Texas Realty I and MDS Realty Texas Realty II in connection with the transfer from Borrower to MDS Realty I, MDS Realty II, MDS Realty III, MDS Realty IV, MDS Texas GP I, MDS Texas GP II, MDS Texas Prop I, MDS Texas Prop II, MDS Texas Realty I and MDS Realty Texas Realty II of any of the fee and leasehold interests subject to the Unitary Leases; sometimes being referred to herein individually as a "Real Estate Transfer Document".

1.130 "Real Property" shall mean all now owned and hereafter acquired real property of Borrower and Guarantor, including leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located.

1.131 "Receivables" shall mean all of the following now owned or hereafter arising or acquired property of Borrower or Guarantor: (a) all Accounts; (b) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Account; (c) all payment intangibles of Borrower or Guarantor; (d) letters of credit, indemnities, guarantees, security or other deposits and proceeds thereof issued payable to Borrower or Guarantor or otherwise in favor of or delivered to Borrower or Guarantor in connection with any Account; or (e) all other accounts, contract rights, chattel paper, instruments, notes, general intangibles and other forms of obligations owing to Borrower or Guarantor, whether from the sale and lease of goods or other property, licensing of any property (including Intellectual Property or other general intangibles), rendition of services or from loans or advances by Borrower or Guarantor or to or for the benefit of any third person (including loans or advances to any Affiliates or Subsidiaries of Borrower or Guarantor) or otherwise associated with any Accounts, Inventory or general intangibles of Borrower or Guarantor (including, without limitation, choses in action, causes of action, tax refunds, tax refund claims, any funds which may become payable to Borrower or Guarantor in connection with the



termination of any Plan or other employee benefit plan and any other amounts payable to Borrower or Guarantor from any Plan or other employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which Borrower or Guarantor is a beneficiary).

1.132 "Records" shall mean, as to Borrower or Guarantor, all of Borrower's or Guarantor's present and future books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of Borrower or Guarantor with respect to the foregoing maintained with or by any other person).

1.133 "Reference Bank" shall mean Wachovia Bank, National Association, or such other bank as Agent may from time to time designate.

1.134 "Register" shall have the meaning set forth in Section 13.7 hereof.

1.135 "Required Lenders" shall mean, at any time, those Lenders, other than Sponsor Affiliated Lenders, whose Pro Rata Shares aggregate more than fifty (50%) percent of the aggregate of the Commitments of all Lenders, other than Sponsor Affiliated Lenders, or if the Commitments shall have been terminated, Lenders, other than Sponsor Affiliated Lenders, to whom more than fifty (50%) percent of the then outstanding Obligations are owing.

1.136 "Required Super-Majority Lenders" shall mean, at any time, those Lenders, other than Sponsor Affiliated Lenders, whose Pro Rata Shares aggregate eighty percent (80%) or more of the aggregate of the Commitments of all Lenders other than Sponsor Affiliated Lenders.

1.137 "Reserves" shall mean:

(a) As of any date of determination, such amounts as Agent may from time to time establish and revise in good faith reducing the amount of Loans and Letter of Credit Accommodations which would otherwise be available to Borrower under the lending formula(s) provided for herein: (i) to reflect events, conditions, contingencies or risks which, as determined by Agent in good faith, adversely affect, or would have a reasonable likelihood of adversely affecting, either (A) the Collateral or any other property which is security for the Obligations, its value or the amount that might be received by Agent from the sale or other disposition or realization upon such Collateral, or (B) the assets, business or prospects of Borrower or Obligor or (C) the security interests and other rights of Agent or any Lender in the Collateral (including the enforceability, perfection and priority thereof), or (ii) to reflect Agent's good faith belief that any collateral report or financial information furnished by or on behalf of Borrower or Obligor to Agent is or may have been incomplete, inaccurate or misleading in any material respect, or (iii) to reflect outstanding Letter of Credit Accommodations as provided in Section 2.2 hereof, or (iv) in respect of any state of facts which Agent determines in good faith constitutes a Default or an Event of Default.

(b) Without limiting the generality of the foregoing, Reserves may be established to reflect (i) dilution with respect to the Credit Card Receivables (based on the ratio of the aggregate amount of non-cash reductions in Credit Card Receivables for any period to the aggregate dollar amount of the sales of Borrower giving rise to Credit Card Receivables for such period) as calculated by Agent for any period is or is reasonably anticipated to be greater than five (5%) percent, or (ii) inventory shrinkage, or (iii) in respect of markdowns and cost variances (pursuant to discrepancies between the purchase order price of Inventory and the actual cost thereof), or (iv) amount due or to become due in respect of sales, use and/or withholding taxes at any time during a Compliance Period or after the occurrence of an Event of Default, or (v) any rental payments, service charges or other amounts to become due to lessors of real property to the extent Inventory or Records are located in or on such property or such Records are needed to monitor or otherwise deal with the Collateral, provided, that, the Reserves established pursuant to this clause (v) as to retail store locations that are leased shall not generally, except as Agent may otherwise determine in its discretion, exceed at any time the aggregate of amounts payable for the next two (2) months from any such time to the lessors of such retail store locations located in those States where any right of the lessor to Collateral may have priority over the security interest and lien of Agent therein, provided, that, such general practice with respect to the amount of the Reserves pursuant to this clause (vi) shall only apply so long as: (A) no Default or Event of Default shall exist or have occurred and be continuing, (B) neither Borrower nor Agent shall have received notice of any event of default by the lessee under the lease with respect to such location and (C) Borrower shall not have granted to the lessor a security interest or lien upon any assets of Borrower; or (vi) any rental payments, service charges or other amounts due or to become due to lessors of personal property, or (vii) amounts owing by Borrower to Credit Card Issuers or Credit Card Processors in connection with the Credit Card Agreements, or (viii) average amount payable to Monogram Credit Card Bank of Georgia (or any subsequent Credit Card Issuer replacing Monogram Credit Card Bank of Georgia in any month under the terms of the Private Label Credit Card Agreement, or (ix) an increase in the number of days of the turnover of Inventory or a change in the mix of the Inventory that results in an overall decrease in the value thereof or a deterioration in its nature or quality (but only to the extent not addressed by the lending formulas in a manner satisfactory to Agent), or (x) variances between the perpetual inventory records of Borrower and the results of the test counts of Inventory conducted by Agent with respect thereto in excess of the percentage acceptable to Agent; or (xi) obligations, liabilities or indebtedness (contingent or otherwise) of Borrowers or Guarantor to Agent or any Bank Product Provider arising under or in connection with any Bank Products or as such Bank Product Provider may otherwise require in connection therewith to the extent that such obligations, liabilities or indebtedness constitute Obligations as such term is defined herein or otherwise receive the benefit of the security interest of Agent in any Collateral, or (xii) amounts which must be paid by Borrower as royalties, fees or other charges in respect of licenses or other agreements to use Intellectual Property owned by third parties other than Guarantor, or (xiii) amounts due or to become due to freight forwarders or customs brokers and for inland freight charges, and any other freight, taxes, duty and other amounts Agent estimates in good faith must be paid in connection with Inventory in transit, or (xiv) amounts due or to become due in cash to Seller or its Affiliates under the Transition Services Agreement or any other Purchase Agreement including without limitation, any amounts due or to become due to Seller under Section 2 of the Equity Purchase Agreement or the Extension Amendment (if the

Net Adjustment (as defined therein) has not been paid in full by Borrower prior to September 30, 2004), or (xv) any amounts received by Agent in respect of the Restricted Lease Proceeds, or (xvi) any amount in respect of an increase in the annual or monthly rent payable by Borrower under any of the Unitary Leases after the date hereof or (xvii) the amount of the increase in rent paid by Borrower in respect of its leasehold interests in the period after the inventory appraisal delivered to Agent prior to the date hereof to the extent such increase in rent is not otherwise included in the estimated liquidation expense calculated by Agent after receipt of an updated inventory appraisal after the date hereof. To the extent Agent may revise the lending formulas used to determine the Borrowing Base or establish new criteria or revise existing criteria for Eligible Credit Card Receivables or Eligible Inventory so as to address any circumstances, condition, event or contingency in a manner satisfactory to Agent, Agent shall not establish a Reserve for the same purpose. The amount of any Reserve established by Agent shall have a reasonable relationship to the event, condition or other matter which is the basis for such reserve as determined by Agent in good faith.

(c) In addition and not in limitation of the foregoing, Reserves in the following amounts shall be established: (i) at Agent's option, either: (A) for fifty (50%) percent of the aggregate amount of merchandise gift certificates or gift cards, or (B) if Borrower can report such liabilities by date of issuance, in form and substance satisfactory to Agent, in an amount equal to: (1) one hundred (100%) percent of the aggregate amount thereof as to which there has elapsed ninety (90) or fewer days since the last usage date, determined by reference to activation, sale or credit transaction or date when new funds were added to an existing card or coupon, whichever shall have last occurred ("Usage"), (2) fifty (50%) percent of the aggregate amount thereof as to which there has elapsed more than ninety (90) days up to and including one hundred eighty (180) days since its last Usage, or (3) twenty-five (25%) percent of the aggregate amount thereof as to which there has elapsed more than one hundred eighty (180) days up to and including five hundred forty-eight (548) days since its last Usage, and (ii) for one hundred (100%) percent of the purchase price paid by any customers or other cash deposits in respect of layaway goods, if any.

1.138 "Restricted Lease Fixtures" shall mean heating, ventilating, air conditioning equipment, boilers, generators, plumbing, elevator and electrical equipment, wall and floor coverings, walls and ceilings and other similar equipment installed in and affixed to the Real Property subject to the Restricted Leases the primary use of which relates to the "Ownership of the Premises" subject to the Restricted Lease or the construction of any improvements thereon or located on or affixed to such premises related to the Ownership of the Premises. For purposes hereof, the term "Ownership of the Premises" shall mean the title, rights and privileges relating primarily to the state of being an owner or lessee of the Premises which is subject to the Restricted Lease, including, without limitation, rights to occupy, develop, lease and exercise dominion and control over the Premises, provided, that, such term shall not include any title, rights or privileges relating primarily to the operation of the business by Borrower being conducted at the Real Property subject to the Restricted Leases. The term "Restricted Lease Fixtures" shall, in any event not include any trade fixtures or other Equipment of Borrower or Guarantor. Notwithstanding anything to the contrary contained in this definition, any fixtures (other than trade fixtures) that are affixed or annexed to the real property that is the subject of a

Restricted Lease, and which under the laws of the jurisdiction in which such real property is located, are regarded as part of such real property shall be deemed to be Restricted Lease Fixtures.

1.139 “Restricted Lease Proceeds” shall mean any income or proceeds generated by any Restricted Lease which are payable to Borrower, including: (a) any sublease rental income to the extent such sublease rental income exceeds the stated rent payable by Borrower under such Restricted Lease, (or in the case of a sublease of a portion of the premises demised under a Restricted Lease, the fairly allocable portion of the rent attributable to such portion of the applicable demised premises); provided, that, the foregoing limitation shall not apply to a triple net sublease where the subtenant is responsible for payment of all rental payments under the prime lease), in which case (for the purposes of this clause (a)) Restricted Lease Proceeds shall mean all sublease rental income payable to Borrower under such sublease, or (b) any amounts received by or on behalf of Borrower in respect of its rights as a lessee in respect of Restricted Lease (or with respect to the leasehold and Restricted Lease Fixtures demised under such Restricted Lease) as a result of (i) any casualty or condemnation affecting such Restricted Lease or Restricted Lease Fixtures, or the real property and improvements demised under such Restricted Lease, to the extent that Borrower has not, utilized such proceeds towards payment (or reimbursement, including reimbursement of its own funds utilized for such restoration costs or Loans for the same) of restoration costs for the affected premises (but exclusive of any casualty insurance proceeds or condemnation awards paid in respect of the Collateral), or (ii) any sale or other disposition by Borrower of its interest in any Restricted Lease (including any termination or surrender of any Restricted Lease) or Restricted Lease Fixtures.

1.140 “Restricted Lease Proceeds Account(s)” shall mean a deposit account(s) specified as such on Schedule 8.10 to the Information Certificate, into which Borrower may deposit Restricted Lease Proceeds.

1.141 “Restricted Lease Proceeds Dividend” shall mean the cash dividend payable by Borrower to Parent in accordance with Section 9.5 of the Borrower LLC Agreement (as in effect on the date hereof) in respect or any Restricted Lease Proceeds received and paid to Borrower in respect of any cash proceeds actually received by Borrower in the Restricted Lease Proceeds Account(s) pursuant to a sale or other disposition of Restricted Leases and Restricted Lease Fixtures permitted by Section 9.7(b)(v)(B) hereof.

1.142 “Restricted Leases” shall mean the leases by and between Borrower, as lessee and a third party (other than an Affiliate of Borrower), as lessor, with respect to retail store locations as more particularly identified on Schedule 1.105 hereto.

1.143 “Seasonal Period” shall mean the period beginning on June 1 of each calendar year and ending on November 30 of the same calendar year.

1.144 “Seller” shall mean Target Corporation, a Minnesota corporation and its successors and assigns.

1.145 “Senior RE Loan Agreement” shall mean the Senior Loan Agreement, dated of even date herewith, by and among Senior RE Loan Lenders, MDS Realty I, MDS Realty II, MDS Texas Realty I and MDS Texas Realty II, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.146 “Senior RE Loan Debt” shall mean all obligations, liabilities and indebtedness of every kind, nature and description owing by MDS Realty I, MDS Realty II, MDS Texas Realty I and MDS Texas Realty II to Senior RE Loan Lenders, including principal, interest, charges, fees, premiums, indemnities, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under or in connection with the Senior RE Loan Documents.

1.147 “Senior RE Loan Documents” shall mean, collectively, the following (as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced): (a) the Senior RE Loan Agreement; and (b) all other agreements, documents and instruments at any time executed and/or delivered by MDS Realty I, MDS Realty II, MDS Texas Realty I or MDS Texas Realty II or any Obligor with, to or in favor of Senior RE Loan Lenders in connection therewith or related thereto; sometimes being referred to herein individually as a “Senior RE Loan Document”.

1.148 “Senior RE Loan Lenders” shall mean, collectively, Greenwich Capital Financial Products, Inc. a Delaware corporation, and Archon Financial L.P., a Delaware limited partnership and their respective successors and assigns.

1.149 “Solvent” shall mean, at any time with respect to any Person, that at such time such Person (a) is able to pay its debts as they mature and has (and has a reasonable basis to believe it will continue to have) sufficient capital (and not unreasonably small capital) to carry on its business consistent with its practices as of the date hereof, and (b) the assets and properties of such Person at a fair valuation (and including as assets for this purpose at a fair valuation all rights of subrogation, contribution or indemnification arising pursuant to any guarantees given by such Person) are greater than the Indebtedness of such Person, and including subordinated and contingent liabilities computed at the amount which, such person has a reasonable basis to believe, represents an amount which can reasonably be expected to become an actual or matured liability (and including as to contingent liabilities arising pursuant to any guarantee the face amount of such liability as reduced to reflect the probability of it becoming a matured liability).

1.150 “Special Agent Advances” shall have the meaning set forth in Section 12.11 hereof.

1.151 “Sponsor” shall mean, individually and collectively, Sun Capital, Cerberus or Lubert-Adler.

1.152 “Sponsor Affiliated Lenders” shall mean Ableco Finance LLC, a Delaware limited liability company, Madeleine L.L.C., a New York limited liability company, Sun Capital Securities Fund, LP, a Delaware limited partnership, Sun Capital Securities Offshore Fund, Ltd, a company organized under the laws of the Cayman Islands and funds and managed accounts

which are controlled by any such Person, Permitted Holders or an Affiliate of such Person or Sponsor.

1.153 "Sponsor Portfolio Company" shall mean any Person that is an Affiliate of Borrower solely due to the fact that such Person is controlled, directly or indirectly, by Sponsor and which does not otherwise have any managerial control over Borrower's business in any capacity.

1.154 "Store Accounts" shall have the meaning set forth in Section 6.3 hereof.

1.155 "Subsidiary" or "subsidiary" shall mean, with respect to any Person, any corporation, limited liability company, limited liability partnership or other limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Capital Stock or other interests entitled to vote in the election of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency), managers, trustees or other controlling persons, or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more subsidiaries of such Person.

1.156 "Sun" shall mean Sun Capital Partners Management, LLC, a Delaware limited liability company, and its successors and assigns.

1.157 "Sun Capital" shall mean collectively, together with their respective successors and assigns: (a) SCSF Mervyn's (US), LLC, a Delaware limited liability company, and (b) SCSF Mervyn's (Offshore), Inc., a Delaware corporation.

1.158 "Taxes" shall mean any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of Agent or any Lender, (a) such taxes (including income taxes, franchise taxes, branch profits or capital taxes) as are imposed on or measured by Agent's or such Lender's net income or capital (or other taxes imposed in lieu thereof) by any jurisdiction or political subdivision thereof and (b) all interest and penalties imposed on Agent or such Lender with respect to the taxes described in clause (a) above.

1.159 "Ten Year Unitary Lease" shall mean the Unitary Lease, dated of even date herewith, by and between MDS Realty II, MDS Texas Realty II and MDS Realty IV, as lessors and Borrower, as lessee, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.160 "Three Year Unitary Lease" shall mean the Unitary Lease, dated of even date herewith, by and between MDS Realty II, as lessor and Borrower, as lessee, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.161 "Transition Services Agreement" shall mean the Transition Services Agreement, dated as of August 28, 2004, by and between Borrower and Seller, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.162 "TSA Side Letter" shall mean the Transition Services Side Letter Agreement, dated of even date herewith, by and among Seller, Agent and Mervyn's, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.163 "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York, and any successor statute, as in effect from time to time (except that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as Agent may otherwise determine).

1.164 "Unitary Leases" shall mean, collectively, the following: (a) the Fifteen Month Unitary Lease, (b) the Three Year Unitary Lease, and (c) the Ten Year Unitary Lease; sometimes referred to herein individually as a "Unitary Lease".

1.165 "Unrestricted Leases" shall mean any lease subject to a Unitary Lease.

1.166 "Value" shall mean, as determined by Agent in good faith, with respect to Inventory, the lower of (a) Cost or (b) market value, provided, that, for purposes of the calculation of the Borrowing Base, (i) the Value of the Inventory shall not include: (A) the portion of the value of Inventory equal to the profit earned by any Affiliate (other than any Sponsor Portfolio Company in the context of an arm's length transaction) on the sale thereof to Borrower or (B) write-ups or write-downs in value with respect to currency exchange rates and (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the most recent appraisal of the Inventory received and accepted by Agent prior to the date hereof, if any.

1.167 "Voting Stock" shall mean with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

1.168 "Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the then outstanding principal amount of such Indebtedness into (b) the total of the product obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment.

## SECTION 2. CREDIT FACILITIES

### 2.1 Loans.

(a) Subject to and upon the terms and conditions contained herein, each Lender severally (and not jointly) agrees to fund its Pro Rata Share of Loans to Borrower from time to time in amounts requested by Borrower up to the amount outstanding at any time equal to the lesser of: (i) the Borrowing Base at such time or (ii) the Maximum Credit.

(b) Agent may, in its discretion, from time to time, upon not less than five (5) days prior notice to Borrower, reduce the lending formula(s) with respect to Eligible Inventory to the extent that Agent determines in good faith that: (i) the number of days of the turnover of the Eligible Inventory for any period has adversely changed or (ii) the liquidation value of the Eligible Inventory, or any class thereof, has decreased, including any decrease attributable to a change in the nature, quality or mix of the Inventory. The amount of any decrease in the lending formulas shall have a reasonable relationship to the event, condition or circumstance which is the basis for such decrease as determined by Agent in good faith. In determining whether to reduce the lending formula(s), Agent may consider events, conditions, contingencies or risks which are also considered in determining Eligible Credit Card Receivables, Eligible Inventory or in establishing Reserves

(c) Except in Agent's discretion, with the consent of all Lenders other than the Sponsor Affiliated Lenders, or as otherwise provided herein, (i) the aggregate amount of the Loans and the Letter of Credit Accommodations outstanding at any time shall not exceed the Maximum Credit, and (ii) the aggregate amount of the Loans outstanding at any time shall not exceed the Borrowing Base.

(d) In the event that the aggregate principal amount of the Loans and Letter of Credit Accommodations outstanding exceed the Maximum Credit or the Loans outstanding exceed the Borrowing Base, or the aggregate amount of the outstanding Letter of Credit Accommodations exceed the sublimit for Letter of Credit Accommodations set forth in Section 2.2(e), such event shall not limit, waive or otherwise affect any rights of Agent or Lenders in such circumstances or on any future occasions and Borrower shall, upon demand by Agent, which may be made at any time or from time to time, immediately repay to Agent the entire amount of any such excess(es) for which payment is demanded.

### 2.2 Letter of Credit Accommodations.

(a) Subject to and upon the terms and conditions contained herein, at the request of Borrower, Agent agrees, for the ratable risk of each Lender according to its Pro Rata Share, to provide or arrange for Letter of Credit Accommodations for the account of Borrower containing terms and conditions acceptable to Agent and the issuer thereof. Any payments made by or on behalf of Agent or any Lender to any issuer thereof and/or related parties in connection with the Letter of Credit Accommodations provided to or for the benefit of Borrower shall constitute additional Loans to Borrower pursuant to this Section 2 (or Special Agent Advances as the case may be).



(b) In addition to any charges, fees or expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations, Borrower shall pay to Agent, (i) for its own account, a letter of credit fronting fee at a rate equal to one-eighth percent ( $\frac{1}{8}\%$ ) per annum on the daily outstanding balance of the Letter of Credit Accommodations for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month; and (ii) for the benefit of Lenders, a letter of credit fee for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month, at a per annum rate equal to: (A) in respect of Letter of Credit Accommodations (other than Letter of Credit Accommodations the purpose for which is purchasing Eligible Inventory), (1) one and three-quarters ( $1\frac{3}{4}\%$ ) percent per annum on the daily outstanding balance of such Letter of Credit Accommodations, for the period from the date hereof through and including the first ( $1^{\text{st}}$ ) day of the second month of the fiscal quarter ending on or about January 29, 2005, and (2) the Applicable Margin (then in effect pursuant to the terms of this Agreement) in excess of the Adjusted Eurodollar Rate per annum on the daily outstanding balance of such Letter of Credit Accommodations at all times thereafter, and (B) in respect of Letter of Credit Accommodations issued for the purpose of purchasing Eligible Inventory, the greater of: (1) fifty (50%) percent of the rate then in effect for determining the letter of credit fee for Letter of Credit Accommodations (other than Letter of Credit Accommodations the purpose for which is purchasing Eligible Inventory) pursuant to Section 2.2(b)(ii)(A) hereof or (2) three-quarters ( $\frac{3}{4}\%$ ) of one percent on the daily outstanding balance of such Letter of Credit Accommodations; provided, that, upon presentation by beneficiary to issuer of a Letter of Credit Accommodation (issued under clause (B) hereof) for conversion to a banker's acceptance, the letter of credit fee applicable to such Letter of Credit Accommodation shall be calculated in accordance with clause (A) above ("Post-Presentation Letters of Credit") except, that, at Agent's option or upon the written direction of Required Lenders, Borrower shall pay to Agent for the ratable benefit of Lenders, such letter of credit fee, at a per annum rate equal to two (2%) percent per annum in excess of then applicable per annum rate to such type of Letter of Credit Accommodations pursuant to Section 2.2(b)(ii) on such daily outstanding balance for the period from and after the date of termination hereof until Agent and Lenders have received full and final payment of all Obligations (notwithstanding entry of a judgment against Borrower) and the period from and after the date of the occurrence of an Event of Default for so long as such Event of Default is continuing as determined by Agent in good faith. Such letter of credit fee shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed and the obligation of Borrower to pay such fee shall survive the termination of this Agreement.

(c) Borrower shall give Agent two (2) Business Days' prior written notice of Borrower's request for the issuance of a Letter of Credit Accommodation. Such notice shall be irrevocable and shall specify the original face amount of the Letter of Credit Accommodation requested, the effective date (which date shall be a Business Day) of issuance of such requested Letter of Credit Accommodation, whether such Letter of Credit Accommodations may be drawn in a single or in partial draws, the date on which such requested Letter of Credit Accommodation is to expire (which date shall be a Business Day), the purpose for which such Letter of Credit Accommodation is to be issued, and the beneficiary of the requested Letter of Credit Accommodation. Borrower shall attach to such notice the proposed form of the Letter of Credit Accommodation.

(d) In addition to being subject to the satisfaction of the applicable conditions precedent contained in Section 4 hereof and the other terms and conditions contained herein, no Letter of Credit Accommodations shall be available unless each of the following conditions precedent have been satisfied in a manner satisfactory to Agent: (i) Borrower shall have delivered to the proposed issuer of such Letter of Credit Accommodation at such times and in such manner as such proposed issuer may require, an application, in form and substance satisfactory to such proposed issuer and Agent, for the issuance of the Letter of Credit Accommodation and such other documents as may be required pursuant to the terms thereof, and the form and terms of the proposed Letter of Credit Accommodation shall be satisfactory to Agent and such proposed issuer, (ii) as of the date of issuance, no order of any court, arbitrator or other Governmental Authority shall purport by its terms to enjoin or restrain money center banks generally from issuing letters of credit of the type and in the amount of the proposed Letter of Credit Accommodation, and no law, rule or regulation applicable to money center banks generally and no request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over money center banks generally shall prohibit, or request that the proposed issuer of such Letter of Credit Accommodation refrain from, the issuance of letters of credit generally or the issuance of such Letter of Credit Accommodation; and (iii) the Excess Availability, prior to giving effect to any Reserves with respect to such Letter of Credit Accommodations, on the date of the proposed issuance of any Letter of Credit Accommodations, shall be equal to or greater than: (A) if the proposed Letter of Credit Accommodation is for the purpose of purchasing Eligible Inventory, provided, that, if such Inventory is or will be in transit from outside the United States then it is or will be in transit to a customs broker or freight forwarder who has executed a bailee agreement in favor of Agent and in form and substance satisfactory to Agent, and the documents of title with respect thereto are consigned or will be consigned to the Agent or issuer or the requirement set forth in Section 1.44(n)(ii)(B) hereof has been satisfied as to such Inventory, at Agent's option, the sum of (1) the percentage equal to one hundred (100%) percent minus the then applicable percentage with respect to Eligible Inventory set forth in the definition of the term Borrowing Base multiplied by the Value of such Eligible Inventory, plus (2) freight, taxes, duty and other amounts which Agent estimates must be paid in connection with such Inventory upon arrival and for delivery to one of Borrower's locations for Eligible Inventory within the United States of America; and (B) if the proposed Letter of Credit Accommodation is for any other purpose or the documents of title are not consigned to the Agent or issuer in connection with a Letter of Credit Accommodation for the purpose of purchasing Inventory or the conditions in Section 2.2(d)(iii)(A) with regard to a Letter of Credit Accommodation for the purpose of purchasing Eligible Inventory have not been satisfied, an amount equal to one hundred (100%) percent of the face amount thereof and all other commitments and obligations made or incurred by Agent with respect thereto; provided, that, (1) the Reserve in effect for any Letter of Credit Accommodation shall be increased to one hundred (100%) percent of the face amount thereof plus all other commitments and obligations made or incurred by Agent with respect thereto plus the amounts set forth in Section 2.2(d)(iii)(A)(2) above at any time seventy-five (75) days after the date of the issuance of the Letter of Credit Accommodation until presented, (2) the Reserve in effect for any Post-Presentation Letter of Credit upon receipt of the related Inventory at a location of Borrower and inclusion of such Inventory in the perpetual inventory report of Borrower provided to Agent in accordance with the terms hereof, shall be an amount equal to one hundred (100%) percent of the

face amount thereof and all other commitments and obligations made or incurred by Agent with respect thereto, and (3) the amount of all outstanding Letter of Credit Accommodations issued under Section 2.2(d)(iii)(B) prior to shipment of the finished goods and all other commitments and obligations made or incurred by Agent or any Lender in connection therewith shall not at any time exceed the lesser of: \$50,000,000 or fifteen (15%) percent of the net book value of the Inventory as determined by Agent at any time during January through May in any year and the lesser of: \$85,000,000 or twenty (20%) percent of the net book value of the Inventory as determined by Agent from June through December in any year. Effective on the issuance of each Letter of Credit Accommodation, a Reserve shall be established in the applicable amount set forth in Section 2.2(d)(iii)(A) or Section 2.2(d)(iii)(B).

Except as set forth in Section 2.2(d)(iii)(B)(2) above, for the period commencing the date hereof and ending on March 1, 2005, Agent shall establish a Reserve in an amount equal to the Reserve set forth in Section 2.2(d)(iii)(A)(1) hereof with respect to Post-Presentation Letters of Credit and at all times thereafter, the applicable Reserve with respect to such Letter of Credit Accommodations shall not be less than the Reserve set forth in Section 2.2(d)(iii)(B) unless the reporting of Borrower provided to Agent hereunder with respect to Post-Presentation Letters of Credit is satisfactory to Agent.

(e) Except in Agent's discretion, with the consent of Required Super-Majority Lenders, the amount of all outstanding Letter of Credit Accommodations and all other commitments and obligations made or incurred by Agent or any Lender in connection therewith shall not at any time exceed \$275,000,000 (inclusive of the sublimit set forth in Section 2.2(d)(iii)(B)(3) hereof).

(f) Borrower and Guarantor shall indemnify and hold Agent and Lenders harmless from and against any and all losses, claims, damages, liabilities, costs and expenses which Agent or any Lender may suffer or incur in connection with any Letter of Credit Accommodations and any documents, drafts or acceptances relating thereto, including any losses, claims, damages, liabilities, costs and expenses due to any action taken by any issuer or correspondent with respect to any Letter of Credit Accommodation, except for such losses, claims, damages, liabilities, costs or expenses that are a direct result of the gross negligence or willful misconduct of any Indemnitee as determined pursuant to a final non-appealable order of a court of competent jurisdiction. Each of Borrower and Guarantor assumes all risks with respect to the acts or omissions of the drawer under or beneficiary of any Letter of Credit Accommodation and for such purposes the drawer or beneficiary shall be deemed Borrower's agent. Each of Borrower and Guarantor assumes all risks for, and agrees to pay, all foreign, Federal, State and local taxes, duties and levies relating to any goods subject to any Letter of Credit Accommodations or any documents, drafts or acceptances thereunder. Each of Borrower and Guarantor hereby releases and holds Agent and Lenders harmless from and against any acts, waivers, errors, delays or omissions, whether caused by Borrower, Guarantor, by any issuer or correspondent or otherwise with respect to or relating to any Letter of Credit Accommodation, except for the gross negligence or willful misconduct of Agent and any Lender as determined pursuant to a final, non-appealable order of a court of competent jurisdiction (but without limiting the obligations of Borrower or Guarantor as to any other Indemnitee (other than any officers, directors, agents or

employees of the Indemnitee whose gross negligence or willful misconduct resulted in such losses, claims, damages, liabilities, costs or expenses)). The provisions of this Section 2.2(f) shall survive the payment of Obligations and the termination of this Agreement.

(g) In connection with Inventory purchased pursuant to Letter of Credit Accommodations, Borrower and Guarantor shall, at Agent's request, instruct all suppliers, carriers, forwarders, customs brokers, warehouses or others receiving or holding cash, checks, Inventory, documents or instruments in which Agent holds a security interest to deliver them to Agent and/or subject to Agent's order, and if they shall come into Borrower's or Guarantor's possession, to deliver them, upon Agent's request, to Agent in their original form. Borrower and Guarantor shall also, at Agent's request, designate Agent as the consignee on all bills of lading and other negotiable and non-negotiable documents.

(h) Each of Borrower and Guarantor hereby irrevocably authorizes and directs any issuer of a Letter of Credit Accommodation to name Borrower as the account party therein and to deliver to Agent all instruments, documents and other writings and property received by issuer pursuant to the Letter of Credit Accommodations and to accept and rely upon Agent's instructions and agreements with respect to all matters arising in connection with the Letter of Credit Accommodations or the applications therefor. Nothing contained herein shall be deemed or construed to grant Borrower or Guarantor any right or authority to pledge the credit of Agent or any Lender in any manner. Agent and Lenders shall have no liability of any kind with respect to any Letter of Credit Accommodation provided by an issuer other than Agent or any Lender unless Agent has duly executed and delivered to such issuer the application or a guarantee or indemnification in writing with respect to such Letter of Credit Accommodation. Borrower and Guarantor shall be bound by any reasonable interpretation made in good faith by Agent, or any other issuer or correspondent under or in connection with any Letter of Credit Accommodation or any documents, drafts or acceptances thereunder, notwithstanding that such interpretation may be inconsistent with any instructions of Borrower or Guarantor.

(i) So long as no Event of Default exists or has occurred and is continuing, Borrower may (i) approve or resolve any questions of non-compliance of documents, (ii) give any instructions as to acceptance or rejection of any documents or goods, (iii) execute any and all applications for steamship or airway guaranties, indemnities or delivery orders, and (iv) with Agent's consent, grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents, and agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letter of Credit Accommodations, or documents, drafts or acceptances thereunder or any letters of credit included in the Collateral.

(j) At any time an Event of Default exists or has occurred and is continuing, Agent shall have the right and authority to, and Borrower shall not, without the prior written consent of Agent, (i) approve or resolve any questions of non-compliance of documents, (ii) give any instructions as to acceptance or rejection of any documents or goods, (iii) execute any and all applications for steamship or airway guaranties, indemnities or delivery orders, (iv) grant any extensions of the maturity of, time of payments for, or time of presentation of, any drafts,

acceptances, or documents, and (v) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letter of Credit Accommodations, or documents, drafts or acceptances thereunder or any letters of credit included in the Collateral. Agent may take such actions either in its own name or in Borrower's name.

(k) Any rights, remedies, duties or obligations granted or undertaken by Borrower or Guarantor to any issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement in favor of any issuer or correspondent relating to any Letter of Credit Accommodation, shall be deemed to have been granted or undertaken by Borrower or Guarantor to Agent for the ratable benefit of Lenders. Any duties or obligations undertaken by Agent to any issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement by Agent in favor of any issuer or correspondent to the extent relating to any Letter of Credit Accommodation, shall be deemed to have been undertaken by Borrower and Guarantor to Agent for the ratable benefit of Lenders and to apply in all respects to Borrower and Guarantor.

(l) Immediately upon the issuance or amendment of any Letter of Credit Accommodation, each Lender shall be deemed to have irrevocably and unconditionally purchased and received, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Pro Rata Share of the liability with respect to such Letter of Credit Accommodation (including, without limitation, all Obligations with respect thereto).

(m) Borrower is irrevocably and unconditionally obligated, without presentment, demand or protest, to pay to Agent any amounts paid by an issuer of a Letter of Credit Accommodation with respect to such Letter of Credit Accommodation (whether through the borrowing of Loans in accordance with Section 2.2(a) or otherwise). In the event that Borrower fails to pay Agent on the date of any payment under a Letter of Credit Accommodation in an amount equal to the amount of such payment, Agent (to the extent it has actual notice thereof) shall promptly notify each Lender of the unreimbursed amount of such payment and each Lender agrees, upon one (1) Business Day's notice, to fund to Agent the purchase of its participation in such Letter of Credit Accommodation in an amount equal to its Pro Rata Share of the unpaid amount. The obligation of each Lender to deliver to Agent an amount equal to its respective participation pursuant to the foregoing two sentences is absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuance of any Event of Default, the failure to satisfy any other condition set forth in Section 4 or any other event or circumstance. If such amount is not made available by a Lender when due, Agent shall be entitled to recover such amount on demand from such Lender with interest thereon, for each day from the date such amount was due until the date such amount is paid to Agent at the interest rate then payable by Borrower in respect of Loans that are Prime Rate Loans as set forth in Section 3.1(a) hereof.

2.3 Commitments. The aggregate amount of each Lender's Pro Rata Share of the Loans and Letter of Credit Accommodations shall not exceed the amount of such Lender's Commitment, as the same may from time to time be amended in accordance with the provisions hereof.

2.4 Bank Products. Borrower or any of its Subsidiaries may (but no such Person is required to) request that the Bank Product Providers provide or arrange for such Person to obtain Bank Products from Bank Product Providers, and each Bank Product Provider may, in its sole discretion, provide or arrange for such Person to obtain the requested Bank Products. Borrower or any of its Subsidiaries that obtains Bank Products shall indemnify and hold Agent, each Lender and their respective Affiliates harmless from any and all obligations now or hereafter owing to any other Person by any Bank Product Provider in connection with any Bank Products other than for gross negligence or willful misconduct on the part of any such indemnified Person. Borrower and its Subsidiaries acknowledge and agree that the obtaining of Bank Products from Bank Product Providers (a) is in the sole discretion of such Bank Product Provider, and (b) is subject to all rules and regulations of such Bank Product Provider.

### **SECTION 3. INTEREST AND FEES**

#### **3.1 Interest**

(a) Borrower shall pay to Agent, for the benefit of Lenders, interest on the outstanding principal amount of the Loans at the Interest Rate. All interest accruing hereunder on and after the date of any Event of Default for so long as same is continuing or on or after the date of the termination hereof shall be payable on demand.

(b) Borrower may from time to time request Eurodollar Rate Loans or may request that Prime Rate Loans be converted to Eurodollar Rate Loans or that any existing Eurodollar Rate Loans continue for an additional Interest Period. Such request from Borrower shall specify the amount of the Eurodollar Rate Loans or the amount of the Prime Rate Loans to be converted to Eurodollar Rate Loans or the amount of the Eurodollar Rate Loans to be continued (subject to the limits set forth below) and the Interest Period to be applicable to such Eurodollar Rate Loans. Subject to the terms and conditions contained herein, three (3) Business Days after receipt by Agent of such a request from Borrower, such Eurodollar Rate Loans shall be made or Prime Rate Loans shall be converted to Eurodollar Rate Loans or such Eurodollar Rate Loans shall continue, as the case may be, provided, that, (i) no Default or Event of Default shall exist or have occurred and be continuing, (ii) no party hereto shall have sent any notice of termination of this Agreement, (iii) Borrower shall have complied with such customary procedures as are established by Agent and specified by Agent to Borrower from time to time for requests by Borrower for Eurodollar Rate Loans, (iv) no more than eight (8) Interest Periods may be in effect at any one time, (v) the aggregate amount of the Eurodollar Rate Loans must be in an amount not less than \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof, (vi) the maximum amount of the Eurodollar Rate Loans in the aggregate at any time requested by Borrower shall not exceed the amount equal to ninety (90%) percent of the lowest principal amount of the Loans which it is anticipated will be outstanding during the applicable Interest Period, in each case as determined by Agent in good faith (but with no obligation of Agent or Lenders to make such Loans), and (vii) Agent and each Lender shall have determined that the Interest Period or Adjusted Eurodollar Rate is available to Agent and such Lender and can be readily determined as of the date of the request for such Eurodollar Rate Loan by Borrower. Any request by or on behalf of Borrower for Eurodollar Rate Loans or to convert Prime Rate Loans to Eurodollar Rate

Loans or to continue any existing Eurodollar Rate Loans shall be irrevocable. Notwithstanding anything to the contrary contained herein, Agent and Lenders shall not be required to purchase United States Dollar deposits in the London interbank market or other applicable Eurodollar Rate market to fund any Eurodollar Rate Loans, but the provisions hereof shall be deemed to apply as if Agent and Lenders had purchased such deposits to fund the Eurodollar Rate Loans.

(c) Any Eurodollar Rate Loans shall automatically convert to Prime Rate Loans upon the last day of the applicable Interest Period, unless Agent has received and approved a request to continue such Eurodollar Rate Loan at least three (3) Business Days prior to such last day in accordance with the terms hereof. Any Eurodollar Rate Loans shall, at Agent's option, upon notice by Agent to Borrower, be subsequently converted to Prime Rate Loans in the event that this Agreement shall terminate or not be renewed. Borrower shall pay to Agent, for the benefit of Lenders, upon demand by Agent (or Agent may, at its option, charge any loan account of Borrower) any amounts required to compensate any Lender or Participant for any loss (including loss of anticipated profits), cost or expense incurred by such person, as a result of the conversion of Eurodollar Rate Loans to Prime Rate Loans pursuant to any of the foregoing.

(d) Interest shall be payable by Borrower to Agent, for the account of Lenders, monthly in arrears not later than the first day of each calendar month and shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed. The interest rate on non-contingent Obligations (other than Eurodollar Rate Loans) shall increase or decrease by an amount equal to each increase or decrease in the Prime Rate effective on the first day of the month after any change in such Prime Rate is announced based on the Prime Rate in effect on the last day of the month in which any such change occurs. In no event shall charges constituting interest payable by Borrower to Agent and Lenders exceed the maximum amount or the rate permitted under any applicable law or regulation, and if any such part or provision of this Agreement is in contravention of any such law or regulation, such part or provision shall be deemed amended to conform thereto.

### 3.2 Fees.

(a) Borrower shall pay to Agent, for the account of Lenders, payable on the first day of each month in arrears while this Agreement is in effect and for so long thereafter as any of the Obligations are outstanding, an unused line fee at a rate equal to three-eighths of one ( $\frac{3}{8}\%$ ) percent per annum calculated upon the amount by which the Maximum Credit exceeds the average daily principal balance of the outstanding Loans and Letter of Credit Accommodations during the immediately preceding month, or part thereof (such amount referred to as the "Unused Facility Amount").

(b) Borrower agrees to pay to Agent the other fees and amounts set forth in the Fee Letter in the amounts and at the times specified therein.

### 3.3 Changes in Laws and Increased Costs of Loans.

(a) If after the date hereof, either (i) any change in, or in the interpretation of, any law or regulation is introduced, including, without limitation, with respect to reserve

requirements, applicable to any Lender or any banking or financial institution from whom any Lender borrows funds or obtains credit (a "Funding Bank"), or (ii) a Funding Bank or any Lender complies with any future guideline or request from any central bank or other Governmental Authority or (iii) a Funding Bank or any Lender determines that the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof has or would have the effect described below, or a Funding Bank or any Lender complies with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, and in the case of any event set forth in this clause (iii), such adoption, change or compliance has or would have the direct or indirect effect of reducing the rate of return on any Lender's capital as a consequence of its obligations hereunder to a level below that which such Lender could have achieved but for such adoption, change or compliance (taking into consideration the Funding Bank's or Lender's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, and the result of any of the foregoing events described in clauses (i), (ii) or (iii) is or results in an increase in the cost to any Lender of funding or maintaining the Loans, the Letter of Credit Accommodations or its Commitment, then Borrower and Guarantor shall from time to time upon demand by Agent pay to Agent additional amounts sufficient to indemnify all such Lenders against such increased cost on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified). A certificate as to the amount of such increased cost shall be submitted to Borrower by Agent and shall be conclusive, absent manifest error.

(b) If prior to the first day of any Interest Period, (i) Agent shall have determined in good faith (which determination shall be conclusive and binding upon Borrower and Guarantor) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, (ii) Agent has received notice from the Required Lenders that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Eurodollar Rate Loans during such Interest Period, or (iii) Dollar deposits in the principal amounts of the Eurodollar Rate Loans to which such Interest Period is to be applicable are not generally available in the London interbank market, Agent shall give telecopy or telephonic notice thereof to Borrower as soon as practicable thereafter, and will also give prompt written notice to Borrower when such conditions no longer exist. If such notice is given (A) any Eurodollar Rate Loans requested to be made on the first day of such Interest Period shall be made as Prime Rate Loans, (B) any Loans that were to have been converted on the first day of such Interest Period to or continued as Eurodollar Rate Loans shall be converted to or continued as Prime Rate Loans and (C) each outstanding Eurodollar Rate Loan shall be converted, on the last day of the then-current Interest Period thereof, to Prime Rate Loans. Until such notice has been withdrawn by Agent, no further Eurodollar Rate Loans shall be made or continued as such, nor shall Borrower have the right to convert Prime Rate Loans to Eurodollar Rate Loans.

(c) Notwithstanding any other provision herein, if the adoption of or any change in any law, treaty, rule or regulation or final, non-appealable determination of an arbitrator or a



court or other Governmental Authority or in the interpretation or application thereof occurring after the date hereof shall make it unlawful for Agent or any Lender to make or maintain Eurodollar Rate Loans as contemplated by this Agreement, (i) Agent or such Lender shall promptly give written notice of such circumstances to Borrower and Agent (which notice shall be withdrawn whenever such circumstances no longer exist), (ii) the commitment of such Lender hereunder to make Eurodollar Rate Loans, continue Eurodollar Rate Loans as such and convert Prime Rate Loans to Eurodollar Rate Loans shall forthwith be canceled and, until such time as it shall no longer be unlawful for such Lender to make or maintain Eurodollar Rate Loans, such Lender shall then have a commitment only to make a Prime Rate Loan when a Eurodollar Rate Loan is requested and (iii) such Lender's Loans then outstanding as Eurodollar Rate Loans, if any, shall be converted automatically to Prime Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Rate Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Borrower and Guarantor shall pay to such Lender such amounts, if any, as may be required pursuant to Section 3.3(d) below.

(d) Borrower and Guarantor shall indemnify Agent and each Lender and to hold Agent and each Lender harmless from any loss or expense which Agent or such Lender may sustain or incur as a consequence of (i) default by Borrower in making a borrowing of, conversion into or extension of Eurodollar Rate Loans after Borrower has given a notice requesting the same in accordance with the provisions of this Loan Agreement, (ii) default by Borrower in making any prepayment of a Eurodollar Rate Loan after Borrower has given a notice thereof in accordance with the provisions of this Agreement, and (iii) the making of a prepayment of Eurodollar Rate Loans on a day which is not the last day of an Interest Period with respect thereto. With respect to Eurodollar Rate Loans, such indemnification may include an amount equal to the excess, if any, of (A) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, converted or extended, for the period from the date of such prepayment or of such failure to borrow, convert or extend to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or extend, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Rate Loans provided for herein over (B) the amount of interest (as determined by Agent or such Lender) which would have accrued to Agent or such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market. This covenant shall survive the termination or non-renewal of this Agreement and the payment of the Obligations.

(e) If Borrower is required to pay additional amounts to any Lender pursuant to Section 3.3(a) that increase the effective lending rate of such Lender with respect to its share of the Loans under this Agreement to greater than one eighth ( $\frac{1}{8}\%$ ) percent in excess of the percentage of the effective lending rate of the other Lenders, then such Lender shall use reasonable efforts (consistent with legal and regulatory restrictions) to change the jurisdiction of its lending office with respect to making Eurodollar Rate Loans so as to eliminate any such additional payment by Borrower which may thereafter accrue, if such change in the judgment of such Lender is not otherwise disadvantageous to such Lender. In the event that any one or more Lenders, pursuant to Section 3.3(a) hereof, incur any increased costs (other than increased costs

to the extent such increased costs are not a recurring cost) for which any such Lender demands compensation pursuant to Section 3.3(a) hereof which increases the effective lending rate of such Lender with respect to its share of the Loans under this Agreement to greater than one eighth (1/8%) percent in excess of the percentage of the effective lending rate of the other Lenders and such Lender has not mitigated such costs within sixty (60) days after receipt by such Lender from Borrower of a written notice that such Lender's effective lending rate has so exceeded the effective lending rate of the other Lenders, then and in any such event, Borrower may substitute another financial institution which is an Eligible Transferee (other than a Sponsor Affiliated Lender) acceptable to the Agent for such Lender to assume the Commitment of such Lender and to purchase the Loans of such Lender under this Agreement, without recourse to or warranty by, or expense to, such Lender for a purchase price equal to the outstanding principal amount of the Loans owing to such Lender plus any accrued but unpaid interest on such Loans and accrued but unpaid fees and other amounts in respect of such Lender's Commitment and share of the Loans (other than any prepayment penalty or other premiums). Upon such purchase such Lender shall no longer be a party hereto or have any rights or benefits hereunder (except for rights or benefits that such Lender would retain hereunder and under the other Financing Agreements upon payment in full of all of the Obligations) and the replacement Lender shall succeed to the rights and benefits, and shall assume the obligations, of such Lender hereunder and thereunder. Agent and Lenders shall cooperate with Borrower to amend the Financing Agreements to reflect such substitution. In no event may Borrower replace a Lender that is also Agent or an issuer of a Letter of Credit Accommodation.

#### **SECTION 4. CONDITIONS PRECEDENT**

4.1 Conditions Precedent to Initial Loans and Letter of Credit Accommodations. Each of the following is a condition precedent to Lenders (or Agent on behalf of Lenders) making the initial Loans and providing the initial Letter of Credit Accommodations hereunder:

(a) all requisite corporate or limited liability company action and proceedings in connection with this Agreement and the other Financing Agreements shall be satisfactory in form and substance to Agent in good faith, and Agent shall have received all information and copies of all documents, including records of requisite corporate or limited liability company action and proceedings which Agent may have requested in connection therewith, such documents where requested by Agent or its counsel to be certified by appropriate corporate officers or Governmental Authority (and including a copy of the certificate of formation of Borrower and Guarantor certified by the Secretary of State (or equivalent Governmental Authority) which shall set forth the same complete corporate or limited liability company name of Borrower or Guarantor as is set forth herein and such document as shall set forth the organizational identification number of Borrower or Guarantor, if one is issued in its jurisdiction of organization or incorporation);

(b) no material adverse change shall have occurred in the assets, business or prospects of Borrower since the date of Agent's latest field examination (not including for this purpose the field review referred to in clause (c) below) and no change or event shall have occurred which would impair the ability of Borrower or Obligor to perform its obligations

hereunder (taking into consideration any rights of contribution such Borrower or Obligor may have) or under any of the other Financing Agreements to which it is a party or of Agent or any Lender to enforce the Obligations or realize upon the Collateral;

(c) Agent shall have completed a field review of the Records and such other information with respect to the Collateral as Agent may require (in good faith) to determine the amount of Loans available to Borrower (including, without limitation, current perpetual inventory records and/or roll-forwards of Accounts and Inventory through the date of closing and test counts of the Inventory in a manner satisfactory to Agent in good faith, together with such supporting documentation as may be necessary or appropriate, and other documents and information that will enable Agent to accurately identify and verify the Collateral), the results of which in each case shall be satisfactory to Agent, not more than ten (10) Business Days prior to the date hereof;

(d) Agent shall have received, in form and substance satisfactory to Agent in good faith, all consents, waivers, acknowledgments and other agreements from third persons which Agent may deem necessary or desirable in order to permit, protect and perfect its security interests in and liens upon the Collateral or to effectuate the provisions or purposes of this Agreement and the other Financing Agreements, including, without limitation, Collateral Access Agreements;

(e) Agent shall have received evidence, in form and substance satisfactory to Agent in good faith, that the Purchase Agreements (including without limitation, the Transition Services Agreement), Unitary Leases and the Real Estate Transfer Documents have been duly executed and delivered by and to the appropriate parties thereto, and the transactions contemplated under the terms of the Purchase Agreements and the Real Estate Transfer Documents have been consummated prior to the execution of this Agreement;

(f) Agent shall have received satisfactory evidence of the receipt by Parent on or prior to the date hereof of (i) an aggregate amount of not less than \$450,000,000 in the aggregate in cash as an equity contribution by Sun Capital, Cerberus and KLA/Mervyn's LLC and/or their respective Affiliates (excluding Borrower and Guarantor) and \$25,000,000 of such amount shall be allocated to Borrower, and (ii) an aggregate amount of not less than \$770,000,000 in cash as proceeds of (A) a loan made by Senior RE Lenders to MDS Realty I, MDS Realty II, MDS Texas Realty I, MDS Texas Realty II, pursuant to the Senior RE Loan Documents which proceeds shall be distributed to Parent, and (B) a loan made by Mezzanine RE Lenders to Realco Holdings I, Realco Holdings II, MDS Texas Prop I and MDS Texas Prop II pursuant to the Mezzanine RE Loan Documents which proceeds shall be distributed to Parent;

(g) Agent shall have received, in form and substance satisfactory to Agent in good faith, true, correct and complete copies of the Borrower LLC Agreement, the Senior RE Loan Documents, the Mezzanine RE Loan Documents, the Real Estate Transfer Documents and the Unitary Leases, in each case, duly authorized, executed and delivered by the parties thereto;

(h) Agent shall have received, in form and substance satisfactory to Agent in good faith, Real Estate Intercreditor Agreement, duly authorized, executed and delivered by each of Senior RE Loan Lenders, Mezzanine RE Loan Lenders, Borrower and Guarantor;

(i) Agent shall have received, in form and substance satisfactory to Agent in good faith, TSA Side Letter, duly authorized, executed and delivered by each of Seller, Borrower and Guarantor;

(j) the Excess Closing Availability as determined by Agent, as of the date hereof, shall be not less than \$100,000,000 after giving effect to the initial Loans made or to be made and Letter of Credit Accommodations issued or to be issued in connection with the initial transactions hereunder;

(k) Agent shall have received Borrower's projected financial statements for the period from the date hereof through the fiscal year ending on or about January 31, 2006, which shall be prepared on a monthly basis, and projected financial statements for the fiscal years ending on or about January 31, 2007, January 31, 2008 and January 31, 2009, which shall be prepared on a quarterly basis, together with a certificate, dated the date hereof, of an authorized officer of Borrower stating that such projected financial statements were prepared by an authorized officer of Borrower in good faith and are based on assumptions that are reasonable in light of all facts and circumstances known to Borrower at such time, all of which shall be satisfactory to Agent and Lenders in good faith (it being understood that the projected results may differ from the actual results);

(l) Agent shall have received, in form and substance satisfactory to Agent in good faith, a pro-forma balance sheet of Borrower reflecting the initial transactions contemplated hereunder, including, but not limited to Loans and Letter of Credit Accommodations provided by Agent and Lenders to Borrower on the date hereof and the use of the proceeds of the initial Loans as provided herein, the consummation of the transactions contemplated by the Purchase Agreements, the Unitary Leases, the Real Estate Transfer Documents and the Borrower LLC Agreement, accompanied by a certificate, dated of even date herewith, of an Authorized Officer of Borrower stating that such pro-forma balance sheet was prepared in good faith by Borrower and based on assumptions that are reasonable in light of all facts and circumstances known to Borrower at such time;

(m) Agent shall have received, in form and substance satisfactory to Agent, a solvency opinion from Duff & Phelps upon which Agent and Lenders are expressly permitted to rely, that after giving effect to the transactions contemplated hereby and the consummation of the transactions contemplated by the Purchase Agreements, the Unitary Leases, the Senior RE Loan Documents and the Mezzanine RE Loan Documents, each of Borrower and Guarantor are Solvent;

(n) Agent and Lenders shall be satisfied that, immediately after giving effect to the transactions contemplated to occur under this Agreement, the consummation of the transactions contemplated by the Purchase Agreements, the Borrower LLC Agreement, the Unitary Leases and the Real Estate Transfer Documents on or before the date hereof, Borrower and Guarantor

(taken as a whole) are Solvent, (i) Borrower and Guarantor (taken as a whole) are able to pay their debts as they mature, (ii) Borrower and Guarantor (taken as a whole) has sufficient capital (and not unreasonably small capital) to carry on their business and all businesses in which they are about to engage, and (iii) the assets and properties of Borrower and Guarantor (taken as a whole) at fair valuation (taken on a going concern basis) and at their present saleable value are greater than the Indebtedness of Borrower and Guarantor (taken as a whole), including subordinated and contingent liabilities computed at the amount which, to the best of Borrower's and Guarantor's knowledge, represents an amount which can reasonably be expected to become an actual or matured liability;

(o) with respect to all fees and expenses incurred by Sun Capital, Cerberus and Lubert-Adler and their respective Affiliates (other than Borrower and Guarantor) in connection with the transactions contemplated by the Financing Agreements that the Borrower desires to reimburse with the proceeds of the Loans made on the date hereof, Agent shall have received satisfactory evidence of such fees and expenses and shall be satisfied with the amount of such fees and expenses;

(p) Agent shall have received payment of all fees due and payable on the date hereof and reimbursement of all documented and invoiced costs and expenses incurred by Agent in accordance with this Agreement;

(q) Agent shall have received, in form and substance satisfactory to Agent in good faith, Deposit Account Control Agreements by and among Agent, Borrower and Guarantor, as the case may be and each bank where Borrower (or Guarantor) has a deposit account (other than Restricted Lease Proceeds Account(s) or the Store Accounts), in each case, duly authorized, executed and delivered by such bank and Borrower or Guarantor, as the case may be (or Agent shall be the bank's customer with respect to such deposit account as Agent may specify);

(r) Agent shall have received evidence, in form and substance satisfactory to Agent in good faith, that Agent has a valid perfected first priority security interest in all of the Collateral subject only to liens expressly permitted hereunder;

(s) Lender shall have received a Credit Card Acknowledgment, duly authorized, executed and delivered by Monogram Credit Card Bank of Georgia;

(t) Agent shall have received and reviewed lien and judgment search results for the jurisdiction of organization of Borrower and Guarantor, the jurisdiction of the chief executive office of Borrower and Guarantor and all jurisdictions in which assets of Borrower and Guarantor are located, which search results shall be in form and substance satisfactory to Agent in good faith;

(u) Agent shall have received evidence of insurance and loss payee endorsements required hereunder and under the other Financing Agreements, in form and substance satisfactory to Agent in good faith, and certificates of insurance policies and/or endorsements naming Agent as loss payee and additional insured;

(v) Agent shall have received, in form and substance satisfactory to Agent in good faith, such opinion letters of counsel to Borrower and Guarantor with respect to the Financing Agreements and such other matters as Agent may request; and

(w) the other Financing Agreements and all instruments and documents hereunder and thereunder shall have been duly executed and delivered to Agent, in form and substance satisfactory to Agent in good faith.

4.2 Conditions Precedent to All Loans and Letter of Credit Accommodations. Each of the following is an additional condition precedent to the making of Loans and/or providing Letter of Credit Accommodations to Borrower, including the initial Loans and Letter of Credit Accommodations and any future Loans and Letter of Credit Accommodations:

(a) all representations and warranties contained herein and in the other Financing Agreements shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date of the making of each such Loan or providing each such Letter of Credit Accommodation and after giving effect thereto, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate in all material respects on and as of such earlier date);

(b) no law, regulation, order, judgment or decree of any Governmental Authority shall exist, and no action, suit, investigation, litigation or proceeding shall be pending or threatened in any court or before any arbitrator or Governmental Authority, which (i) purports to enjoin, prohibit, restrain or otherwise affect (A) the making of the Loans or providing the Letter of Credit Accommodations, or (B) the consummation of the transactions contemplated pursuant to the terms hereof or the other Financing Agreements or (ii) has or has a reasonable likelihood of having a Material Adverse Effect; and

(c) no Default or Event of Default shall exist or have occurred and be continuing on and as of the date of the making of such Loan or providing each such Letter of Credit Accommodation and after giving effect thereto.

## **SECTION 5. GRANT AND PERFECTION OF SECURITY INTEREST**

5.1 Grant of Security Interest. To secure payment and performance of all Obligations, each of Borrower and Guarantor hereby grants to Agent, for itself and the benefit of Lenders and the Bank Product Providers, a continuing security interest in, a lien upon, and a right of set off against, and hereby collaterally assigns to Agent, for itself and the benefit of Lenders and the Bank Product Providers, as security, all personal and real property and fixtures, and interests in property and fixtures, of each of Borrower and Guarantor, whether now owned or hereafter acquired or existing, and wherever located (together with all other collateral security for the Obligations at any time granted to or held or acquired by Agent or any Lender, collectively, the "Collateral"), including:

(a) all Accounts;

- (b) all general intangibles, including, without limitation, all Intellectual Property;
- (c) all goods, including, without limitation, Inventory and Equipment;
- (d) all Real Property and fixtures;
- (e) all chattel paper, including, without limitation, all tangible and electronic chattel paper;
- (f) all instruments, including, without limitation, all promissory notes;
- (g) all documents and all credit card sales drafts, credit card sales slips or charge slips or receipts and other forms of store receipts;
- (h) all deposit accounts;
- (i) all letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights;
- (j) all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of Receivables and other Collateral, including (i) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (ii) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (iii) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, Receivables or other Collateral, including returned, repossessed and reclaimed goods, and (iv) deposits by and property of account debtors or other persons securing the obligations of account debtors;
- (k) all (i) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and (ii) monies, credit balances, deposits and other property of Borrower or Guarantor now or hereafter held or received by or in transit to Agent, any Lender or its Affiliates or at any other depository or other institution from or for the account of Borrower or Guarantor, whether for safekeeping, pledge, custody, transmission, collection or otherwise;
- (l) all commercial tort claims, including, without limitation, those identified in the Information Certificate;
- (m) to the extent not otherwise described above, all Receivables;
- (n) all Records; and
- (o) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

## 5.2 Perfection of Security Interests.

(a) Each of Borrower and Guarantor irrevocably and unconditionally authorizes Agent (or its agent) to file at any time and from time to time such financing statements with respect to the Collateral naming Agent or its designee as the secured party and Borrower or Guarantor as debtor, as Agent may require, and including any other information with respect to Borrower or Guarantor or otherwise required by part 5 of Article 9 of the Uniform Commercial Code of such jurisdiction as Agent may determine, together with any amendment and continuations with respect thereto, which authorization shall apply to all financing statements filed on, prior to or after the date hereof. Each of Borrower and Guarantor hereby ratifies and approves all financing statements naming Agent or its designee as secured party and Borrower or Guarantor, as the case may be, as debtor with respect to the Collateral (and any amendments with respect to such financing statements) filed by or on behalf of Agent prior to the date hereof and ratifies and confirms the authorization of Agent to file such financing statements (and amendments, if any). Each of Borrower and Guarantor hereby authorizes Agent to adopt on behalf of Borrower and Guarantor any symbol required for authenticating any electronic filing. In the event that the description of the collateral in any financing statement naming Agent or its designee as the secured party and Borrower or Guarantor as debtor includes assets and properties of Borrower or Guarantor that do not at any time constitute Collateral, whether hereunder, under any of the other Financing Agreements or otherwise, the filing of such financing statement shall nonetheless be deemed authorized by Borrower or Guarantor to the extent of the Collateral included in such description and it shall not render the financing statement ineffective as to any of the Collateral or otherwise affect the financing statement as it applies to any of the Collateral. In no event shall Borrower or Guarantor at any time file, or permit or cause to be filed, any correction statement or termination statement with respect to any financing statement (or amendment or continuation with respect thereto) naming Agent or its designee as secured party and Borrower or Guarantor as debtor; provided, that, (i) upon the sale or other disposition of specific items of Collateral in compliance with Section 9.7 hereof, Agent shall file or cause to be filed, at the expense of Borrower, UCC partial releases solely with respect to such Collateral and (ii) upon the termination of this Agreement and payment and satisfaction of all of the Obligations and the delivery of cash collateral to the extent required by Section 13.1, Agent shall file or cause to be filed, at the expense of Borrower, UCC termination statements with respect to all of the Collateral (excluding such cash collateral). Upon the request and at the expense of Borrower, Agent shall furnish Borrower with copies of all financing statements filed by or on behalf of Agent naming Agent, as secured party, and Borrower or Guarantor, as debtor.

(b) Each of Borrower and Guarantor does not have any chattel paper (whether tangible or electronic) or instruments as of the date hereof, except as set forth in the Information Certificate. In the event that Borrower or Guarantor shall be entitled to or shall receive any chattel paper or instrument after the date hereof, Borrower and Guarantor shall promptly notify Agent thereof in writing. Promptly upon the receipt thereof by or on behalf of Borrower or Guarantor (including by any agent or representative), Borrower or Guarantor shall deliver, or cause to be delivered to Agent, all tangible chattel paper and instruments that Borrower or Guarantor has or may at any time acquire, accompanied by such instruments of transfer or assignment duly executed in blank as Agent may from time to time specify, in each case except



as Agent may otherwise agree. At Agent's option, each of Borrower and Guarantor shall, or Agent may at any time on behalf of Borrower or Guarantor, cause the original of any such instrument or chattel paper to be conspicuously marked in a form and manner acceptable to Agent with the following legend referring to chattel paper or instruments as applicable: "This [chattel paper][instrument] is subject to the security interest of Congress Financial Corporation (Western) as Agent and any sale, transfer, assignment or encumbrance of this [chattel paper][instrument] violates the rights of such secured party."

(c) In the event that Borrower or Guarantor shall at any time hold or acquire an interest in any electronic chattel paper or any "transferable record" with a value in excess of \$1,500,000 in the aggregate (as such term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction), Borrower or Guarantor shall promptly notify Agent thereof in writing. Promptly upon Agent's request, Borrower or Guarantor shall take, or cause to be taken, such actions as Agent may request to give Agent control of such electronic chattel paper under Section 9-105 of the UCC and control of such transferable record under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as in effect in such jurisdiction.

(d) Each of Borrower and Guarantor does not have any deposit accounts as of the date hereof, except as set forth in the Information Certificate. Borrower and Guarantor shall not, directly or indirectly, after the date hereof open, establish or maintain any deposit account unless each of the following conditions is satisfied: (i) Agent shall have received not less than five (5) Business Days prior written notice of the intention of Borrower or Guarantor to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Agent the name of the account, the owner of the account, the name and address of the bank at which such account is to be opened or established, the individual at such bank with whom Borrower or Guarantor is dealing and the purpose of the account, (ii) the bank where such account is opened or maintained shall be acceptable to Agent, and (iii) on or before the opening of such deposit account, Borrower or Guarantor shall as Agent may specify either (A) deliver to Agent a Deposit Account Control Agreement with respect to such deposit account duly authorized, executed and delivered by Borrower or Guarantor and the bank at which such deposit account is opened and maintained or (B) arrange for Agent to become the customer of the bank with respect to the deposit account on terms and conditions acceptable to Agent. The terms of this subsection (d) shall not apply to deposit accounts specifically and exclusively used for Restricted Lease Proceeds, payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's or Guarantor's salaried employees.

(e) Neither Borrower nor Guarantor owns or holds, directly or indirectly, beneficially or as record owner or both, any investment property, as of the date hereof, or have any investment account, securities account, commodity account or other similar account with any bank or other financial institution or other securities intermediary or commodity intermediary as of the date hereof, in each case except as set forth in the Information Certificate.

(i) In the event that Borrower or Guarantor shall be entitled to or shall at any time after the date hereof hold or acquire any certificated securities, Borrower or Guarantor shall promptly endorse, assign and deliver the same to Agent, accompanied by such instruments of transfer or assignment duly executed in blank as Agent may from time to time specify. If any securities, now or hereafter acquired by Borrower or Guarantor are uncertificated and are issued to Borrower or Guarantor or its nominee directly by the issuer thereof, Borrower or Guarantor shall immediately notify Agent thereof and shall as Agent may specify, either (A) cause the issuer to agree to comply with instructions from Agent as to such securities, without further consent of Borrower or Guarantor or such nominee, or (B) arrange for Agent to become the registered owner of the securities.

(ii) Borrower and Guarantor shall not, directly or indirectly, after the date hereof open, establish or maintain any investment account, securities account, commodity account or any other similar account (other than a deposit account) with any securities intermediary or commodity intermediary unless each of the following conditions is satisfied: (A) Agent shall have received not less than five (5) Business Days prior written notice of the intention of Borrower or Guarantor to open or establish such account which notice shall specify in reasonable detail and specificity acceptable to Agent the name of the account, the owner of the account, the name and address of the securities intermediary or commodity intermediary at which such account is to be opened or established, the individual at such intermediary with whom Borrower or Guarantor is dealing and the purpose of the account, (B) the securities intermediary or commodity intermediary (as the case may be) where such account is opened or maintained shall be acceptable to Agent, and (C) on or before the opening of such investment account, securities account or other similar account with a securities intermediary or commodity intermediary, Borrower or Guarantor shall as Agent may specify either (1) execute and deliver, and cause to be executed and delivered to Agent, an Investment Property Control Agreement with respect thereto duly authorized, executed and delivered by Borrower or Guarantor and such securities intermediary or commodity intermediary or (2) arrange for Agent to become the entitlement holder with respect to such investment property on terms and conditions acceptable to Agent.

(f) Borrower and Guarantor are not the beneficiary or otherwise entitled to any right to payment under any letter of credit, banker's acceptance or similar instrument as of the date hereof, except as set forth in the Information Certificate. In the event that Borrower or Guarantor shall be entitled to or shall receive any right to payment under any letter of credit, banker's acceptance or any similar instrument with a principal amount in excess of \$1,500,000, individually, and \$3,000,000 in the aggregate, whether as beneficiary thereof or otherwise after the date hereof, Borrower or Guarantor shall promptly notify Agent thereof in writing. Borrower or Guarantor shall immediately, as Agent may specify, either (i) deliver, or cause to be delivered to Agent, with respect to any such letter of credit, banker's acceptance or similar instrument, the written agreement of the issuer and any other nominated person obligated to make any payment in respect thereof (including any confirming or negotiating bank), in form and substance satisfactory to Agent in good faith, consenting to the assignment of the proceeds of the letter of credit to Agent by Borrower or Guarantor and agreeing to make all payments thereon directly to Agent or as Agent may otherwise direct or (ii) cause Agent to become, at Borrower's expense, the

transferee beneficiary of the letter of credit, banker's acceptance or similar instrument (as the case may be).

(g) Borrower and Guarantor do not have any commercial tort claims as of the date hereof, except as set forth in the Information Certificate. In the event that Borrower or Guarantor shall at any time after the date hereof have any commercial tort claims for an amount in excess of \$1,500,000 individually, and \$3,000,000 in the aggregate, Borrower or Guarantor shall promptly notify Agent thereof in writing, which notice shall (i) set forth in reasonable detail the basis for and nature of such commercial tort claim and (ii) include the express grant by Borrower or Guarantor to Agent of a security interest in such commercial tort claim (and the proceeds thereof). In the event that such notice does not include such grant of a security interest, the sending thereof by Borrower or Guarantor to Agent shall be deemed to constitute such grant to Agent. Upon the sending of such notice, any commercial tort claim described therein shall constitute part of the Collateral and shall be deemed included therein. Without limiting the authorization of Agent provided in Section 5.2(a) hereof or otherwise arising by the execution by Borrower or Guarantor of this Agreement or any of the other Financing Agreements, Agent is hereby irrevocably authorized from time to time and at any time to file such financing statements naming Agent or its designee as secured party and Borrower or Guarantor as debtor, or any amendments to any financing statements, covering any such commercial tort claim as Collateral. In addition, each of Borrower and Guarantor shall promptly upon Agent's request, execute and deliver, or cause to be executed and delivered, to Agent such other agreements, documents and instruments as Agent may require in connection with such commercial tort claim.

(h) Borrower and Guarantor do not have any goods, documents of title or other Collateral in the custody, control or possession of a third party as of the date hereof, except as set forth in the Information Certificate and except for goods located in the United States in transit to a location of Borrower or Guarantor permitted herein in the ordinary course of business of Borrower or Guarantor in the possession of the carrier transporting such goods. In the event that any goods, documents of title or other Collateral with Value in excess of \$1,500,000 in the aggregate, are at any time after the date hereof in the custody, control or possession of any other person not referred to in the Information Certificate or such carriers, Borrower and Guarantor shall promptly notify Agent thereof in writing and such Inventory shall not constitute Eligible Inventory and such Inventory shall be included in any report provided to Agent in accordance with Section 7.1(a)(ii)(L) hereof and not be included in any report provided to Agent in accordance with Section 7.1(a)(ii)(M) hereof until such time as a Collateral Access Agreement has been executed with such person or carrier (except as set forth in Section 7.6 hereof). Promptly upon Agent's request, Borrower and Guarantor shall deliver to Agent a Collateral Access Agreement duly authorized, executed and delivered by such person and the Borrower or Guarantor that is the owner of such Collateral.

(i) Borrower and Guarantor shall take any other actions reasonably requested by Agent from time to time to cause the attachment, perfection and first priority of, and the ability of Agent to enforce, the security interest of Agent in any and all of the Collateral, including, without limitation, (i) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC or other applicable law, to the extent, if any,

that Borrower's or Guarantor's signature thereon is required therefor, (ii) causing Agent's name to be noted as secured party on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of Agent to enforce, the security interest of Agent in such Collateral, (iii) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Agent to enforce, the security interest of Agent in such Collateral, (iv) obtaining the consents and approvals of any Governmental Authority or third party, including, without limitation, any consent of any licensor, lessor or other person obligated on Collateral, and taking all actions required by any earlier versions of the UCC or by other law, as applicable in any relevant jurisdiction.

5.3 Special Provisions Regarding Collateral. Notwithstanding anything to the contrary contained in this Section 5, the types or items of Collateral described in Section 5.1 shall not include (a) any rights or interest in any lease, contract, license or license agreement covering personal or real property of Borrower or Guarantor, so long as under the terms of such lease, contract, license or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein to Agent is prohibited and such prohibition has not been or is not waived or the consent of the other party to such contract, license or license agreement has not been or is not otherwise obtained; provided, that, the foregoing exclusion shall in no way be construed (i) to apply if any such prohibition is unenforceable under the UCC or other applicable law or (ii) so as to limit, impair or otherwise affect Agent's unconditional continuing security interests in and liens upon any rights or interests of Borrower or Guarantor in or to monies due or to become due under any such lease, contract, license or license agreement (including any Receivables), (b) any Restricted Leases, (c) any Restricted Lease Proceeds, (d) any Restricted Lease Fixtures, or (e) any Restricted Lease Proceeds Accounts.

## **SECTION 6. COLLECTION AND ADMINISTRATION**

6.1 Borrower' Loan Accounts. Agent shall maintain one or more loan account(s) on its books in which shall be recorded (a) all Loans, Letter of Credit Accommodations and other Obligations and the Collateral, (b) all payments made by or on behalf of Borrower or Guarantor and (c) all other appropriate debits and credits as provided in this Agreement, including fees, charges, costs, expenses and interest. All entries in the loan account(s) shall be made in accordance with Agent's customary practices as in effect from time to time.

6.2 Statements. Agent shall render to Borrower each month a statement setting forth the balance in the Borrower's loan account(s) maintained by Agent for Borrower pursuant to the provisions of this Agreement, including principal, interest, fees, costs and expenses. Each such statement shall be subject to subsequent adjustment by Agent but shall, absent manifest errors or omissions, be considered correct and deemed accepted by Borrower and Guarantor and conclusively binding upon Borrower and Guarantor as an account stated except to the extent that Agent receives a written notice from Borrower of any specific exceptions of Borrower thereto within forty-five (45) days after the date such statement has been received by Borrower. Until such time as Agent shall have rendered to Borrower a written statement as provided above, the

balance in Borrower's loan account(s) shall be presumptive evidence of the amounts due and owing to Agent and Lenders by Borrower and Guarantor.

### 6.3 Collection of Accounts.

(a) Each of Borrower and Guarantor shall establish and maintain, at its expense, deposit account arrangements and merchant payment arrangements with the banks set forth on Schedule 8.10 to the Information Certificate and subject to Section 5.2(d) hereof such other banks as Borrower may hereafter select. The banks set forth on Schedule 8.10 to the Information Certificate constitute all of the banks with which Borrower and Guarantor have deposit account arrangements and merchant payment arrangements as of the date hereof and identifies each of the deposit accounts at such banks that are used solely for receiving store receipts from a retail store location of Borrower (together with any other deposit accounts at any time established or used by Borrower for receiving such store receipts from any retail store location, collectively, the "Store Accounts" and each individually, a "Store Account") or otherwise describes the nature of the use of such deposit account by Borrower.

(i) Borrower shall deposit all proceeds from sales of Inventory in every form, including, without limitation, cash, checks, credit card sales drafts, credit card sales or charge slips or receipts and other forms of daily store receipts (other than nominal amounts retained in registers at the store as cash on hand (which nominal amounts shall not exceed in the aggregate \$5,000,000 at any time commencing February 1<sup>st</sup> through and including September 30<sup>th</sup> each year or \$10,000,000 at any time commencing October 1<sup>st</sup> of each calendar through and including January 30<sup>th</sup> of the immediately succeeding calendar year)), from each retail store location of Borrower on each Business Day into the Store Account of Borrower used solely for such purpose. All such funds deposited into the Store Accounts shall be sent by wire transfer or other electronic funds transfer no less frequently than weekly or more frequently upon Agent's request at any time after a Direct Remittance Event to the Blocked Accounts as provided in Section 6.3(a)(ii) below, except nominal amounts which are required to be maintained in such Store Accounts under the terms of Borrower's arrangements with the bank at which such Store Accounts are maintained, which nominal amounts shall not exceed \$5,000 as to any individual Store Account at any time.

(ii) Borrower shall establish and maintain, at its expense, deposit accounts with such banks as are reasonably acceptable to Agent (the "Blocked Accounts") into which Borrower shall promptly either cause all amounts on deposit in the Store Accounts of Borrower to be sent as provided in Section 6.3(a)(i) above or shall itself deposit or cause to be deposited all proceeds from sales of Inventory, and all other amounts payable to Borrower from Credit Card Issuers and Credit Card Processors and all other proceeds of Collateral. Borrower and Guarantor shall deliver, or cause to be delivered to Agent a Deposit Account Control Agreement duly authorized, executed and delivered by each bank where a Blocked Account is maintained as provided in Section 5.2 hereof or at any time and from time to time Agent may become the bank's customer with respect to any of the Blocked Accounts and promptly upon Lender's request, Borrower shall execute and deliver such agreements and documents as Lender may require in connection therewith. Agent shall instruct the depository banks at which the Blocked Account are

maintained to transfer the funds on deposit in the Blocked Accounts to such operating bank account of Borrower as Borrower may specify in writing to Agent until such time as Agent shall notify the depository bank otherwise. Without limiting any other rights or remedies of Agent or Lenders, Agent may, at its option, instruct the depository banks at which the Blocked Accounts are maintained to transfer all available funds received or deposited into the Blocked Accounts to the Agent Payment Account at any time on or after a Direct Remittance Event. For purposes hereof, a "Direct Remittance Event" shall exist and be continuing at any time (A) a Default or Event of Default shall exist or have occurred and be continuing or (B) during any Compliance Period. Upon and after a Direct Remittance Event, Agent shall be authorized to direct all of the depository banks at which Blocked Accounts are maintained to remit by federal funds wire transfer all funds received or deposited into such Blocked Accounts and related deposit accounts to the Agent Payment Account or as Agent may direct. Each of Borrower and Guarantor agrees that all payments made to the Blocked Accounts on or after a Direct Remittance Event and during any Compliance Period, and all other funds received and collected by Agent at any time, whether in respect of the Receivables, as proceeds of Inventory or other Collateral or otherwise shall be treated as payments to Agent in respect of the Obligations and therefore shall constitute the property of Agent and Lenders to the extent of the then outstanding Obligations.

(iii) In accordance with Section 5.2(d) hereof, Borrower may establish and maintain, at its expense, Restricted Lease Proceeds Accounts with banks into which Borrower shall deposit Restricted Lease Proceeds, provided, that, Borrower and Guarantor hereby agree that Agent nor any Lender shall have any liability to Borrower or any Obligor or any person claiming by, through or under Borrower or any Obligor, with respect to any Restricted Lease Proceeds which are deposited into the Blocked Accounts and Borrower and Guarantor each hereby waives and releases Agent and Lenders from any claims, actions or proceedings as a result of the payment of such proceeds into the Blocked Accounts. In no event will Borrower or Guarantor or any person claiming by, through or under Borrower or Guarantor, assert against Agent or any Lender, any setoff, defense, claim of breach, or other claim, withholding claim, counterclaim, recoupment, any such person may have or claim to have against or with respect to any Restricted Lease Proceeds or with respect to the Blocked Account or against Agent or any Lender for any amounts that may now or hereafter constitute Restricted Lease Proceeds.

(b) For purposes of calculating the amount of the Loans available to Borrower, such payments will be applied (conditional upon final collection) to the Obligations on the Business Day of receipt by Agent of immediately available funds in the Agent Payment Account provided such payments and notice thereof are received in accordance with Agent's usual and customary practices as in effect from time to time and within sufficient time to credit Borrower's loan account on such day, and if not, then on the next Business Day. For the purposes of calculating interest on the Obligations, such payments or other funds received will be applied (conditional upon final collection) to the Obligations on the date of receipt of immediately available funds by Agent in the Agent Payment Account provided such payments or other funds and notice thereof are received in accordance with Agent's usual and customary practices as in effect from time to time and within sufficient time to credit Borrower's loan account on such day, and if not, then on the next Business Day.

(c) Each of Borrower and Guarantor and their respective shareholders, directors, employees, agents, Subsidiaries or other Affiliates shall, acting as trustee for Agent, receive, as the property of Agent, any monies, cash, checks, credit card sales drafts, credit card sales or charge slips or receipts, notes, drafts all forms of store receipts or any other payment relating to and/or proceeds of Accounts or other Collateral which come into their possession or under their control and upon receipt thereof in accordance with Section 6.3(a) hereof, shall deposit or cause the same to be deposited in the Blocked Accounts, or remit the same or cause the same to be remitted, in kind, to Agent, provided, that, during any Compliance Period, Borrower shall promptly upon Agent's request cause the portion thereof representing either (i) sales and/or use taxes payable in connection with such sales or otherwise or (ii) payments made by any customer to Borrower in respect of a Mervyn's Card or any Co-Branded Card to be deposited into a separate bank account or accounts established for such purpose. In no event shall such cash, checks, credit card sales drafts, credit card sales or charge slips or receipts, notes, drafts or other payments be commingled with Borrower's or Guarantor's own funds. Borrower agrees to reimburse Agent on demand for any amounts owed or paid to any bank or other financial institution at which a Blocked Account or any other deposit account or investment account is established or any other bank, financial institution or other person involved in the transfer of funds to or from the Blocked Accounts arising out of Agent's payments to or indemnification of such bank, financial institution or other person in connection with such Blocked Account or any amounts received therein or transferred therefrom. The obligations of Borrower to reimburse Agent for such amounts pursuant to this Section 6.3 shall survive the termination of this Agreement.

#### 6.4 Payments.

(a) All Obligations shall be payable to the Agent Payment Account as provided in Section 6.3 or such other place as Agent may designate from time to time. Subject to the other terms and conditions contained herein, Agent shall apply payments received or collected from Borrower or Guarantor or for the account of Borrower or Guarantor (including the monetary proceeds of collections or of realization upon any Collateral) as follows: first, to pay any fees, indemnities or expense reimbursements then due to Agent and Lenders from Borrower or Guarantor; second, to pay interest due in respect of any Loans (and including any Special Agent Advances); third, to pay or prepay principal in respect of Special Agent Advances; fourth, to pay or prepay principal in respect of the Loans and to pay or prepay any Obligations arising under or pursuant to any Hedging Transactions of Borrower or Guarantor with any Bank Product Provider (up to the amount of the any then effective Reserve established in respect of such Obligations), on a pro rata basis; fifth, to pay or prepay any other Obligations (but not including for this purpose any Obligations arising under or pursuant to any Bank Products) whether or not then due, in such order and manner as Agent determines and, at any time on or after an Event of Default and for so long as same is continuing, to be held as cash collateral with respect to any Letter of Credit Accommodation or other contingent Obligations (but not including for this purpose any Obligations arising under or pursuant to any Bank Products); and sixth, at any time after an Event of Default and for so long as same is continuing, to pay or prepay any Obligations arising under or pursuant to any Bank Products (other than to the extent provided for above) on a pro rata basis. Notwithstanding anything to the contrary contained in this Agreement, (i) unless

so directed by Borrower, or unless a Default or an Event of Default shall exist or have occurred and be continuing, Agent shall not apply any payments which it receives to any Eurodollar Rate Loans, except (A) on the expiration date of the Interest Period applicable to any such Eurodollar Rate Loans or (B) in the event that there are no outstanding Prime Rate Loans, provided, that, Agent will attempt to honor any written request received from Borrower to hold such payment until the expiration of the applicable Interest Period, it being understood and agreed that Agent shall have no liability for any failure to do so, and (ii) to the extent Borrower uses any proceeds of the Loans or Letter of Credit Accommodations to acquire rights in or the use of any Collateral or to repay any Indebtedness used to acquire rights in or the use of any Collateral, payments in respect of the Obligations shall be deemed applied first to the Obligations arising from Loans and Letter of Credit Accommodations that were not used for such purposes and second to the Obligations arising from Loans and Letter of Credit Accommodations the proceeds of which were used to acquire rights in or the use of any Collateral in the chronological order in which Borrower acquired such rights in or the use of such Collateral.

(b) At Agent's option, all principal, interest, fees, costs, expenses and other charges provided for in this Agreement or the other Financing Agreements may be charged directly to the loan account(s) of Borrower maintained by Agent. Borrower and Guarantor shall make all payments to Agent and Lenders on the Obligations free and clear of, and without deduction or withholding for or on account of, any setoff, counterclaim, defense, duties, taxes, levies, imposts, fees, deductions, withholding, restrictions or conditions of any kind. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Obligations, Agent or any Lender is required to surrender or return such payment or proceeds to any Person for any reason, then the Obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received by Agent or such Lender. Borrower and Guarantor shall be liable to pay to Agent, and do hereby indemnify and hold Agent and Lenders harmless for the amount of any payments or proceeds surrendered or returned. This Section 6.4(b) shall remain effective notwithstanding any contrary action which may be taken by Agent or any Lender in reliance upon such payment or proceeds. This Section 6.4(b) shall survive the payment of the Obligations and the termination of this Agreement.

6.5 Authorization to Make Loans. Agent and Lenders are authorized to make the Loans and provide the Letter of Credit Accommodations based upon telephonic or other instructions received from anyone purporting to be an officer of Borrower or other authorized person or, at the discretion of Agent, if such Loans are necessary to satisfy any Obligations. All requests for Loans or Letter of Credit Accommodations hereunder shall specify the date on which the requested advance is to be made or Letter of Credit Accommodations established (which day shall be a Business Day) and the amount of the requested Loan. Requests received after 11:00 a.m. Los Angeles time on any day shall be deemed to have been made as of the opening of business on the immediately following Business Day. All Loans and Letter of Credit Accommodations under this Agreement shall be conclusively presumed to have been made to, and at the request of and for the benefit of, Borrower or Guarantor when deposited to the credit of Borrower or Guarantor or otherwise disbursed or established in accordance with the



instructions of Borrower or Guarantor or in accordance with the terms and conditions of this Agreement.

6.6 Use of Proceeds. Borrower shall use the initial proceeds of the Loans provided by Agent to Borrower hereunder only for: (a) payments to each of the persons listed in the disbursement direction letter furnished by Borrower to Agent on or about the date hereof and (b) costs, expenses and fees in connection with the preparation, negotiation, execution and delivery of the Purchase Agreements, this Agreement and the other Financing Agreements. All other Loans made or Letter of Credit Accommodations provided to or for the benefit of Borrower pursuant to the provisions hereof shall be used by Borrower only for general operating, working capital and other limited liability company purposes of Borrower not otherwise prohibited by the terms hereof. None of the proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any margin security or for the purposes of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as amended.

6.7 Pro Rata Treatment. Except to the extent otherwise provided in this Agreement: (a) the making and conversion of Loans shall be made among the Lenders based on their respective Pro Rata Shares as to the Loans and (b) each payment on account of any Obligations to or for the account of one or more of Lenders in respect of any Obligations due on a particular day shall be allocated among the Lenders entitled to such payments based on their respective Pro Rata Shares and shall be distributed accordingly.

6.8 Sharing of Payments, Etc.

(a) Each of Borrower and Guarantor agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim Agent or any Lender may otherwise have, each Lender shall be entitled, at its option (but subject, as among Agent and Lenders, to the provisions of Section 12.3(b) hereof), to offset balances held by it for the account of Borrower or Guarantor at any of its offices, in dollars or in any other currency, against any principal of or interest on any Loans owed to such Lender or any other amount payable to such Lender hereunder, that is not paid when due (regardless of whether such balances are then due to Borrower or Guarantor), in which case it shall promptly notify Borrower and Agent thereof; provided, that, such Lender's failure to give such notice shall not affect the validity thereof.

(b) If any Lender (including Agent) shall obtain from Borrower or Guarantor payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any of the other Financing Agreements through the exercise of any right of setoff, banker's lien or counterclaim or similar right or otherwise (other than from Agent as provided herein), and, as a result of such payment, such Lender shall have received more than its Pro Rata Share of the principal of the Loans or more than its share of such other amounts then due hereunder or thereunder by Borrower or Guarantor to such Lender than the percentage thereof received by any other Lender, it shall promptly pay to Agent, for the benefit of such other Lenders, the amount of such excess and simultaneously purchase from such other Lenders a

participation in the Loans or such other amounts, respectively, owing to such other Lenders (or such interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) in accordance with their respective Pro Rata Shares or as otherwise agreed by Lenders. To such end all Lenders shall make appropriate adjustments among themselves (by the resale of participation sold or otherwise) if such payment is rescinded or must otherwise be restored.

(c) Each of Borrower and Guarantor agrees that any Lender purchasing a participation (or direct interest) as provided in this Section may exercise, in a manner consistent with this Section, all rights of setoff, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained herein shall require any Lender to exercise any right of setoff, banker's lien, counterclaims or similar rights or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other Indebtedness or obligation of Borrower or Guarantor. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section applies, such Lender shall, to the extent practicable, assign such rights to Agent for the benefit of Lenders and, in any event, exercise its rights in respect of such secured claim in a manner consistent with the rights of Lenders entitled under this Section to share in the benefits of any recovery on such secured claim.

#### 6.9 Settlement Procedures.

(a) In order to administer the Credit Facility in an efficient manner and to minimize the transfer of funds between Agent and Lenders, Agent may, at its option, subject to the terms of this Section, make available, on behalf of Lenders, the full amount of the Loans requested or charged to Borrower's loan account(s) or otherwise to be advanced by Lenders pursuant to the terms hereof, without requirement of prior notice to Lenders of the proposed Loans.

(b) With respect to all Loans made by Agent on behalf of Lenders as provided in this Section, the amount of each Lender's Pro Rata Share of the outstanding Loans shall be computed weekly, and shall be adjusted upward or downward on the basis of the amount of the outstanding Loans as of 5:00 p.m. New York time on the Business Day immediately preceding the date of each settlement computation; provided, that, Agent retains the absolute right at any time or from time to time to make the above described adjustments at intervals more frequent than weekly, but in no event more than twice in any week. Agent shall deliver to each of the Lenders after the end of each week, or at such lesser period or periods as Agent shall determine, a summary statement of the amount of outstanding Loans for such period (such week or lesser period or periods being hereinafter referred to as a "Settlement Period"). If the summary statement is sent by Agent and received by a Lender prior to 12:00 p.m. New York time, then such Lender shall make the settlement transfer described in this Section by no later than 3:00

p.m. New York time on the same Business Day and if received by a Lender after 12:00 p.m. New York time, then such Lender shall make the settlement transfer by not later than 3:00 p.m. New York time on the next Business Day following the date of receipt. If, as of the end of any Settlement Period, the amount of a Lender's Pro Rata Share of the outstanding Loans is more than such Lender's Pro Rata Share of the outstanding Loans as of the end of the previous Settlement Period, then such Lender shall forthwith (but in no event later than the time set forth in the preceding sentence) transfer to Agent by wire transfer in immediately available funds the amount of the increase. Alternatively, if the amount of a Lender's Pro Rata Share of the outstanding Loans in any Settlement Period is less than the amount of such Lender's Pro Rata Share of the outstanding Loans for the previous Settlement Period, Agent shall forthwith transfer to such Lender by wire transfer in immediately available funds the amount of the decrease. The obligation of each of the Lenders to transfer such funds and effect such settlement shall be irrevocable and unconditional and without recourse to or warranty by Agent. Agent and each Lender agrees to mark its books and records at the end of each Settlement Period to show at all times the dollar amount of its Pro Rata Share of the outstanding Loans and Letter of Credit Accommodations. Each Lender shall only be entitled to receive interest on its Pro Rata Share of the Loans to the extent such Loans have been funded by such Lender. Because the Agent on behalf of Lenders may be advancing and/or may be repaid Loans prior to the time when Lenders will actually advance and/or be repaid such Loans, interest with respect to Loans shall be allocated by Agent in accordance with the amount of Loans actually advanced by and repaid to each Lender and the Agent and shall accrue from and including the date such Loans are so advanced to but excluding the date such Loans are either repaid by Borrower or actually settled with the applicable Lender as described in this Section.

(c) To the extent that Agent has made any such amounts available and the settlement described above shall not yet have occurred, upon repayment of any Loans by Borrower, Agent may apply such amounts repaid directly to any amounts made available by Agent pursuant to this Section. In lieu of weekly or more frequent settlements, Agent may, at its option, at any time require each Lender to provide Agent with immediately available funds representing its Pro Rata Share of each Loan, prior to Agent's disbursement of such Loan to Borrower. In such event, all Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares. No Lender shall be responsible for any default by any other Lender in the other Lender's obligation to make a Loan requested hereunder nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in the other Lender's obligation to make a Loan hereunder.

(d) If Agent is not funding a particular Loan to Borrower pursuant to Sections 6.10(a) and 6.10(b) above on any day, but is requiring each Lender to provide Agent with immediately available funds on the date of such Loan as provided in Section 6.10(c) above, Agent may assume that each Lender will make available to Agent such Lender's Pro Rata Share of the Loan requested or otherwise made on such day and Agent may, in its discretion, but shall not be obligated to, cause a corresponding amount to be made available to or for the benefit of Borrower on such day. If Agent makes such corresponding amount available to Borrower and such corresponding amount is not in fact made available to Agent by such Lender, Agent shall be entitled to recover such corresponding amount on demand from such Lender together with

interest thereon for each day from the date such payment was due until the date such amount is paid to Agent at the Federal Funds Rate for each day during such period (as published by the Federal Reserve Bank of New York or at Agent's option based on the arithmetic mean determined by Agent of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York City time) on that day by each of the three leading brokers of Federal funds transactions in New York City selected by Agent) and if such amounts are not paid within three (3) days of Agent's demand, at the highest Interest Rate provided for in Section 3.1 hereof applicable to Prime Rate Loans. During the period in which such Lender has not paid such corresponding amount to Agent, notwithstanding anything to the contrary contained in this Agreement or any of the other Financing Agreements, the amount so advanced by Agent to or for the benefit of Borrower shall, for all purposes hereof, be a Loan made by Agent for its own account. Upon any such failure by a Lender to pay Agent, Agent shall promptly thereafter notify Borrower of such failure and Borrower shall pay such corresponding amount to Agent for its own account within five (5) Business Days of Borrower's receipt of such notice. A Lender who fails to pay Agent its Pro Rata Share of any Loans made available by the Agent on such Lender's behalf, or any Lender who fails to pay any other amount owing by it to Agent, is a "Defaulting Lender". Notwithstanding anything to the contrary contained in this Agreement, Agent shall not be obligated to transfer to a Defaulting Lender any payments received by Agent for the Defaulting Lender's benefit, nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder (including any principal, interest or fees). Amounts payable to a Defaulting Lender shall instead be paid to or retained by Agent. Agent may hold and, in its discretion, relend to Borrower the amount of all such payments received or retained by it for the account of such Defaulting Lender. For purposes of voting or consenting to matters with respect to this Agreement and the other Financing Agreements and determining Pro Rata Shares, such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero (0). This Section shall remain effective with respect to a Defaulting Lender until such default is cured. The operation of this Section shall not be construed to increase or otherwise affect the Commitment of any Lender, or relieve or excuse the performance by Borrower or Obligor of their duties and obligations hereunder.

(e) Nothing in this Section or elsewhere in this Agreement or the other Financing Agreements shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its Commitment hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by any Lender hereunder in fulfilling its Commitment.

6.10 Obligations Several; Independent Nature of Lenders' Rights. The obligation of each Lender hereunder is several, and no Lender shall be responsible for the obligation or commitment of any other Lender hereunder. Nothing contained in this Agreement or any of the other Financing Agreements and no action taken by the Lenders pursuant hereto or thereto shall be deemed to constitute the Lenders to be a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and subject to Section 12.3 hereof, each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

## 6.11 Taxes.

(a) Any and all payments by Borrower and Guarantor to Agent or any Lender under this Agreement and any of the other Financing Agreements shall be made free and clear of, and without deduction or withholding for, any Taxes. In addition, Borrower shall pay all Other Taxes (or Agent may, at its option, pay such Other Taxes and charge the loan account of Borrower for such amounts so paid).

(b) Subject to the last sentence of Section 6.11(f), Borrower and Guarantor shall indemnify and hold harmless Agent and Lenders for the full amount of Taxes or Other Taxes paid by Agent or any Lender (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section, but not including Other Taxes that arise as a result of Agent's or any Lender's arrangements with the applicable taxing jurisdiction, if any, and not as a result of this Agreement) and any liability (including penalties, interest and expenses (including reasonable attorney's fees and expenses) other than those resulting solely from a failure by Agent or any Lender to pay any Taxes or Other Taxes which it is required to pay and for which it received an indemnity payment) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted by the relevant Governmental Authority. Payment under this indemnification shall be made within ten (10) days after the date Agent or any Lender makes written demand therefor. If Borrower reasonably believes that such Taxes or Other Taxes were not correctly or legally asserted, Agent or such Lender shall, upon Borrower's request and at Borrower's expense, provide such documents to Borrower in form and substance reasonably satisfactory to Borrower, to enable Borrower to contest such Taxes or Other Taxes pursuant to appropriate proceedings then available to Borrower (so long as providing such documents shall not, in the good faith determination of Agent, have a reasonable likelihood of resulting in any liability of Agent or any Lender).

(c) If Borrower or Guarantor shall be required by law to deduct or withhold any Taxes or Other Taxes from or in respect of any sum payable hereunder or under the other Financing Agreements to Agent or any Lender, then:

(i) subject to the last sentence of Section 6.11(f) the sum payable shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) Agent or such Lender receives an amount equal to the sum it would have received had no such deductions or withholdings been made;

(ii) Borrower or Guarantor shall make such deductions and withholdings;

(iii) Borrower or Guarantor shall pay the full amount deducted or withheld to the relevant taxing authority or other authority in accordance with applicable law; and

(iv) to the extent not paid to Agent or Lenders pursuant to Section 6.11(c)(i), Borrower or Guarantor shall also pay to Agent or any Lender, at the time interest is paid, all additional amounts which are necessary to preserve the after-tax yield Agent or such Lender

would have received pursuant to the Financing Agreements if such Taxes or Other Taxes had not been imposed.

(d) Within thirty (30) days after the date of any payment by Borrower or Guarantor of Taxes or Other Taxes, Borrower or Guarantor shall furnish to Agent the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment satisfactory to Agent.

(e) If Borrower or Guarantor otherwise would be required to pay additional amounts to Agent or a Lender pursuant to subsection (c) of this Section, then upon Borrower's written request such Lender shall use reasonable efforts at Borrower's expense (consistent with legal and regulatory restrictions) to take such action, including changing the jurisdiction of its lending office so as to eliminate any such additional payment by Borrower or Guarantor which may thereafter accrue.

(f) In the event a Lender shall assign the Obligations and its rights hereunder to an assignee which is organized under the laws of a jurisdiction outside the United States, such assignee of a Lender shall provide Borrower with an IRS Form W-8BEN or Form W-8ECI or other applicable form, certificate or document prescribed by the Internal Revenue Service certifying as to such assignee's being entitled to full exemption from United States withholding tax with respect to all payments to be made to such assignee hereunder and under any of the other Financing Agreements (unless such assignee of a Lender is unable to do so by reason of a change in law, including, without limitation, any statute, treaty, ruling, determination or regulation occurring subsequent to the effective date of such assignment). Notwithstanding anything to the contrary contained in this Section 6.11, unless Borrower has received forms or other documents indicating that payments to such assignee hereunder or under any of the other Financing Agreements are not subject to United States of America withholding tax, Borrower shall, in the case of payments to or for any assignee of a Lender organized under the laws of a jurisdiction outside the United States (i) withhold taxes from such payments at the applicable statutory rate, or at a rate reduced by an applicable tax treaty and (ii) pay such assignee such payment net of any taxes so withheld. Such assignee will be required to use reasonable efforts (including reasonable efforts to change its lending office) to avoid or to minimize any amounts which might otherwise be payable by Borrower or Guarantor pursuant to this Section 6.11; provided, that, such efforts shall not cause the imposition on such assignee of any additional costs or legal or regulatory burdens deemed by such assignee in good faith to be material.

(g) If Agent or any Lender receives a permanent tax benefit in respect of any Taxes or Other Taxes for which Agent or such Lender has received an indemnification payment from Borrower or Guarantor hereunder, so long as no Event of Default shall exist or have occurred and be continuing, Agent or such Lender (as the case may be) shall credit to the loan account of Borrower the amount of such permanent tax benefit.

(h) Each Person that is a Lender as of the date of this Agreement (i) represents and warrants to Borrower that such Person is incorporated or organized under the laws of the United States or a state thereof, (ii) agrees to furnish (if it is organized under the laws of any jurisdiction

other than the United States or any State thereof) to Agent and Borrower prior to the time that Agent or Borrower is required to make any payment of principal, interest or fees hereunder, duplicate executed originals of either U.S. Internal Revenue Service Form W-8BEN or W-8ECI, as applicable (wherein such Lender claims entitlement to the benefits of a tax treaty that provides for a complete exemption from U.S. federal income withholding tax on all payments hereunder) and agrees to provide new such forms upon the expiration of any previously delivered form or comparable statements in accordance with applicable U.S. law and regulations and amendments thereto, duly executed and completed by such Lender, and (iii) agrees to comply with all applicable U.S. laws and regulations with regard to such withholding tax exemption.

## **SECTION 7. COLLATERAL REPORTING AND COVENANTS**

### **7.1 Collateral Reporting.**

(a) Borrower shall provide Agent with the following documents in a form satisfactory to Agent:

(i) as soon as possible after the end of each second week, but in any event by the third (3rd) Business Day after the end of such second week, for the immediately preceding two week period (A) inventory reports by department, location and class (including indicating the amounts of Inventory at warehouses and stores) as of the end of such two week period, (B) reports of sales of Inventory, indicating gross sales, returns, allowances and net sales, and reports of aggregate Inventory purchases (including all costs related thereto, such as freight, duty and taxes) during such two week period, (C) a report of credit card sales during such two week period, including the amount of the chargebacks and credits with respect thereto and providing an aging of such sales identifying those outstanding more than five (5) Business Days since the sale date giving rise thereto, (D) a borrowing base certificate in form acceptable to Agent in all respects;

(ii) as soon as possible after the end of each month (but in any event within ten (10) Business Days after the end thereof), or more frequently as Agent may request, (A) perpetual inventory reports, (B) inventory reports by location and class (and including the amounts of Inventory and the value thereof at any leased locations and at premises of warehouses, processors or other third parties) as of the end of such month, (C) to the extent available agings of accounts payable (and including information indicating the amounts owing to owners and lessors of leased premises, warehouses, fulfillment centers, processors and other third parties from time to time in possession of any Collateral) as of the end of such month, (D) a detailed breakdown of the calculations of Inventory to be returned to vendors, (E) an aging report with respect to all outstanding merchandise gift certificates or gift cards, (F) a report setting forth the total amount of any purchase price paid by any customers to Borrower in respect of layaway goods, if any, (G) a month-end calculation of the Borrowing Base reflecting the "Stock Ledger" activity for such month, (H) a general ledger trial balance, (I) a report summarizing any amounts payable to Seller under the Transition Services Agreement as of such month end, (J) a report summarizing any closed retail store locations and results by class of Inventory of any going-out-of-business sales and identifying the proceeds of any other assets of Borrower sold in connection

with such store closures, (K) a report of any reductions in the amount of rent payable under the Unitary Lease during such month, (L) a report of Eligible Inventory by location and class (including whether at port, at sea or other location and by stock keeping unit (sku)) as of such month end, (M) a report of any Inventory (other than Eligible Inventory) in the custody, control or possession of a third party not identified in the Information Certificate and except for goods located in the United States in transit to a location of Borrower or Guarantor permitted herein in the ordinary course of business of Borrower or Guarantor in the possession of the carrier transporting such goods, by location and class (including whether at port, at sea or other location and by stock keeping unit (sku)) and (N) to the extent any Restricted Lease has been sublet by Borrower to a third party, a report as to whether any or all of such sublessees are current in their rent payments.

(iii) as soon as possible after the end of each month (but in any event ten (10) Business Days after the end thereof), in each case certified by an Authorized Officer of Borrower Agent as true and correct: (A) a statement confirming the payment of rent and other amounts due to owners and lessors of real property used by Borrower in the immediately preceding month, subject to year-end or other periodic adjustments, (B) the addresses of all new retail store locations of Borrower opened and existing retail store locations closed or sold, in each case since the date of the most recent certificate delivered to Agent containing the information required under this clause, and (C) a report of any new deposit account established or used by Borrower with any bank or other financial institution, including the name of the account, the account number, the name and address of the financial institution at which such account is maintained, the purpose of such account and, if any, the amount held in such account on or about the date of such report;

(iv) upon Agent's request, (A) reports of sales for each class of Inventory, (B) reports of aggregate Inventory purchases (including all costs related thereto, such as freight, duty and taxes) and identifying items of Inventory in transit to Borrower related to the applicable documentary letter of credit and/or bill of lading number, (C) copies of purchase orders, sales invoices, credit memos, remittance advices and reports, and copies of deposit slips and bank statements, (D) reports by retail store location of sales and operating profits for each such retail store location, (E) subject to Section 7.6 hereof, copies of marine survey and in bound vessel reports, port of entry summaries for each shipment of Inventory received by Borrower in the immediately preceding week and copies of all packing slips and invoices related to any of the foregoing and copies of the bills of lading related thereto with respect to Eligible In-Transit LC Inventory or Eligible In-Transit Open Account Inventory and (F) reports on sales and use tax collections, deposits and payments, including monthly sales and use tax accruals during such month;

(v) upon Agent's request, the monthly statements received by Borrower or any of its Affiliates from any Credit Card Issuers or Credit Card Processors, together with such additional information with respect thereto as shall be sufficient to enable Agent to monitor the transactions pursuant to the Credit Card Agreements;



(vi) such other reports as to the Collateral as Agent shall reasonably request from time to time.

(b) If Borrower's or Guarantor's records or reports of the Collateral are prepared or maintained by an accounting service, contractor, shipper or other agent, Borrower and Guarantor hereby irrevocably authorizes such service, contractor, shipper or agent to deliver such records, reports, and related documents to Agent and to follow Agent's instructions with respect to further services at any time that an Event of Default exists or has occurred and is continuing.

## 7.2 Accounts Covenants.

(a) Borrower shall notify Agent promptly of: (i) any claims, offsets, defenses or counterclaims by any account debtor, Credit Card Issuer or Credit Card Processor or any disputes with such Persons, or any settlement, adjustment or compromise thereof, to the extent any of the foregoing exceeds \$1,000,000 in any one case, and (ii) all material adverse information relating to the financial condition of any account debtor, Credit Card Issuer or Credit Card Processor. No credit, discount, allowance or extension or agreement for any of the foregoing shall be granted to any account debtor, Credit Card Issuer or Credit Card Processor except in the ordinary course of Borrower's business in accordance with the current practices of Borrower as in effect on the date hereof. So long as no Event of Default exists or has occurred and is continuing, Borrower shall have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with any account debtor, Credit Card Issuer, Credit Card Processor. At any time that an Event of Default exists or has occurred and is continuing, Agent shall, at its option, have the exclusive right to settle, adjust or compromise any claim, offset, counterclaim or dispute with account debtors, Credit Card Issuers or Credit Card Processors or grant any credits, discounts or allowances.

(b) With respect to each Account: (i) no payments shall be made thereon except payments delivered to Agent pursuant to the terms of this Agreement, (ii) there shall be no setoffs, deductions, contra, defenses, counterclaims or disputes existing or asserted with respect thereto except as reported to Agent in accordance with the terms of this Agreement, (iii) none of the transactions giving rise thereto will violate in any material respect any applicable foreign, Federal, State or local laws or regulations, all documentation relating thereto will be legally sufficient under such laws and regulations and all such documentation will be legally enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws limiting creditors' rights generally and be general equitable principles.

(c) Borrower shall notify Agent promptly of: (i) any notice of a material default by Borrower under any of the Credit Card Agreements or of any default which has a reasonable likelihood of resulting in the Credit Card Issuer or Credit Card Processor ceasing to make payments or suspending payments to Borrower, (ii) any notice from any Credit Card Issuer or Credit Card Processor that such person is ceasing or suspending, or will cease or suspend, any present or future payments due or to become due to Borrower from such person, or that such person is terminating or will terminate any of the Credit Card Agreements, and (iii) the failure of

Borrower to comply with any material terms of the Credit Card Agreements or any terms thereof which has a reasonable likelihood of resulting in the Credit Card Issuer or Credit Card Processor ceasing or suspending payments to Borrower.

(d) Agent shall have the right, in Agent's name (at any time or times during which any Event of Default shall exist or be continuing), in Agent's name or in the name of a nominee of Agent (at all other times), to verify the validity, amount or any other matter relating to any Receivables or other Collateral, by mail, telephone, facsimile transmission or otherwise.

7.3 Inventory Covenants. With respect to the Inventory: (a) each of Borrower and Guarantor shall at all times maintain inventory records reasonably satisfactory to Agent, keeping correct and accurate records itemizing and describing the kind, type, quality and quantity of Inventory, Borrower's or Guarantor's cost therefor and daily withdrawals therefrom and additions thereto; (b) Borrower and Guarantor shall conduct a physical count of the Inventory either through periodic cycle counts or wall to wall counts, so that all Inventory is subject to such counts at least once each year but at any time or times as Agent may request upon the occurrence and during the continuance of an Event of Default, and promptly following such physical inventory (whether through periodic cycle counts or wall to wall counts) shall supply Agent with a report in the form and with such specificity as may be satisfactory to Agent in good faith concerning such physical count; (c) except as permitted under Section 9.2 hereof, Borrower and Guarantor shall not remove any Inventory from the locations set forth or permitted herein, without the prior written consent of Agent, except for sales of Inventory in the ordinary course of its business and except to move Inventory directly from one location set forth or permitted herein to another such location and except for Inventory shipped from the manufacturer thereof to Borrower or Guarantor which is in transit to the locations set forth or permitted herein; (d) (i) upon Agent's request, Borrower shall, at its expense, no more than two (2) times in any twelve (12) month period and, in addition, one (1) time in each fiscal quarter if Borrower closes twenty (20) or more stores, (ii) at any additional time or times as Agent may request at the expense of Lenders, or (iii) at any time or times as Agent may request at Borrower's expense at any time upon the occurrence and during the continuance of an Event of Default, deliver or cause to be delivered to Agent written appraisals as to the Inventory in form, scope and methodology acceptable to Agent and by an appraiser acceptable to Agent, addressed to Agent and Lenders and upon which Agent and Lenders are expressly permitted to rely; (e) Borrower and Guarantor shall produce, use, store and maintain the Inventory with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with applicable laws (including the requirements of the Federal Fair Labor Standards Act of 1938, as amended and all rules, regulations and orders related thereto); (f) upon Agent's request, Borrower shall, at its expense, conduct through RGIS Inventory Specialists, Inc. or another inventory counting service acceptable to Agent, a physical count of the Inventory in form, scope and methodology acceptable to Agent no more than one (1) time in any twelve (12) month period, but at any time or times as Agent may request at any time an Event of Default exists or has occurred and is continuing or at any time or times as Agent may request in the event of test count variances in excess of the shrinkage reserve established by Borrower, the results of which shall be reported directly by such inventory counting service to Agent and Borrower shall promptly deliver confirmation in a form satisfactory to Agent that appropriate adjustments have been made to the

inventory records of Borrower to reconcile the inventory count to Borrower's inventory records; (g) none of the Inventory or other Collateral constitutes farm products or the proceeds thereof; (h) each of Borrower and Guarantor assumes all responsibility and liability arising from or relating to the production, use, sale or other disposition of the Inventory; (i) Borrower and Guarantor shall not sell Inventory to any customer on approval, or any other basis which entitles the customer to return or may obligate Borrower or Guarantor to repurchase such Inventory except for the right of return given to retail customers of Borrower in the ordinary course of the business of Borrower in accordance with the then current return policy of Borrower; (j) Borrower and Guarantor shall keep the Inventory in good and marketable condition; and (k) Borrower and Guarantor shall not, without prior written notice to Agent or the specific identification of such Inventory in a report with respect thereto provided by Borrower to Agent pursuant to Section 7.1(a) hereof, acquire or accept any Inventory on consignment or approval.

7.4 Equipment and Real Property Covenants. With respect to the Equipment and Real Property: (a) upon Agent's request, at any time or times as Agent may request upon the occurrence and during the continuance of an Event of Default, deliver or cause to be delivered to Agent written appraisals as to the Equipment in form, scope and methodology acceptable to Agent and by an appraiser acceptable to Agent, addressed to Agent and upon which Agent is expressly permitted to rely; (b) Borrower and Guarantor shall keep the Equipment in good order, repair, running and marketable condition (ordinary wear and tear excepted) in the ordinary course of business; (c) Borrower and Guarantor shall use the Equipment and Real Property with all reasonable care and caution and in accordance with applicable standards of any insurance and in conformity with all applicable laws; (d) the Equipment is and shall be used in the business of Borrower and Guarantor and not for personal, family, household or farming use; (e) without limitation upon the rights of Borrower and Guarantor to dispose of Equipment pursuant to Section 9.7(b)(ii) or (v)(A) hereof and Restricted Lease Fixtures pursuant to Section 9.7(b)(v)(B) hereof, Borrower and Guarantor shall not remove any Equipment from the locations set forth or permitted herein, except to the extent necessary to have any Equipment repaired or maintained in the ordinary course of its business or to move Equipment directly from one location set forth or permitted herein to another such location and except for the movement of motor vehicles used by or for the benefit of Borrower or Guarantor in the ordinary course of business; (f) the Equipment is now and shall remain personal property and Borrower and Guarantor shall not permit any of the Equipment to be or become a part of or affixed to Real Property; and (g) each of Borrower and Guarantor assumes all responsibility and liability arising from the use of the Equipment and Real Property.

7.5 Power of Attorney. Each of Borrower and Guarantor hereby irrevocably designates and appoints Agent (and all persons designated by Agent) as Borrower's and Guarantor's true and lawful attorney-in-fact, and authorizes Agent, in Borrower's, Guarantor's or Agent's name, to: (a) at any time an Event of Default exists or has occurred and is continuing (i) demand payment on Receivables or other Collateral, (ii) enforce payment of Receivables by legal proceedings or otherwise, (iii) exercise all of Borrower's or Guarantor's rights and remedies to collect any Receivable or other Collateral, (iv) sell or assign any Receivable upon such terms, for such amount and at such time or times as the Agent deems advisable, (v) settle, adjust, compromise, extend or renew an Account, (vi) discharge and release any Receivable, (vii)

prepare, file and sign Borrower's or Guarantor's name on any proof of claim in bankruptcy or other similar document against an account debtor or other obligor in respect of any Receivables or other Collateral, (viii) notify the post office authorities to change the address for delivery of remittances from account debtors or other obligors in respect of Receivables or other proceeds of Collateral to an address designated by Agent, and open and dispose of all mail addressed to Borrower or Guarantor and handle and store all mail relating to the Collateral; and (ix) do all acts and things which are necessary, in Agent's determination made in good faith, to fulfill Borrower's or Guarantor's obligations under this Agreement and the other Financing Agreements and (b) at any time to (i) take control in any manner of any item of payment in respect of Receivables or constituting Collateral or otherwise received in or for deposit in the Blocked Accounts or otherwise received by Agent or any Lender, (ii) have access to any lockbox or postal box into which remittances from account debtors or other obligors in respect of Receivables or other proceeds of Collateral are sent or received, (iii) endorse Borrower's or Guarantor's name upon any items of payment in respect of Receivables or constituting Collateral or otherwise received by Agent and any Lender and deposit the same in Agent's account for application to the Obligations, (iv) endorse Borrower's or Guarantor's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Receivable or any goods pertaining thereto or any other Collateral, including any warehouse or other receipts, or bills of lading and other negotiable or non-negotiable documents, (v) clear Inventory the purchase of which was financed with Letter of Credit Accommodations through U.S. Customs or foreign export control authorities in Borrower's or Guarantor's name, Agent's name or the name of Agent's designee, and to sign and deliver to customs officials powers of attorney in Borrower's or Guarantor's name for such purpose, and to complete in Borrower's or Guarantor's or Agent's name, any order, sale or transaction, obtain the necessary documents in connection therewith and collect the proceeds thereof, and (vi) sign Borrower's or Guarantor's name on any verification of Receivables and notices thereof to account debtors or any secondary obligors or other obligors in respect thereof. Each of Borrower and Guarantor hereby releases Agent and Lenders and their respective officers, employees and designees from any liabilities arising from any act or acts under this power of attorney and in furtherance thereof, whether of omission or commission, except as a result of Agent's or any Lender's own gross negligence or willful misconduct as determined pursuant to a final non-appealable order of a court of competent jurisdiction.

7.6 Bills of Lading and other Documents of Title. At any time after the date that is one hundred eighty (180) days after the date hereof and upon the request of Agent, Borrower shall cause all bills of lading and other documents of title relating to goods being purchased by Borrower which are outside the United States and in transit to the premises of any Borrower or the premises of a customs broker in the United States to name Borrower as consignee, unless and until Agent may direct otherwise. At such time as Agent may direct, Borrower shall cause Agent or such financial institution or other person as Agent may specify to be named as consignee. Without limiting any other rights of Agent hereunder, Agent shall have the right to endorse and negotiate on behalf of, and as attorney-in-fact for, Borrower any bill of lading with respect to such goods naming Borrower as consignee to Agent. One (1) original of each bill of lading or other document of title shall be delivered to such customs broker as Borrower may specify, and upon Agent's request, two (2) extra originals of each such bill of lading shall be delivered to

Agent or to such other person as Agent may designate for such purpose. Borrower shall obtain a copy (but not the originals) of such bill of lading or other documents from the customs broker. Borrower shall cause all bills of lading or other documents of title relating to goods purchased by Borrower which are outside the United States and in transit to the premises of Borrower or the premises of a customs broker in the United States to be issued in a form so as to constitute negotiable documents as such term is defined in the Uniform Commercial Code. To the extent that the terms of this Section have not been satisfied as to any Inventory, such Inventory shall not constitute Eligible Inventory, except as Agent may otherwise agree.

7.7 Right to Cure. Agent may, at its option, upon prior notice to Borrower (and so long as Borrower has not taken such action with five (5) days after such notice, unless Agent determines in good faith that under the circumstances it must act sooner), (a) cure any material default by Borrower or Guarantor under any material agreement with a third party that affects the Collateral, its value or the ability of Agent to collect, sell or otherwise dispose of the Collateral or the rights and remedies of Agent or any Lender therein or the ability of Borrower to the extent that Agent determines in good faith that such action is necessary or appropriate to protect, preserve or enforce the interests of Agent or Guarantor to perform its obligations hereunder or under any of the other Financing Agreements, (b) pay or bond on appeal any judgment entered against Borrower or Guarantor, (c) discharge taxes, liens, security interests or other encumbrances at any time levied on or existing with respect to the Collateral and pay any amount, incur any expense or perform any act which, in Agent's judgment, is necessary or appropriate to preserve, protect, insure or maintain the Collateral and the rights of Agent and Lenders with respect thereto. Agent may add any amounts so expended to the Obligations and charge Borrower's account therefor, such amounts to be repayable by Borrower on demand. Agent and Lenders shall be under no obligation to effect such cure, payment or bonding and shall not, by doing so, be deemed to have assumed any obligation or liability of Borrower or Guarantor. Any payment made or other action taken by Agent or any Lender under this Section shall be without prejudice to any right to assert an Event of Default hereunder and to proceed accordingly.

7.8 Access to Premises. From time to time as requested by Agent, at the cost and expense of Borrower, (a) Agent or its designee shall have complete access to all of each of Borrower's and Guarantor's premises during normal business hours and after notice to Borrower, or at any time and without notice to Borrower if an Event of Default exists or has occurred and is continuing, for the purposes of inspecting, verifying and auditing the Collateral and all of each of Borrower's and Guarantor's books and records, including the Records (it being agreed that unless an Event of Default shall exist or have occurred and be continuing, Agent shall not conduct more than two (2) field audits of the Collateral and books and records, including the Records of Borrower and Guarantor, in any calendar year), and (b) each of Borrower and Guarantor shall promptly furnish to Agent such copies of such books and records or extracts therefrom as Agent may request, and Agent or any Lender or Agent's designee may use during normal business hours such of Borrower's and Guarantor's personnel, equipment, supplies and premises as may be reasonably necessary for the foregoing and if an Event of Default exists or has occurred and is continuing for the collection of Receivables and realization of other Collateral. Any Lender

whose commitment is more than \$50,000,000 may accompany Agent in the conduct of an audit of the Collateral, at such Lender's own expense.

## **SECTION 8. REPRESENTATIONS AND WARRANTIES**

Each of Borrower and Guarantor hereby represents and warrants to Agent and Lenders the following (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which are a continuing condition of the making of Loans and providing Letter of Credit Accommodations to Borrower:

8.1 Corporate Existence, Power and Authority. Each of Borrower and Guarantor is a limited liability company duly organized and in good standing under the laws of its state of formation and is duly qualified as a foreign limited liability company and in good standing in all states or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary, except for those jurisdictions in which the failure to so qualify would not have a material adverse effect on Borrower's or Guarantor's financial condition, results of operation or business or the rights of Agent in or to any of the Collateral. The execution, delivery and performance of this Agreement, the other Financing Agreements and the transactions contemplated hereunder and thereunder (a) are all within each Borrower's and Guarantor's limited liability company powers, (b) have been duly authorized, (c) are not in contravention of law or the terms of Borrower's or Guarantor's certificate of formation, by-laws, or other organizational documentation (including without limitation, the Borrower LLC Agreement, or any material indenture, agreement or undertaking to which Borrower or Guarantor is a party or by which Borrower or Guarantor or its property are bound and (d) will not result in the creation or imposition of, or require or give rise to any obligation to grant, any lien, security interest, charge or other encumbrance upon any property of Borrower or Guarantor, except for security interests and liens expressly permitted in Section 9.8 hereof. This Agreement and the other Financing Agreements to which Borrower or Guarantor is a party constitute legal, valid and binding obligations of Borrower and Guarantor enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws limiting creditors' rights generally and by general equitable principles.

### 8.2 Name; State of Organization; Chief Executive Office; Collateral Locations.

(a) The exact legal name of each of Borrower and Guarantor is as set forth on the signature page of this Agreement and in the Information Certificate. Neither Borrower nor Guarantor has, during the past five years prior to the date hereof, been known by or used any other corporate or fictitious name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property or assets out of the ordinary course of business, except as set forth in the Information Certificate.

(b) Each of Borrower and Guarantor is an organization of the type and organized in the jurisdiction set forth in the Information Certificate. The Information Certificate accurately sets forth the organizational identification number of each of Borrower and Guarantor or

accurately states that Borrower or Guarantor has none and accurately sets forth the federal employer identification number of each of Borrower and Guarantor.

(c) The chief executive office and mailing address of each of Borrower and Guarantor and each of Borrower's and Guarantor's Records concerning Accounts are located only at the address identified as such in Schedule 8.2 to the Information Certificate and its only other places of business and the only other locations of Collateral, if any, are the addresses set forth in Schedule 8.2 to the Information Certificate (other than goods that are in transit to one of the locations set forth in Schedule 8.2 to the Information Certificate), subject to the rights of Borrower or Guarantor to establish new locations in accordance with Section 9.2 below; provided, that, Borrower and Guarantor shall have the right to send Equipment out for repair in the ordinary course of business and consistent with past practices so long as such Equipment is promptly returned upon the completion of such repair to a location set forth on Schedule 8.2 to the Information Certificate (as supplemented by new locations established in accordance with Section 9.2 hereof). The Information Certificate correctly identifies any of such locations which are not owned by Borrower or Guarantor and sets forth the owners and/or operators thereof.

8.3 Financial Statements; No Material Adverse Change. All financial statements relating to Borrower or Guarantor which have been or may hereafter be delivered by Borrower or Guarantor to Agent and Lenders have been prepared in accordance with GAAP (except as to any interim financial statements, to the extent such statements are subject to normal year-end adjustments and do not include any notes) and fairly present in all material respects the financial condition and the results of operation of Borrower and Guarantor as at the dates and for the periods set forth therein. Except as disclosed in any interim financial statements furnished by Borrower and Guarantor to Agent prior to the date of this Agreement, there has been no act, condition or event which has had or is reasonably likely to have a Material Adverse Effect since the date of the most recent audited financial statements of Borrower or Guarantor furnished by Borrower or Guarantor to Agent prior to the date of this Agreement.

8.4 Priority of Liens; Title to Properties. The security interests and liens granted to Agent under this Agreement and the other Financing Agreements constitute valid and perfected first priority liens and security interests in and upon the Collateral subject only to the liens indicated on Schedule 8.4 to the Information Certificate and the other liens permitted under Section 9.8 hereof. Each of Borrower and Guarantor has good and marketable fee simple title to or valid leasehold interests in all of its Real Property and good, valid and merchantable title to all of its other properties and assets subject to no liens, mortgages, pledges, security interests, encumbrances or charges of any kind, except those granted to Agent and such others as are specifically listed on Schedule 8.4 to the Information Certificate or permitted under Section 9.8 hereof.

8.5 Tax Returns. Except as set forth on Schedule 8.5 to the Information Certificate, each of Borrower and Guarantor has filed, or caused to be filed, in a timely manner all material tax returns, reports and declarations which are required to be filed by it. All information in such tax returns, reports and declarations is complete and accurate in all material respects. Each of Borrower and Guarantor has paid or caused to be paid all taxes due and payable or claimed due

and payable in any assessment received by it, except (a) taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Borrower or Guarantor and with respect to which adequate reserves have been set aside on its books, and (b) taxes for which a valid extension to file the applicable tax returns has been granted. Adequate provision has been made for the payment of all material accrued and unpaid Federal, State, county, local, foreign and other taxes whether or not yet due and payable and whether or not disputed.

8.6 Litigation. Except as set forth on Schedule 8.6 to the Information Certificate, (a) there is no investigation by any Governmental Authority pending, or to the best of Borrower's or Guarantor's knowledge threatened, against or affecting Borrower or Guarantor, its or their assets or business or the Purchased Securities and (b) there is no action, suit, proceeding or claim by any Person pending, or to the best of Borrower's or Guarantor's knowledge threatened, against Borrower or Guarantor or its or their assets or goodwill or the Purchased Securities, or against or affecting any transactions contemplated by this Agreement, or the Purchase Agreement, in each case, which if adversely determined against Borrower or Guarantor has or could reasonably be expected to have a Material Adverse Effect.

8.7 Compliance with Other Agreements and Applicable Laws.

(a) Borrower and Guarantor are in compliance with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority relating to their respective businesses, including, without limitation, those set forth in or promulgated pursuant to the Occupational Safety and Health Act of 1970, as amended, the Fair Labor Standards Act of 1938, as amended, ERISA, the Code, as amended, and the rules and regulations thereunder, and all Environmental Laws, in each case except where the failure to so comply would not be reasonably expected to have Material Adverse Effect.

(b) Borrower and Guarantor have obtained all material permits, licenses, approvals, consents, certificates, orders or authorizations of any Governmental Authority required for the lawful conduct of its business (the "Permits") except to the extent the failure to so obtain would not reasonably be expected to have a Material Adverse Effect. All of the Permits are valid and subsisting and in full force and effect. There are no actions, claims or proceedings pending or to the best of Borrower's or Guarantor's knowledge, threatened that seek the revocation, cancellation, suspension or modification of any of the Permits.

8.8 Environmental Compliance.

(a) Except as set forth on Schedule 8.8 to the Information Certificate, Borrower, Guarantor and any Subsidiary of Borrower or Guarantor have not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, in any manner which at any time violates any applicable Environmental Law or Permit, except for such violations which could not be reasonably expected to result in a Material Adverse Effect and the operations of Borrower, Guarantor and any Subsidiary of Borrower or Guarantor comply with all Environmental Laws and all Permits, except for such non-compliance which could not be reasonably expected to result in a Material Adverse Effect.



(b) Except as set forth on Schedule 8.8 to the Information Certificate, there has been no investigation by any Governmental Authority or any proceeding, complaint, order, directive, claim, citation or notice by any Governmental Authority or any other person nor is any pending or to the best of Borrower's or Guarantor's knowledge threatened, with respect to any non-compliance with or violation of the requirements of any Environmental Law by Borrower or Guarantor and any Subsidiary of Borrower or Guarantor or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which in any case could reasonably be expected to result in a Material Adverse Effect.

(c) Except as set forth on Schedule 8.8 to the Information Certificate, Borrower, Guarantor and their Subsidiaries have no material liability (contingent or otherwise) in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials which in any case could reasonably be expected to result in a Material Adverse Effect.

(d) Borrower, Guarantor and their Subsidiaries have all Permits required to be obtained or filed in connection with the operations of Borrower and Guarantor under any Environmental Law except where the failure to maintain or have such Permits could not reasonably be expected to result in a Material Adverse Effect, and all of such licenses, certificates, approvals or similar authorizations and other Permits are valid and in full force and effect.

#### 8.9 Employee Benefits.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or State law. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service and to the best of Borrower's or Guarantor's knowledge, nothing has occurred which could reasonably be expected to cause the loss of such qualification. Borrower and its ERISA Affiliates have made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending, or to the best of Borrower's or Guarantor's knowledge, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan, which could reasonably be expected to result in liability in excess of \$5,000,000. There has been no non-exempt prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which could be reasonably expected to subject Borrower or Guarantor to any material liability.

(c) (i) No ERISA Event has occurred and no condition, event or circumstance exists that could be reasonably expected to result in the occurrence of an ERISA Event; (ii) the current value of the assets of each Plan subject to Title IV of ERISA (determined in accordance

with the assumptions used for funding such Plan pursuant to Section 412 of the Code) are not less than such Plan's liabilities under Section 4001(a)(16) of ERISA; (iii) each of Borrower and Guarantor, and their ERISA Affiliates, have not incurred and no condition, event or circumstance exists that could be reasonably expected to result in, any material liability under Title IV of ERISA with respect to any Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) each of Borrower and Guarantor, and their ERISA Affiliates, have not incurred and do not reasonably expect to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) each of Borrower and Guarantor, and their ERISA Affiliates, have not engaged in a transaction that could reasonably be expected to be subject to Section 4069 or 4212(c) of ERISA.

8.10 Bank Accounts. All of the deposit accounts, investment accounts or other accounts in the name of or used by Borrower or Guarantor maintained at any bank or other financial institution are set forth on Schedule 8.10 to the Information Certificate, subject to the right of each of Borrower and Guarantor to establish new accounts in accordance with Section 5.2 hereof.

8.11 Intellectual Property. To the knowledge of Borrower and Guarantor, each of Borrower and Guarantor owns or licenses or otherwise has the right to use all Intellectual Property necessary for the operation of their respective businesses as conducted by Seller immediately prior to the date hereof or proposed to be conducted by Borrower and Guarantor. As of the date hereof, Borrower and Guarantor do not have any Intellectual Property registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those described in Schedule 8.11 to the Information Certificate and has not granted any licenses with respect thereto other than as set forth in Schedule 8.11 to the Information Certificate. No event has occurred which permits or would permit after notice or passage of time or both, the revocation, suspension or termination of such rights, other than the scheduled expiration in the ordinary course of business of any license agreement pertaining to licensed Intellectual Property and the expiration of any registered Intellectual Property in accordance with its terms. To the best of Borrower's and Guarantor's knowledge, no slogan or other advertising device, product, process, method, substance or other Intellectual Property or goods bearing or using any Intellectual Property presently contemplated to be sold by or employed by Borrower or Guarantor infringes any patent, trademark, servicemark, tradename, copyright, license or other Intellectual Property owned by any other Person presently and no claim or litigation is pending or threatened against or affecting Borrower or Guarantor contesting its right to sell or use any such Intellectual Property. Schedule 8.11 to the Information Certificate sets forth all of the material agreements or other arrangements of each of Borrower and Guarantor pursuant to which Borrower or Guarantor has a license (other than commercially available off-the-shelf software) or other right to use any trademarks, logos, designs, representations or other Intellectual Property owned by another person as in effect on the date hereof (collectively, together with such agreements or other arrangements as may be entered into by Borrower or Guarantor after the date hereof, collectively, the "License Agreements" and individually, a "License Agreement"). No trademark, servicemark, copyright

or other Intellectual Property at any time used by Borrower or Guarantor which is owned by another person, or owned by Borrower or Guarantor subject to any security interest, lien, collateral assignment, pledge or other encumbrance in favor of any person other than Agent, is affixed to any Eligible Inventory, except (a) to the extent permitted under the term of the License Agreements listed on Schedule 8.11 to the Information Certificate and (b) to the extent the sale of Inventory to which such Intellectual Property is affixed is permitted to be sold by Borrower or Guarantor under applicable law (including the United States Copyright Act of 1976).

#### 8.12 Subsidiaries; Affiliates; Capitalization; Solvency.

(a) As of the date hereof, each of Borrower and Guarantor does not have any direct or indirect Subsidiaries or Affiliates (other than any Sponsor Portfolio Company) and is not engaged in any joint venture or partnership except as set forth in Schedule 8.12 to the Information Certificate.

(b) As of the date hereof, each of Borrower and Guarantor is the record and beneficial owner of all of the issued and outstanding shares of Capital Stock of each of the Subsidiaries listed on Schedule 8.12 to the Information Certificate as being owned by Borrower or Guarantor and there are no proxies, irrevocable or otherwise, with respect to such shares and no equity securities of any of the Subsidiaries are or may become required to be issued by reason of any options, warrants, rights to subscribe to, calls or commitments of any kind or nature and there are no contracts, commitments, understandings or arrangements by which any Subsidiary is or may become bound to issue additional shares of its Capital Stock or securities convertible into or exchangeable for such shares.

(c) As of the date hereof, the issued and outstanding shares of Capital Stock of each of Borrower and Guarantor are directly and beneficially owned and held by the persons indicated in the Information Certificate, and in each case all of such shares have been duly authorized and are fully paid and non-assessable, free and clear of all claims, liens, pledges and encumbrances of any kind, except as disclosed in writing to Agent prior to the date hereof.

(d) Borrower and Guarantor (taken as a whole) is Solvent and will continue to be Solvent after the creation of the Obligations, the security interests of Agent and the other transactions contemplated hereunder and the consummation of the transactions under the Purchase Agreements, Borrower LLC Agreement, Unitary Leases, and the Real Estate Transfer Documents.

#### 8.13 Labor Disputes.

(a) Set forth on Schedule 8.13 to the Information Certificate is a list (including dates of termination) of all collective bargaining or similar agreements between or applicable to each of Borrower and Guarantor and any union, labor organization or other bargaining agent in respect of the employees of Borrower or Guarantor on the date hereof.

(b) There is (i) no material unfair labor practice complaint pending against Borrower or Guarantor or, to the best of Borrower's or Guarantor's knowledge, threatened

against it, before the National Labor Relations Board, and no material grievance or material arbitration proceeding arising out of or under any collective bargaining agreement is pending on the date hereof against Borrower or Guarantor or, to best of Borrower's or Guarantor's knowledge, threatened against it, and (ii) no material strike, labor dispute, slowdown or stoppage is pending against Borrower or Guarantor or, to the best of Borrower's or Guarantor's knowledge, threatened against Borrower or Guarantor.

8.14 Restrictions on Subsidiaries. Except for restrictions contained in this Agreement or any other agreement with respect to Indebtedness of Borrower or Guarantor permitted hereunder as in effect on the date hereof, there are no contractual or consensual restrictions on Borrower or Guarantor or any of its Subsidiaries which prohibit or otherwise restrict (a) the transfer of cash or other assets (i) between Borrower or Guarantor and any of its or their Subsidiaries or (ii) between any Subsidiaries of Borrower or Guarantor or (b) the ability of Borrower or Guarantor or any of its or their Subsidiaries to incur Indebtedness or grant security interests to Agent or any Lender in the Collateral.

8.15 Material Contracts. Schedule 8.15 to the Information Certificate sets forth all Material Contracts to which Borrower or Guarantor is a party or is bound as of the date hereof. Borrower and Guarantor have delivered true, correct and complete copies of such Material Contracts to Agent on or before the date hereof. Borrower and Guarantor are not in breach or in default in any material respect of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract. Borrower is a party to all contracts necessary for the operation of its business as presently conducted, as conducted immediately prior to the date hereof or as presently proposed to be conducted, except for those the failure to obtain could not reasonably be expected to have a Material Adverse Effect.

8.16 Credit Card Agreements. Set forth in Schedule 8.16 hereto is a correct and complete list of (a) all of the Credit Card Agreements and all other agreements, documents and instruments existing as of the date hereof between or among Borrower, any of its Affiliates (other than any Sponsor Portfolio Company), the Credit Card Issuers, the Credit Card Processors and any of their affiliates, (b) the percentage of each sale payable to the Credit Card Issuer or Credit Card Processor under the terms of the Credit Card Agreements, (c) all other fees and charges payable by Borrower under or in connection with the Credit Card Agreements and (d) the term of such Credit Card Agreements. The Credit Card Agreements and the Transition Services Agreement constitute all of such agreements necessary for each of Borrower to operate its business as presently conducted with respect to credit cards and debit cards and no Accounts of Borrower or Guarantor arise from purchases by customers of Inventory with credit cards or debit cards, other than those which are issued by Credit Card Issuers with whom Borrower has entered into one of the Credit Card Agreements set forth on Schedule 8.16 hereto or with whom Borrower has entered into a Credit Card Agreement in accordance with Section 9.13 hereof. Each of the Credit Card Agreements constitutes the legal, valid and binding obligations of Borrower or Guarantor that is a party thereto and to the best of each of Borrower's and Guarantor's knowledge, the other parties thereto, enforceable in accordance with their respective terms and are in full force and effect. No material default or material event of default, or act,

condition or event which after notice or passage of time or both, would constitute a material default or a material event of default under any of the Credit Card Agreements exists or has occurred. Each of Borrower and Guarantor and the other parties thereto have complied with all of the material terms and conditions of the Credit Card Agreements to the extent necessary for Borrower and Guarantor to be entitled to receive all payments thereunder. Borrower have delivered, or caused to be delivered to Agent , true, correct and complete copies of all of the Credit Card Agreements.

8.17 Payable Practices. Each of Borrower and Guarantor have not made any material change in the historical accounts payable practices from those in effect immediately prior to the date hereof.

8.18 Acquisition of Purchased Securities.

(a) The Purchase Agreements Real Estate Transfer Documents, and the transactions contemplated thereunder have been duly executed, delivered and performed in accordance with their terms by the respective parties thereto in all material respects, including the fulfillment (not merely the waiver, except as may be disclosed to Agent) of all conditions precedent set forth therein and giving effect to the terms of the Purchase Agreements and the assignments executed and delivered by Seller (or any of its affiliates or subsidiaries) thereunder, Parent has acquired and has good and marketable title to the Purchased Securities, free and clear of all claims, liens, pledges and encumbrances of any kind, except as permitted hereunder.

(b) All actions and proceedings required (if any) of Parent, Borrower or Guarantor by the Purchase Agreements, Real Estate Transfer Documents, applicable law or regulation (including, but not limited to, compliance by Borrower, Guarantor and Seller with the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, as amended, and compliance by Parent, Borrower and Guarantor with the Worker Adjustment and Retaining Notification Act) have been taken, the transactions required thereunder have been duly and validly taken and consummated.

(c) No court of competent jurisdiction has issued any injunction, restraining order or other order which prohibits the consummation of the transactions described in the Purchase Agreements, Real Estate Transfer Documents, the Senior RE Loan Documents and Mezzanine RE Loan Documents and no governmental or other action or proceeding has been commenced or, to Borrower's knowledge, threatened, seeking any injunction, restraining order or other order which seeks to void or otherwise modify the transactions described in the Purchase Agreements, the Senior RE Documents and Mezzanine RE Documents.

(d) Borrower has delivered, or caused to be delivered, to Agent, true, correct and complete copies of the Purchase Agreements Real Estate Transfer Documents, the Senior RE Documents and Mezzanine RE Documents.

(e) The execution and delivery of the Purchase Agreements and the consummation of the transactions contemplated thereby do not and will not result in (i) any violation by Borrower or any Guarantor of any provisions of the Worker Adjustment and Retraining Notification Act or (ii) any liability to Borrower or any Guarantor under such Act or under any

pension plan, benefits plan, severance plan or union contract except as set forth on Schedule 8.18(e) hereto.

8.19 Accuracy and Completeness of Information. All information furnished by or on behalf of Borrower or Guarantor in writing to Agent or any Lender in connection with this Agreement or any of the other Financing Agreements or any transaction contemplated hereby or thereby, including all information on the Information Certificate is true and correct in all material respects on the date as of which such information is dated or certified and does not omit any material fact necessary in order to make such information not misleading. Since May 31, 2004, no event or circumstance has occurred which has had or could reasonably be expected to have a Material Adverse Effect, which has not been fully and accurately disclosed to Agent in writing prior to the date hereof.

8.20 Transition Services Agreement; AMC Agreement and Other Agreements

(a) Borrower has delivered to Agent on or prior to the date hereof a true, complete and correct copy of the Transition Services Agreement and the AMC Agreement, together with all exhibits and schedules thereto, as in effect on the date hereof and shall promptly furnish to Agent all material supplements, amendments and additions thereto at all times hereafter. Each of the Transition Services Agreement and the AMC Agreement is in full force and effect until expiration or termination in accordance with the terms thereof, has not been amended or modified in any respect that would not be reasonably expected to have a Material Adverse Effect and, to the knowledge of Borrower and Guarantor, none of the parties to any of such agreements is in default of any of its obligations thereunder except where any such default would reasonably be expected to have a Material Adverse Effect. Borrower may terminate the AMC Agreement or replace it so long as such termination or disruption does not cause any disruption to the procurement of imported Inventory in the ordinary course of Borrower's business and such termination or replacement would not otherwise reasonably be expected to have a Material Adverse Effect. Borrower shall promptly provide Agent with any notice Borrower receives from Seller with respect to a change in the consolidators or customs brokers used by Seller to provide certain services to Borrower under the terms of the Transitions Services Agreement after the date hereof.

(b) Borrower and Guarantor have each received and reviewed a copy of the Real Estate Intercreditor Agreement and Borrower and Guarantor each acknowledge and agree to the agreements between the Senior RE Loan Lenders, the Mezzanine RE Loan Lenders and Agent set forth therein and to give prompt notice to each them with respect to any proposal received by Borrower as set forth in Section 15(b) of the Real Estate Intercreditor Agreement.

8.21 Unitary Leases. Borrower has delivered to Agent true, correct and complete copies of the Unitary Leases. Each Unitary Lease is a true lease of Real Property not constituting Indebtedness of Borrower, and in no event shall a default under the Senior RE Loan Documents and Mezzanine RE Loan Documents, result in an acceleration of the rent payments due by Borrower under any Unitary Lease or give rise to a termination of any Unitary Lease.

8.22 Survival of Warranties; Cumulative. All representations and warranties contained in this Agreement or any of the other Financing Agreements shall survive the execution and delivery of this Agreement and shall be deemed to have been made again to Agent and Lenders on the date of each additional borrowing or other credit accommodation hereunder and shall be conclusively presumed to have been relied on by Agent and Lenders regardless of any investigation made or information possessed by Agent or any Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which Borrower or Guarantor shall now or hereafter give, or cause to be given, to Agent or any Lender.

## **SECTION 9. AFFIRMATIVE AND NEGATIVE COVENANTS**

### **9.1 Maintenance of Existence.**

(a) Each of Borrower and Guarantor shall at all times preserve, renew and keep in full force and effect its corporate or limited liability company existence and rights and franchises with respect thereto and maintain in full force and effect all licenses, trademarks, tradenames, approvals, authorizations, leases, contracts and Permits necessary to carry on the business as presently or proposed to be conducted, except as permitted by Section 9.7 hereof or where the failure to so maintain could not be reasonably expected to have a Material Adverse Effect.

(b) Neither Borrower nor Guarantor shall change its name unless each of the following conditions is satisfied: (i) Agent shall have received not less than thirty (30) days prior written notice from Borrower of such proposed change in its corporate name, which notice shall accurately set forth the new name; and (ii) Agent shall have received a copy of the amendment to the Certificate of Incorporation or Formation of Borrower or Guarantor providing for the name change certified by the Secretary of State of the jurisdiction of organization of Borrower or Guarantor as soon as it is available.

(c) Neither Borrower nor Guarantor shall change its chief executive office or its mailing address or organizational identification number (or if it does not have one, shall not acquire one) unless Agent shall have received not less than thirty (30) days' prior written notice from Borrower of such proposed change, which notice shall set forth such information with respect thereto as Agent may require and Agent shall have received such agreements as Agent may reasonably require in connection therewith. Neither Borrower nor Guarantor shall change its type of organization, jurisdiction of organization or other legal structure.

9.2 New Collateral Locations. Each of Borrower and Guarantor may only open any new location within the continental United States provided Borrower or Guarantor (a) gives Agent thirty (30) days prior written notice of the intended opening of any such new location and (b) executes and delivers, or causes to be executed and delivered, to Agent such agreements, documents, and instruments as Agent may deem reasonably necessary or desirable to create, perfect or protect its interests in the Collateral at such location; provided, that, without limiting the obligations of Borrower and Guarantor under Section 7.1 hereof or as may otherwise be provided herein, Borrower and Guarantor shall not be required to give such notice or cause to be

executed or delivered any Collateral Access Agreement pursuant to this Section 9.2 with respect to any new retail store location established after the date hereof.

### 9.3 Compliance with Laws, Regulations, Etc.

(a) Each of Borrower and Guarantor shall, and shall cause any Subsidiary to, at all times, comply in all material respects with all laws, rules, regulations, licenses, approvals, orders and other Permits applicable to it and duly observe all requirements of any foreign, Federal, State or local Governmental Authority including ERISA, the Code, the Occupational Safety and Health Act of 1970, as amended, the Fair Labor Standards Act of 1938, as amended, except where such failure to comply could not have a Material Adverse Effect, and all statutes, rules, regulations, orders, permits and stipulations relating to environmental pollution and employee health and safety, including all of the Environmental Laws; provided, that, unless the failure to comply with Environmental Laws could be reasonably expected to have a Material Adverse Effect as determined by Agent in good faith, the failure to comply with Environmental Laws shall not constitute a breach of this Section 9.3(a) so long as each of the following conditions have been satisfied as determined by Agent in good faith: (i) Borrower or Guarantor is promptly and diligently taking actions in accordance with applicable Environmental Laws to cure and remedy such non-compliance to the extent required by Environmental Laws and adequate reserves have been established on the books of Borrower or Guarantor with respect thereto; (ii) Borrower or Guarantor shall promptly notify Agent in writing of such failure to comply and state whether or not Seller is liable for losses, costs and expenses in connection with such failure; (iii) the aggregate amounts incurred (or reasonably expected to be incurred) by Borrower and Guarantor in connection with such non-compliance (whether remediation costs or otherwise) shall not exceed \$10,000,000 during any twelve-month period; and (iv) the aggregate amounts incurred (or reasonably expected to be incurred) by Borrower and Guarantor in connection with such non-compliance (whether remediation costs or otherwise) for which Seller is liable under the Purchase Agreements and has not assumed responsibility in writing shall not exceed \$10,000,000 during any twelve (12) month period.

(b) Borrower and Guarantor shall give written notice to Agent promptly upon Borrower's or Guarantor's receipt of any notice of, or Borrower's or Guarantor's otherwise obtaining knowledge of, (i) the occurrence of any event involving the material release, spill or discharge, threatened or actual, of any Hazardous Material by Borrower or Guarantor or required to be reported to any Governmental Authority under any Environmental Law or (ii) any investigation, proceeding, complaint, order, directive, claims, citation or notice with respect to: (A) any material non-compliance with or violation of any Environmental Law by Borrower or Guarantor or (B) the release, spill or discharge, threatened or actual, of any Hazardous Material by Borrower or Guarantor other than in the ordinary course of business and other than as permitted under any applicable Environmental Law. Copies of all environmental surveys, audits, assessments, feasibility studies and results of remedial investigations shall be promptly furnished, or caused to be furnished, by Borrower or Guarantor to Agent. Each of Borrower and Guarantor shall take prompt action to respond to any material non-compliance with any of the Environmental Laws and shall regularly report to Agent on such response.



(c) Without limiting the generality of the foregoing, whenever Agent reasonably determines that there is a material violation, or any condition which requires any action by or on behalf of Borrower or Guarantor in order to avoid any material violation of or non-compliance with, any Environmental Law, Borrower shall, at Agent's request and Borrower's expense: (i) cause an independent environmental engineer reasonably acceptable to Agent to conduct such tests of the site where a violation or alleged violation with such Environmental Laws has occurred as to the subject matter of a violation and prepare and deliver to Agent a report as to such violation setting forth the results of such tests, a proposed plan for responding to any violation of any Environmental Law described therein, and an estimate of the costs thereof and (ii) provide to Agent a supplemental report of such engineer whenever the scope of such violation, or Borrower's or Guarantor's response thereto or the estimated costs thereof, shall change in any material respect.

(d) Each of Borrower and Guarantor shall indemnify and hold harmless Agent and Lenders and their respective directors, officers, employees, agents, invitees, representatives, successors and assigns, from and against any and all losses, claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and expenses) directly or indirectly arising out of or attributable to the use, generation, manufacture, reproduction, storage, release, threatened release, spill, discharge, disposal or presence of a Hazardous Material, including the costs of any required or necessary repair, cleanup or other remedial work with respect to any property of Borrower or Guarantor and the preparation and implementation of any closure, remedial or other required plans ("Losses") unless it is determined pursuant to a final non-appealable order of a court of competent jurisdiction that the Losses were the result of acts or omissions constituting gross negligence or willful misconduct of Agent or any Lender (but without limiting the obligations of Borrower or Guarantor as to any other Indemnitee (other than any officers, directors, agents or employees of the Indemnitee whose gross negligence or willful misconduct resulted in such losses, claims, damages, liabilities, costs or expenses)). All representations, warranties, covenants and indemnifications in this Section 9.3 shall survive the payment of the Obligations and the termination of this Agreement.

9.4 Payment of Taxes and Claims. Each of Borrower and Guarantor shall, and shall cause any Subsidiary to, duly pay and discharge when due all material taxes, assessments, contributions and governmental charges upon or against it or its properties or assets, except for taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Borrower, Guarantor or any Subsidiary, as the case may be, and with respect to which adequate reserves have been set aside on its books. Each of Borrower and Guarantor shall be liable for any tax or penalties imposed on Agent or any Lender as a result of the financing arrangements provided for herein and each of Borrower and Guarantor agrees to indemnify and hold Agent and Lenders harmless with respect to the foregoing, and to repay to Agent, for the benefit of Lenders, on demand the amount thereof, and until paid by Borrower or Guarantor such amount shall be added and deemed part of the Loans, provided, that, nothing contained herein shall be construed to require Borrower or Guarantor to pay any income, branch profit or franchise taxes attributable to the income of Lenders from any amounts charged or paid hereunder to Lenders. The foregoing indemnity shall survive the payment of the Obligations and the termination of this Agreement.

9.5 Insurance. Each of Borrower and Guarantor shall, and shall cause any Subsidiary to, at all times, maintain with financially sound and reputable insurers insurance with respect to the Collateral against loss or damage and all other insurance of the kinds and in the amounts customarily insured against or carried by corporations of established reputation engaged in the same or similar businesses and similarly situated. Said policies of insurance shall be reasonably satisfactory to Agent as to form, amount and insurer. Borrower and Guarantor shall furnish certificates, policies or endorsements to Agent as Agent shall reasonably require as proof of such insurance, and, if Borrower or Guarantor fails to do so, Agent is authorized, but not required, to obtain such insurance at the expense of Borrower. All policies shall provide for at least thirty (30) days prior written notice to Agent of any cancellation or reduction of coverage and that Agent may act as attorney for each of Borrower and Guarantor in obtaining, and at any time an Event of Default exists or has occurred and is continuing, adjusting, settling, amending and canceling such insurance. Borrower and Guarantor shall cause Agent to be named as a loss payee and an additional insured (but without any liability for any premiums) under such insurance policies and Borrower and Guarantor shall obtain non-contributory lender's loss payable endorsements to all insurance policies in form and substance satisfactory to Agent in good faith. Such lender's loss payable endorsements shall specify that the proceeds of such insurance shall be payable to Agent as its interests may appear and further specify that Agent and Lenders shall be paid regardless of any act or omission by Borrower, Guarantor or any of its or their Affiliates. Without limiting any other rights of Agent or Lenders, any insurance proceeds received by Agent at any time may be applied to payment of the Obligations in accordance with Section 6.4 hereof. Upon application of such proceeds to the Loans, Loans may be available subject and pursuant to the terms hereof to be used for the costs of repair or replacement of the Collateral lost or damages resulting in the payment of such insurance proceeds.

#### 9.6 Financial Statements and Other Information.

(a) Each of Borrower and Guarantor shall, and shall cause any Subsidiary to, keep proper books and records in which true and complete entries shall be made of all dealings or transactions of or in relation to the Collateral and the business of Borrower, Guarantor and their respective Subsidiaries in accordance with GAAP. Borrower and Guarantor shall promptly furnish to Agent and Lenders all such financial and other information as Agent shall reasonably request relating to the Collateral and the assets, business and operations of Borrower and Guarantor, and Borrower shall notify the auditors and accountants of Borrower and Guarantor that Agent is authorized to obtain such information directly from them. Without limiting the foregoing, Borrower and Guarantor shall furnish or cause to be furnished to Agent, the following: (i) within thirty (30) days after the end of each fiscal month, monthly unaudited consolidated financial statements, and unaudited consolidating financial statements (including in each case balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), all in reasonable detail, fairly presenting in all material respects the financial position and the results of the operations of Borrower and its Subsidiaries as of the end of and through such fiscal month, certified to be correct by an Authorized Officer of Borrower, subject to normal year-end adjustments and no footnotes and accompanied by a compliance certificate substantially in the form of Exhibit C hereto, along with a schedule in a form satisfactory to Agent of the calculations used in determining, as of the end of such month,

whether Borrower and Guarantor are in compliance with the covenants set forth in Section 9.18 of this Agreement for such month and (ii) within one hundred twenty (120) days after the end of each fiscal year, audited consolidated financial statements and unaudited consolidating financial statements of Borrower and its Subsidiaries (including in each case balance sheets, statements of income and loss, statements of cash flow, and statements of shareholders' equity), and the accompanying notes thereto, all in reasonable detail, fairly presenting in all material respects the financial position and the results of the operations of Borrower and its Subsidiaries as of the end of and for such fiscal year, together with the unqualified opinion of independent certified public accountants (which shall not contain a going concern or scope qualification) with respect to the audited consolidated financial statements, which accountants shall be an independent accounting firm selected by Borrower and acceptable to Agent, that such audited consolidated financial statements have been prepared in accordance with GAAP, and present fairly in all material respects the results of operations and financial condition of Borrower and its Subsidiaries as of the end of and for the fiscal year then ended.

(b) Borrower and Guarantor shall promptly notify Agent in writing of the details of (i) any loss, damage, investigation, action, suit, proceeding or claim relating to Collateral having a value of more than \$5,000,000 or which if adversely determined would result in any material adverse change in Borrower's or Guarantor's business, properties, assets, goodwill or condition, financial or otherwise, (ii) any Material Contract being terminated or amended or any new Material Contract entered into (in which event Borrower and Guarantor shall provide Agent with a copy of such Material Contract), (iii) any order, judgment or decree in excess of \$5,000,000 shall have been entered against Borrower or Guarantor any of its or their properties or assets, (iv) any notification of a material violation of laws or regulations received by Borrower or Guarantor, (v) the occurrence of any ERISA Event, and (vi) the occurrence of any Default or Event of Default.

(c) Borrower and Guarantor shall promptly after the sending or filing thereof furnish or cause to be furnished to Agent copies of all reports which Borrower or Guarantor sends to its stockholders generally and copies of all reports and registration statements which Borrower or Guarantor files with the Securities and Exchange Commission, any national securities exchange or the National Association of Securities Dealers, Inc.

(d) Borrower and Guarantor shall furnish or cause to be furnished to Agent such budgets, forecasts, projections and other information respecting the Collateral and the business of Borrower and Guarantor, as Agent may, from time to time, reasonably request. All projections shall represent Borrower's and Guarantor's reasonable best estimate of the future financial performance of Borrower and Guarantor for the periods set forth therein and shall have been prepared on the basis of the assumptions set forth therein which Borrower and Guarantor believe are fair and reasonable as of the date of preparation in light of current and reasonably foreseeable business conditions (it being understood that actual results may differ from those set forth in such projected financial statements). Agent is hereby authorized to deliver a copy of any financial statement or any other information relating to the business of Borrower and Guarantor to any court or other Governmental Authority or to any Lender or Participant or prospective Lender or Participant or any Affiliate of any Lender or Participant subject to Section 13.5 hereof.

Each of Borrower and Guarantor hereby irrevocably authorizes and directs all accountants or auditors to deliver to Agent, at Borrower's expense, copies of the financial statements of Borrower and Guarantor and any reports or management letters prepared by such accountants or auditors on behalf of Borrower or Guarantor and to disclose to Agent and Lenders such information as they may have regarding the business of Borrower and Guarantor. Any documents, schedules, invoices or other papers delivered to Agent or any Lender may be destroyed or otherwise disposed of by Agent or such Lender one (1) year after the same are delivered to Agent or such Lender, except as otherwise designated by Borrower to Agent or such Lender in writing.

(e) Borrower shall deliver, or cause to be delivered, to Agent, as soon as practicable and in any event within one hundred twenty (120) days from the date hereof, an opening balance sheet of Borrower and Guarantor after giving effect to the transactions contemplated by this Agreement and the Purchase Agreements, Borrower LLC Agreements, Real Estate Transfer Documents and the Unitary Leases.

(f) Borrower and Guarantor shall furnish to Agent all reports, notices, demands or other documents related to any adjustments to the Purchase Price (as defined in the Purchase Agreements) received by any of Parent, Borrower or Guarantor or on their behalf promptly after the receipt thereof, or sent by Parent, Borrower or Guarantor or on its behalf concurrently with the sending thereof, as the case may be.

9.7 Sale of Assets, Consolidation, Merger, Dissolution, Etc. Each of Borrower and Guarantor shall not, and shall not permit any Subsidiary to, directly or indirectly,

(a) merge into or with or consolidate with any other Person or permit any other Person to merge into or with or consolidate with it except that any wholly-owned Subsidiary of Borrower may merge with and into or consolidate with any other wholly-owned Subsidiary of Borrower or Borrower, provided, that, each of the following conditions is satisfied as determined by Agent in good faith: (i) Agent shall have received not less than ten (10) Business Days' prior written notice of the intention of Borrower or such Subsidiaries to so merge or consolidate, which notice shall set forth in reasonable detail satisfactory to Agent, the persons that are merging or consolidating, which person will be the surviving entity, the locations of the assets of the persons that are merging or consolidating, and the material agreements and documents relating to such merger or consolidation, (ii) Agent shall have received such other information with respect to such merger or consolidation as Agent may reasonably request, (iii) as of the effective date of the merger or consolidation and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing, (iv) Agent shall have received, true, correct and complete copies of all agreements, documents and instruments relating to such merger or consolidation, including, but not limited to, the certificate or certificates of merger to be filed with each appropriate Secretary of State (with a copy as filed promptly after such filing), (v) the surviving corporation shall expressly confirm, ratify and assume the Obligations and the Financing Agreements to which it is a party in writing, in form and substance satisfactory to Agent, and Borrower and such Subsidiaries shall execute and deliver such other agreements, documents and instruments as Agent may request in connection therewith, (vi) if the merger or

consolidation involves Borrower, Borrower shall be the surviving entity, (vii) such merger or consolidation shall not cause or result in the breach of, or a default under, any law, order or decree of any court or other Governmental Authority or any material document, instrument or agreement to which Borrower, Guarantor or any other Subsidiary is a party or by which any its property is bound, (viii) effective upon such merger or consolidation, all of the assets and properties of the Subsidiaries involved in such merger or consolidation shall be duly and validly transferred and assigned to Borrower in the case of any merger or consolidation involving Borrower, or otherwise to the surviving entity, free and clear of any liens, restrictions or encumbrances other than the security interests and liens of Agent or other security interests expressly permitted hereunder (and Agent shall have received such evidence thereof as Agent may require), (ix) to the extent the assets transferred are of Guarantor or another Subsidiary, the surviving entity shall acquire such assets subject to the security interests and liens of Agent which shall continue in full force and effect as to the assets transferred and upon Agent's request, Borrower, Guarantor or other Subsidiary shall acknowledge the same in writing pursuant to an agreement in form and substance satisfactory to Agent and shall execute and deliver to Agent such agreements, documents and instruments as Agent may require (including guarantees, security agreements, UCC financing statements), (x) Borrower or Guarantor shall not assume any Indebtedness, obligations or liabilities as a result of such merger or consolidation or otherwise become liable in respect of any obligation or liabilities of the Person with whom it is merging or consolidating, unless such Indebtedness is expressly permitted hereunder and such obligations and liabilities are not prohibited under this Agreement or any of the other Financing Agreements, and (xi) each Obligor shall ratify and confirm that its guarantees of the Obligations shall apply to the Obligations as assumed by such surviving entity; or; and

(b) sell, issue, assign, lease, license, transfer, abandon or otherwise dispose of any Capital Stock or Indebtedness to any other Person or any of its assets to any other Person, except for:

(i) sales of Inventory in the ordinary course of business,

(ii) the sale or other disposition (other than in connection with the closing or sale of a retail store location) of Equipment (including worn-out or obsolete Equipment or Equipment no longer used or useful in the business of Borrower or Guarantor) so long as such sales or other dispositions do not involve Equipment having an aggregate fair market value in excess of \$5,000,000 for all such Equipment disposed of in any fiscal year of Borrower or as Agent may otherwise agree,

(iii) the issuance and sale by Borrower or Guarantor of Capital Stock of Borrower or Guarantor after the date hereof; provided, that, (A) Agent shall have received not less than ten (10) Business Days' prior written notice of such issuance and sale by Borrower or Guarantor, which notice shall specify the parties to whom such shares are to be sold, the terms of such sale, the total amount which it is anticipated will be realized from the issuance and sale of such stock and the net cash proceeds which it is anticipated will be received by Borrower or Guarantor from such sale, (B) Borrower or Guarantor shall not be required to pay any cash dividends or repurchase or redeem such Capital Stock or make any other payments in respect

thereof, except as otherwise permitted in Section 9.11 hereof, (C) the terms of such Capital Stock, and the terms and conditions of the purchase and sale thereof, shall not include any terms that include any limitation on the right of Borrower to request or receive Loans or Letter of Credit Accommodations or the right of Borrower and Guarantor to amend or modify any of the terms and conditions of this Agreement or any of the other Financing Agreements or otherwise in any way relate to or affect the arrangements of Borrower and Guarantor with Agent and Lenders or are more restrictive or burdensome to Borrower or Guarantor than the terms of any Capital Stock in effect on the date hereof, (D) except as Agent may otherwise agree in writing, all of the proceeds of the sale and issuance of such Capital Stock shall be paid to Agent for application to the Obligations in such order and manner as Agent may determine or at Agent's option, to be held as cash collateral for the Obligations and (E) as of the date of such issuance and sale and after giving effect thereto, no Default or Event of Default shall exist or have occurred,

(iv) the issuance of Capital Stock of Borrower or Guarantor consisting of common stock pursuant to an employee stock option or grant or similar equity plan or 401(k) plans of Borrower or Guarantor for the benefit of its employees, directors and consultants, provided, that, in no event shall Borrower or Guarantor be required to issue, or shall Borrower or Guarantor issue, Capital Stock pursuant to such stock plans or 401(k) plans which would result in a Change of Control or other Event of Default,

(v) sales or other dispositions by Borrower of assets in connection with any closing of a store; provided, that, as to each and all such sales or other dispositions and after giving effect thereto:

(A) in the case of assets which consist of Equipment and trade fixtures, and Inventory located at such premises and the books and records relating exclusively and directly to the operations of such store (1) Agent shall have received not less than ten (10) Business Days prior written notice of such sale or other disposition, which notice shall set forth in reasonable detail satisfactory to Agent, the parties to such sale or other disposition, the assets to be sold or otherwise disposed of, the purchase price and the manner of payment thereof and such other information with respect thereto as Agent may request, (2) such sale shall be on commercially reasonable prices and terms in a bona fide arm's length transaction, (3) any such sale or disposition of Inventory shall have been conducted pursuant to arrangements with a third party liquidator, which arrangements and such liquidator shall be acceptable to Agent, unless (aa) twelve (12) or fewer retail store locations of Borrower are closed or sold during any fiscal quarter, or (bb) any retail store location of Borrower is closed or sold and the Inventory at such location is promptly moved to an existing or recently opened retail store location of Borrower in the same general vicinity as the closed or sold retail store location, (4) Agent shall have received such collateral reports as it may request, prepared on a pro forma basis after giving effect to such sale or disposition of Inventory, and (5) any and all net proceeds payable or delivered to Borrower in respect of such sale or other disposition shall be paid or delivered, or caused to be paid or delivered, to Agent for application to the Obligations in accordance with the terms hereof;

(B) in the case of sales or other dispositions by Borrower of its right, title and interest in and to any Restricted Leases (and related Restricted Lease Fixtures) for such a store (1) Agent shall have received not less than ten (10) Business Days prior written notice of such sale or other disposition, which notice shall set forth in reasonable detail satisfactory to Agent, the parties to such sale or other disposition, the Restricted Leases (and Restricted Lease Fixtures) to be sold or otherwise disposed of, the purchase price and the manner of payment thereof and such other information with respect thereto as Agent may reasonably request, (2) all Restricted Lease Proceeds arising from such sales or other dispositions of Restricted Leases and related Restricted Lease Fixtures shall be directed by Borrower to be deposited into the Restricted Lease Proceeds Account(s) and such amounts may be used by Borrower to fund the payment of any Restricted Lease Proceeds Dividend which may due in accordance with terms of the Borrower LLC Agreement (as in effect on the date hereof) as permitted in Sections 9.11(f) hereof, and (3) upon the effective date of such sale or other disposition of a Restricted Lease, the Monthly Restricted Lease Dividend shall be permanently reduced by the amount attributable to such Restricted Lease as set forth on Schedule 1.105 hereto,

(C) in the case of sales or other dispositions by Borrower of its right, title and interest in and to any Unrestricted Leases for such a store, (1) Agent shall have received not less than ten (10) Business Days prior written notice of such sale or other disposition, which notice shall set forth in reasonable detail satisfactory to Agent, the parties to such sale or other disposition, the Unrestricted Leases to be sold or otherwise disposed of, the purchase price and the manner of payment thereof and such other information with respect thereto as Agent may reasonably request, (2) in the case of a sale or disposition arising from a sublease of any portion of the premises demised under an Unrestricted Lease, the fairly allocable portion of the rent attributable to such portion of the applicable demised premises shall be remitted to Borrower; provided, that, the foregoing limitation shall not apply to a triple net sublease where the subtenant is responsible for payment of all rental payments under the prime lease, and (3) upon the effective date of such sale or other disposition of such Unrestricted Lease, the annual rental payment due from Borrower to lessor under the Unitary Leases after giving effect to the aggregate amount of such retail store closure shall be permanently reduced by the Minimum Rent Reduction attributable to such Unrestricted Lease;

(vi) any removal or severance of a Unrestricted Lease pursuant to Section 9.22(a)(vi) hereof,

(vii) the assignment by Borrower, from time to time, of all of its right, title and interest as a lessee in respect of a Restricted Lease to MDS Realty I, MDS Realty II, MDS Realty III, MDS Realty IV, MDS Texas Realty I and MDS Realty Texas Realty II; provided, that, (A) Agent shall have received not less than ten (10) Business Days prior written notice of such assignment, which notice shall set forth in reasonable detail satisfactory to Agent, the Restricted Lease to be assigned, and to which Unitary Lease it shall be subject and such other information with respect thereto as Agent may request, (B) Agent shall have received a true, correct and complete copy of the assignment agreement between Borrower and MDS Realty I, MDS Realty II, MDS Realty III, MDS Realty IV, MDS Texas Realty I and MDS Realty Texas Realty II (as applicable) and a copy of the amendment to the Unitary Leases to include such Restricted Lease,

(C) the annual rental payment due by Borrower under the Unitary Leases does not exceed the lesser of: (1) the amount equal to: (aa) the annual rent payable prior to such assignment under the Unitary Leases plus (bb) the annual rent payable under such Restricted Lease plus (cc) the annual amount of the Monthly Restricted Lease Dividend attributable to such Restricted Lease (and set forth on Schedule 1.105 hereto) or (2) \$82,000,000 (less any permanent reductions thereto pursuant to Sections 9.7(b)(v)(C) and 9.22(a)(vi) hereof), and (D) such assignment does not violate applicable law, the Restricted Lease or any other agreement to which Borrower or Guarantor is or may become a party to, and (E) upon the effective date of such assignment, the aggregate amount of Monthly Restricted Lease Dividend (for all remaining Restricted Leases) payable each month shall be permanently reduced by the amount of the Monthly Restricted Lease Dividend attributable to such Restricted Lease;

(viii) any transfer which is an investment to the extent such investment is permitted by Section 9.10 hereof;

(c) wind up, liquidate or dissolve except that Guarantor may wind up, liquidate and dissolve, provided, that, each of the following conditions is satisfied, (i) the winding up, liquidation and dissolution of Guarantor shall not violate any law or any order or decree of any court or other Governmental Authority in any material respect and shall not conflict with or result in the breach of, or constitute a default under, any indenture, mortgage, deed of trust, or any other agreement or instrument to which Borrower or Guarantor is a party or may be bound, (ii) such winding up, liquidation or dissolution shall be done in accordance with the requirements of all applicable laws and regulations, (iii) effective upon such winding up, liquidation or dissolution, all of the assets and properties of Guarantor shall be duly and validly transferred and assigned to Borrower, free and clear of any liens, restrictions or encumbrances other than the security interest and liens of Agent (and Agent shall have received such evidence thereof as Agent may require) and Agent shall have received such deeds, assignments or other agreements as Agent may request to evidence and confirm the transfer of such assets of Guarantor to Borrower, (iv) Agent shall have received all documents and agreements that Borrower or Guarantor has filed with any Governmental Authority or as are otherwise required to effectuate such winding up, liquidation or dissolution, (v) neither Borrower nor Guarantor shall assume any Indebtedness, obligations or liabilities as a result of such winding up, liquidation or dissolution, or otherwise become liable in respect of any obligations or liabilities of the entity that is winding up, liquidating or dissolving, unless such Indebtedness is otherwise expressly permitted hereunder, (vi) Agent shall have received not less than ten (10) Business Days prior written notice of the intention of Guarantor to wind up, liquidate or dissolve, and (vii) as of the date of such winding up, liquidation or dissolution and after giving effect thereto, no Default or Event of Default shall exist or have occurred; or

(d) agree to do any of the foregoing (unless such agreement has been consented to in writing by Agent, or includes as a condition to the effectiveness of such agreement that Agent's consent thereto shall be obtained or that as of the consummation of the transactions contemplated thereby all of the Obligations shall be fully and finally paid and satisfied and this Agreement terminated in accordance with the terms hereof).



9.8 Encumbrances. Each of Borrower and Guarantor shall not, and shall not permit any Subsidiary to, create, incur, assume or suffer to exist any security interest, mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of its assets or properties, including the Collateral, except:

(a) the security interests and liens of Agent for itself and the benefit of Lenders and the Bank Product Providers (but only to the extent provided for herein);

(b) liens securing the payment of taxes, assessments or other governmental charges or levies either (i) not yet overdue (or if overdue, then do not exceed \$500,000 at any time outstanding and are not overdue by more than seventy-five (75) days but only so long as the holder and beneficiary of such lien does not have any right to take any action with respect to the assets subject to such lien) or (ii) the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to Borrower, or Guarantor or Subsidiary, as the case may be and with respect to which adequate reserves have been set aside on its books and Agent may establish a Reserve with respect to any of the foregoing;

(c) non-consensual statutory liens (other than liens securing the payment of taxes) arising in the ordinary course of Borrower's, Guarantor's or Subsidiary's business to the extent: (i) such liens secure Indebtedness which is not overdue or (ii) such liens secure Indebtedness relating to claims or liabilities which are fully insured and being defended at the sole cost and expense and at the sole risk of the insurer or being contested in good faith by appropriate proceedings diligently pursued and available to Borrower, Guarantor or such Subsidiary, in each case prior to the commencement of foreclosure or other similar proceedings and with respect to which adequate reserves have been set aside on its books;

(d) zoning restrictions, easements, licenses, covenants and other restrictions affecting the use of Real Property which do not interfere in any material respect with the use of such Real Property or ordinary conduct of the business of Borrower, Guarantor or such Subsidiary as presently conducted thereon or materially impair the value of the Real Property which may be subject thereto;

(e) purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages on Real Property to secure Indebtedness permitted under Section 9.9(b) hereof;

(f) pledges and deposits of cash by Borrower or Guarantor after the date hereof in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security benefits consistent with the current practices of Borrower or Guarantor as of the date hereof;

(g) pledges and deposits of cash by Borrower or Guarantor after the date hereof to secure the performance of tenders, bids, leases, trade contracts (other than for the repayment of Indebtedness), statutory obligations and other similar obligations in each case in the ordinary course of business consistent with the current practices of Borrower or Guarantor as of the date hereof; provided, that, in connection with any performance bonds issued by a surety or other

person, the issuer of such bond shall have waived or subordinated in writing any rights in or to, or other interest in, any of the Collateral in an agreement, in form and substance satisfactory to Agent in good faith;

(h) liens arising from (i) operating leases and the precautionary UCC financing statement filings in respect thereof and (ii) equipment or other materials which are not owned by Borrower or Guarantor located on the premises of Borrower or Guarantor (but not in connection with, or as part of, the financing thereof) from time to time in the ordinary course of business and consistent with current practices of Borrower or Guarantor and the precautionary UCC financing statement filings in respect thereof;

(i) liens or rights of setoff against credit balances of Borrower with Credit Card Issuers or Credit Card Processors or amounts owing by such Credit Card Issuers or Credit Card Processors to Borrower in the ordinary course of business, but not liens on or rights of setoff against any other property or assets of Borrower, pursuant to the Credit Card Agreements (as in effect on the date hereof) to secure the obligations of Borrower to the Credit Card Issuers or Credit Card Processors as a result of fees and chargebacks;

(j) statutory or common law liens or rights of setoff of depository banks with respect to funds of Borrower at such banks to secure fees and charges in connection with returned items or the standard fees and charges of such banks in connection with the deposit accounts maintained by Borrower at such banks (but not any other Indebtedness or obligations);

(k) deposits of cash with the owner or lessor of premises leased and operated by Borrower (exclusive of Affiliates of Borrower) in the ordinary course of the business of Borrower to secure the performance by Borrower of their respective obligations under the terms of the lease for such premises;

(l) judgments and other similar liens arising in connection with court proceedings that do not constitute an Event of Default, provided, that, (i) such liens are being contested in good faith and by appropriate proceedings diligently pursued, (ii) adequate reserves or other appropriate provision, if any, as are required by GAAP have been made therefor, (iii) a stay of enforcement of any such liens is in effect and (iv) Agent may establish a Reserve with respect thereto;

(m) pledges and deposits of cash after the date hereof to secure obligations under appeal bonds or as otherwise required in connection with court proceedings (including, without limitation, surety bonds, security for costs of litigation where required by law and letters of credit) or any other instruments serving a similar purpose; provided, that, (i) as of the date of the pledge and deposit of such cash, and after giving effect thereto, the aggregate amount of the Excess Availability of Borrower shall be not less than \$50,000,000 and (ii) the judgment in connection with which such appeal bond or other instruments are required do not constitute an Event of Default;

(n) liens, pledges and encumbrances with respect to any Real Property granted to a public utility or any Governmental Authority when required by such utility or other authority in

connection with the operation of the business or other ownership or the assets of the Person, which do not (whether by interference in any material respect with the use of such Real Property or with the ordinary conduct of the business of the Borrower, Guarantor or such Subsidiary as presently conducted thereon) materially impair the value of the Real Property which may be subject thereto;

(o) the right reserved to or vested in any Governmental Authority by any statutory provision or by the terms of any lease, license, franchise, grant or permit of the Person with such Governmental Authority, to terminate any such lease, license, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;

(p) the security interests and liens securing Refinancing Indebtedness to the extent permitted under Section 9.9(j) hereof; and

(q) the security interests and liens set forth on Schedule 8.4 to the Information Certificate.

9.9 Indebtedness. Each of Borrower and Guarantor shall not, and shall not permit any Subsidiary to, incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any Indebtedness, or guarantee, assume, endorse, or otherwise become responsible for (directly or indirectly), the Indebtedness, performance, obligations or dividends of any other Person, except:

(a) the Obligations;

(b) purchase money Indebtedness (including Capital Leases) arising after the date hereof to the extent secured by purchase money security interests in Equipment (including Capital Leases) not to exceed \$50,000,000 in the aggregate at any time outstanding for such Indebtedness arising from the purchase by Borrower of computer systems to replace information services provided to Borrower by Seller under the Transition Services Agreement and, which amount may include, at Borrower's option, up to \$10,000,000 that may be used to acquire other Equipment, so long as, in each case, such security interests do not apply to any property of Borrower, Guarantor or any Subsidiary other than the Equipment so acquired, and the Indebtedness secured thereby does not exceed the cost of the Equipment so acquired, as the case may be;

(c) guarantees by Guarantor of the Obligations of Borrower in favor of Agent for the benefit of Lenders and the Bank Product Providers;

(d) the Indebtedness of Borrower or Guarantor to the other arising after the date hereof pursuant to loans by Borrower or Guarantor permitted under Section 9.10(g) hereof;

(e) unsecured Indebtedness of Borrower or Guarantor arising after the date hereof to any third person (but not to the other), provided, that, each of the following conditions is satisfied as determined by Agent in good faith: (i) such Indebtedness shall be on terms and conditions acceptable to Agent and shall be subject and subordinate in right of payment to the

right of Agent and Lenders to receive the prior indefeasible payment and satisfaction in full payment of all of the Obligations pursuant to the terms of an intercreditor agreement between Agent and such third party, in form and substance satisfactory to Agent, (ii) Agent shall have received not less than ten (10) days prior written notice of the intention of Borrower or Guarantor to incur such Indebtedness, which notice shall set forth in reasonable detail satisfactory to Agent the amount of such Indebtedness, the person or persons to whom such Indebtedness will be owed, the interest rate, the schedule of repayments and maturity date with respect thereto and such other information as Agent may request with respect thereto, (iii) Agent shall have received true, correct and complete copies of all agreements, documents and instruments evidencing or otherwise related to such Indebtedness, (iv) except as Agent may otherwise agree in writing, all of the proceeds of the loans or other accommodations giving rise to such Indebtedness shall be paid to Agent for application to the Obligations in accordance with the terms hereof, (v) in no event shall the person or person to whom such Indebtedness will be owed shall be entitled to receive any cash payments in respect of the principal amount of, or any interest payable with respect thereto, prior to the final payment in full of the Obligations (and cash collateralization of contingent obligations pursuant to the terms hereof) and termination of the Financing Agreements (other than any interest payable in kind), (vi) as of the date of incurring such Indebtedness and after giving effect thereto, no Default or Event of Default shall exist or have occurred and is continuing, (vii) Borrower and Guarantor shall not, directly or indirectly, (A) amend, modify, alter or change the terms of such Indebtedness or any agreement, document or instrument related thereto, except, that, Borrower or Guarantor may, after prior written notice to Agent, amend, modify, alter or change the terms thereof so as to extend the maturity thereof, or defer the timing of any payments in respect thereof, or to forgive or cancel any portion of such Indebtedness (other than pursuant to payments thereof), or to reduce the interest rate or any fees in connection therewith, or (B) redeem, retire, defease, purchase or otherwise acquire such Indebtedness (except pursuant to regularly scheduled payments permitted herein), or set aside or otherwise deposit or invest any sums for such purpose, and (viii) Borrower and Guarantor shall furnish to Agent all notices or demands in connection with such Indebtedness either received by Borrower or Guarantor or on its behalf promptly after the receipt thereof, or sent by Borrower or Guarantor or on its behalf concurrently with the sending thereof, as the case may be;

(f) Indebtedness of Borrower or Guarantor entered into in the ordinary course of business pursuant to a Hedging Transaction; provided, that, (i) such arrangements are either with a Bank Product Provider or other financial institutions acceptable to Agent, (ii) such arrangements are not for speculative purposes, and (iii) such Indebtedness shall be unsecured, except as to obligations under Hedging Transactions with Bank Product Providers, but only to the extent of the security interest of Agent in the Collateral as provided herein;

(g) Indebtedness of Borrower or Guarantor arising pursuant to the redemption by Borrower or Guarantor of its common stock in accordance with Section 9.11(c) hereof; provided, that, (i) the aggregate principal amount of such Indebtedness incurred in any fiscal year shall not exceed the amount expressly permitted in Section 9.11(c) hereof, (ii) neither Borrower nor Guarantor shall make, or be required to make, any payments in respect of such Indebtedness prior to the end of the then current term of this Agreement except for regularly scheduled non-cash capitalized interest payments in respect of such Indebtedness, (iii) Borrower and Guarantor

shall not, directly or indirectly, (A) amend, modify, alter or change the terms of such Indebtedness or any agreement, document or instrument related thereto except, that, Borrower and Guarantor may, after prior written notice to the Agent, amend, modify, alter or change the terms thereof so as to extend the maturity thereof, or defer the timing of any payments in respect thereof, or to forgive or cancel any portion of such Indebtedness (other than pursuant to payments thereof), or to reduce the interest rate or any fees in connection therewith, or (B) redeem, retire, defease, purchase or otherwise acquire such Indebtedness, or set aside or otherwise deposit or invest any sums for such purpose, (iv) such Indebtedness shall be subject to, and subordinate in right of payment to, the right of Agent and Lenders to receive the prior final payment and satisfaction in full of all of the Obligations on terms and conditions acceptable to Agent, (v) Agent shall have received a subordination agreement, in form and substance satisfactory to Agent, duly authorized, executed and delivered by each holder of such Indebtedness, and (vi) Borrower and Guarantor shall furnish to the Agent all notices or demands in connection with such Indebtedness either received by Borrower or Guarantor or on its behalf, promptly after the receipt thereof, or sent by Borrower or Guarantor or on its behalf, concurrently with the sending thereof, as the case may be;

(h) the unsecured Indebtedness of Borrower in respect of any letters of credit issued for the account of Borrower by Fleet Bank in connection with the import of Inventory; provided, that, such Indebtedness (i) shall not exceed \$35,000,000 with respect to all such letters of credit and shall permanently reduce by the amount of each letter of credit as it expires and (ii) no new letters of credit shall be issued by Fleet Bank at any time after March 1, 2005; and

(i) Indebtedness arising pursuant to appeal bonds or similar instruments required in connection with judgments that do not result in a Default or an Event of Default hereunder; provided, that, (i) the aggregate outstanding amount of all such surety bonds, appeal bonds and like instruments permitted by this clause (i) shall not at any time exceed \$25,000,000 in the aggregate and (ii) the issuer of any such surety bonds, appeal bonds or like instruments shall have waived in writing any rights in or to, or other interest in, any of the Collateral in an agreement, in form and substance satisfactory to Agent; and

(j) Indebtedness of Borrower or any Subsidiary of Borrower arising after the date hereof issued in exchange for, or the proceeds of which are used to refinance, replace or substitute for Indebtedness permitted under Sections 9.9(b) and 9.9(e) hereof (the "Refinancing Indebtedness"); provided, that, as to any such Refinancing Indebtedness, each of the following conditions is satisfied:

(i) Agent shall have received not less than ten (10) Business Days' prior written notice of the intention to incur such Indebtedness, which notice shall set forth in reasonable detail satisfactory to Agent, the amount of such Indebtedness, the schedule of repayments and maturity date with respect thereto and such other information with respect thereto as Agent may reasonably request,

(ii) promptly upon Agent's request, Agent shall have received true, correct and complete copies of all agreements, documents and instruments evidencing or otherwise related to such Indebtedness, as duly authorized, executed and delivered by the parties thereto,

(iii) the Refinancing Indebtedness shall have a Weighted Average Life to Maturity and a final maturity equal to or greater than the Weighted Average Life to Maturity and the final maturity, respectively, of the Indebtedness being extended, refinanced, replaced, or substituted for,

(iv) the Refinancing Indebtedness shall rank in right of payment no more senior than, and be at least as subordinated (if subordinated) to, the Obligations as the Indebtedness being extended, refinanced, replaced or substituted for,

(v) the Refinancing Indebtedness shall not include terms and conditions with respect to Borrower or Guarantor which are more burdensome or restrictive in any material respect than those included in the Indebtedness so extended, refinanced, replaced or substituted for,

(vi) such Indebtedness incurred by Borrower or Guarantor shall be at rates and with fees or other charges that are commercially reasonable,

(vii) as of the date of incurring such Indebtedness and after giving effect to such Indebtedness, no Default or Event of Default shall exist or have occurred,

(viii) the principal amount of such Refinancing Indebtedness shall not exceed the principal amount of the Indebtedness so extended, refinanced, replaced or substituted for (plus the amount of refinancing fees and expenses incurred in connection therewith outstanding on the date of such event),

(ix) Borrower and Guarantor may only make regularly scheduled payments of principal, interest and fees, if any, in respect of such Indebtedness to the extent such payments would have been permitted hereunder in respect of the Indebtedness so extended, refinanced, replaced or substituted for (and except as otherwise permitted below),

(x) Borrower and Guarantor shall not, directly or indirectly, (A) amend, modify, alter or change any terms of the agreements with respect to such Refinancing Indebtedness, except that Borrower and Guarantor may, after prior written notice to Agent, amend, modify, alter or change the terms thereof to the extent permitted with respect to the Indebtedness so extended, refinanced, replaced or substituted for, or (B) redeem, retire, defease, purchase or otherwise acquire such Indebtedness, or set aside or otherwise deposit or invest any sums for such purpose (other than with Refinancing Indebtedness to the extent permitted herein and to the extent permitted with respect to the Indebtedness so extended, refinanced, replaced or substituted for), and

(xi) Borrower and Guarantor shall furnish to Agent copies of all material notices or demands in connection with Indebtedness received by Borrower or Guarantor or on its behalf

promptly after the receipt thereof or sent by Borrower or Guarantor or on its behalf concurrently with the sending thereof, as the case may be; and

(k) the other Indebtedness set forth on Schedule 9.9 to the Information Certificate which is not otherwise permitted under Section 9.9 above; provided, that, (i) Borrower and Guarantor may only make regularly scheduled payments of principal and interest in respect of such Indebtedness in accordance with the terms of the agreement or instrument evidencing or giving rise to such Indebtedness as in effect on the date hereof, (ii) Borrower and Guarantor shall not, directly or indirectly, (A) amend, modify, alter or change the terms of such Indebtedness or any agreement, document or instrument related thereto as in effect on the date hereof except, that, Borrower and Guarantor may, after prior written notice to Agent, amend, modify, alter or change the terms thereof so as to extend the maturity thereof, or defer the timing of any payments in respect thereof, or to forgive or cancel any portion of such Indebtedness (other than pursuant to payments thereof), or to reduce the interest rate or any fees in connection therewith, or (B) redeem, retire, defease, purchase or otherwise acquire such Indebtedness, or set aside or otherwise deposit or invest any sums for such purpose, and (iii) Borrower and Guarantor shall furnish to Agent all notices or demands in connection with such Indebtedness either received by Borrower or Guarantor or on its behalf, promptly after the receipt thereof, or sent by Borrower or Guarantor or on its behalf, concurrently with the sending thereof, as the case may be.

9.10 Loans, Investments, Etc. Each of Borrower and Guarantor shall not, and shall not permit any Subsidiary to, directly or indirectly, make any loans or advance money or property to any person, or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the Capital Stock or Indebtedness or all or a substantial part of the assets or property of any person, or form or acquire any Subsidiaries, or agree to do any of the foregoing, except:

(a) the endorsement of instruments for collection or deposit in the ordinary course of business;

(b) investments in cash or Cash Equivalents, provided, that, (i) no Loans are then outstanding and (ii) the terms and conditions of Section 5.2 hereof shall have been satisfied with respect to the deposit account, investment account or other account in which such cash or Cash Equivalents are held;

(c) the existing equity investments of each of Borrower and Guarantor as of the date hereof in its Subsidiaries, provided, that, neither Borrower nor Guarantor shall have any further obligations or liabilities to make any capital contributions or other additional investments or other payments to or in or for the benefit of any of such Subsidiaries;

(d) loans and advances by Borrower or Guarantor to employees of Borrower or Guarantor not to exceed the principal amount of \$2,000,000 in the aggregate at any time outstanding for: (i) reasonably and necessary work-related travel or other ordinary business expenses to be incurred by such employee in connection with their work for Borrower or Guarantor and (ii) reasonable and necessary relocation expenses of such employees (including home mortgage financing for relocated employees);

(e) stock or obligations issued to Borrower or Guarantor by any Person (or the representative of such Person) in respect of Indebtedness of such Person owing to Borrower or Guarantor in connection with the insolvency, bankruptcy, receivership or reorganization of such Person or a composition or readjustment of the debts of such Person; provided, that, the original of any such stock or instrument evidencing such obligations shall be promptly delivered to Agent, upon Agent's request, together with such stock power, assignment or endorsement by Borrower or Guarantor as Agent may request;

(f) loans by Borrower to Guarantor and Guarantor to Borrower after the date hereof, provided, that,

(i) as to all of such loans,

(A) within thirty (30) days after the end of each fiscal month, Borrower shall provide to Agent a report in form and substance satisfactory to Agent of the outstanding amount of such loans as of the last day of the immediately preceding month and indicating any loans made and payments received during the immediately preceding month,

(B) the Indebtedness arising pursuant to any such loan shall not be evidenced by a promissory note or other instrument, unless the single original of such note or other instrument is promptly delivered to Agent upon its request to hold as part of the Collateral, with such endorsement and/or assignment by the payee of such note or other instrument as Agent may require, and

(C) as of the date of any such loan and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing, and

(ii) as of the date of any such loan from Borrower to Guarantor and after giving effect thereto, Borrower shall be Solvent, and

(iii) as to loans by Guarantor to Borrower, (A) the Indebtedness arising pursuant to such loan shall be subject to, and subordinate in right of payment to, the right of Agent and Lenders to receive the prior final payment and satisfaction in full of all of the Obligations on terms and conditions acceptable to Agent, (B) promptly upon Agent's request, Agent shall have received a subordination agreement, in form and substance satisfactory to Agent, providing for the terms of the subordination in right of payment of such Indebtedness of Borrower to the prior final payment and satisfaction in full of all of the Obligations, duly authorized, executed and delivered by Guarantor and Borrower, and (C) Borrower shall not, directly or indirectly make, or be required to make, any payments in respect of such Indebtedness prior to the end of the then current term of this Agreement; and

(g) the loans and advances set forth on Schedule 9.10 to the Information Certificate; provided, that, as to such loans and advances, Borrower and Guarantor shall not, directly or indirectly, amend, modify, alter or change the terms of such loans and advances or any agreement, document or instrument related thereto and Borrower and Guarantor shall furnish to Agent all notices or demands in connection with such loans and advances either received by



Borrower or Guarantor or on its behalf, promptly after the receipt thereof, or sent by Borrower or Guarantor or on its behalf, concurrently with the sending thereof, as the case may be.

9.11 Dividends and Redemptions. Each of Borrower and Guarantor shall not, directly or indirectly, declare or pay any dividends on account of any shares of class of any Capital Stock of Borrower or Guarantor now or hereafter outstanding, or set aside or otherwise deposit or invest any sums for such purpose, or redeem, retire, defease, purchase or otherwise acquire any shares of any class of Capital Stock (or set aside or otherwise deposit or invest any sums for such purpose) for any consideration or apply or set apart any sum, or make any other distribution (by reduction of capital or otherwise) in respect of any such shares or agree to do any of the foregoing, except that:

(a) Borrower or Guarantor may declare and pay such dividends or redeem, retire, defease, purchase or otherwise acquire any shares of any class of Capital Stock for consideration in the form of shares of common stock (so long as after giving effect thereto no Change of Control or other Default or Event of Default shall exist or occur);

(b) to the extent Borrower is permitted to pay Affiliates certain amounts in accordance with Section 9.12(b) below, Borrower and Guarantor may pay dividends, from legally available funds therefor, in respect of such amounts so long as such dividends are not in violation of applicable law or other agreement to which Borrower is a party or by which Borrower is bound;

(c) Borrower and Guarantor may repurchase Capital Stock consisting of Capital Stock held by employees pursuant to any employee stock ownership plan thereof upon the termination, retirement or death of any such employee in accordance with the provisions of such plan or declare and pay a cash dividend to Parent so that Parent may repurchase such Capital Stock, provided, that, as to any such repurchase or dividend, each of the following conditions is satisfied: (i) as of the date of the payment for such repurchase or the dividend and after giving effect thereto, no Default or Event of Default shall exist or have occurred and be continuing, (ii) such repurchase or dividend shall be paid with funds legally available therefor either in cash or in the form of Indebtedness permitted under Section 9.9(g) hereof, (iii) such repurchase or dividend shall not violate any law or regulation or the terms of any indenture, agreement or undertaking to which Borrower or Guarantor is a party or by which Borrower or Guarantor or its or their property are bound, and (iv) the aggregate amount of all payments made, dividend paid or Indebtedness incurred in respect of such repurchases in any calendar year shall not exceed \$5,000,000;

(d) Borrower may pay dividends in the form of cash, from legally available funds therefor, to Parent in an aggregate amount not to exceed \$100,000 during any twelve (12) month period, for the purpose of paying for expenses actually incurred by Parent in connection with the ordinary corporate governance and maintenance arising out of the relationship between Borrower and Parent (in Parent's capacity as the owner of all of the issued and outstanding shares of Borrower); provided, that, as of the date of any such dividend payment and after giving effect thereto, no Event of Default has occurred and is continuing or would result therefrom;

(e) any Subsidiary of Borrower or Guarantor may pay dividends to Borrower;

(f) Borrower may declare and pay a cash dividend to its Parent, from legally available funds therefor,

(i) no more than one (1) time during each calendar month, from legally available funds therefor, in an amount equal to the aggregate Monthly Restricted Lease Dividend then in effect; provided, that, at the time of payment of such dividend, such dividend is not in violation of applicable law or other agreement to which Borrower is a party or by which Borrower is bound; and

(ii) equal to the Restricted Lease Proceeds received by Borrower into the Restricted Lease Proceeds Account in respect or any Restricted Lease Proceeds received and paid to Borrower in respect of any cash proceeds actually received by Borrower pursuant to a sale or other disposition of Restricted Leases and Restricted Lease Fixtures permitted by Sections 9.7(b)(v) hereof and deposited into any Restricted Lease Proceeds Account or any other Restricted Lease Proceeds, provided, that, as to any such dividend, each of the following conditions is satisfied as determined by Agent: (A) any such dividend payments shall be funded by Borrower entirely from the Restricted Loan Proceeds Account, and not from the proceeds of Loans, and (B) all such dividend payments shall be made promptly after receipt of such proceeds by Borrower but in any event not later than six (6) days after receipt of such funds in the Restricted Lease Proceeds Account(s) or otherwise;

(g) Borrower may declare and pay a cash dividend to its Parent, from legally available funds therefor,

(i) equal to the Net Adjustment (as such term is defined in the Extension Amendment as in effect on the date hereof) payable by Parent to Seller under the Extension Amendment; provided, that, as to any such dividend, each of the following conditions is satisfied as determined by Agent: (A) Agent shall have received copies of the calculation of the Net Adjustment provided by Seller to Buyer under the terms of the Extension Amendment (as in effect on the date hereof) or any Notice of Disagreement (as such term is defined in the Extension Amendment as in effect on the date hereof) promptly upon receipt or delivery of such calculation by Borrower and such other information as Agent may request, and (B) such dividend shall be declared and paid on or before September 30, 2004 unless such payment is being contested in which case such payment may be extended; and

(ii) equal to any adjustment to the Purchase Price (as such term is defined in the Equity Purchase Agreement as in effect on the date hereof) payable by Parent to Seller under Section 2 of the Equity Purchase Agreement as in effect on the date hereof; provided, that, each of the following conditions is satisfied as determined by Agent: (A) Agent shall have received copies of the Statement and Notice of Disagreement (as each such term is defined in the Equity Purchase Agreement) promptly upon receipt or delivery of such documents by Borrower and such other information as Agent may request, (B) Agent shall have received not less than ten (10) Business Days prior written notice of any such dividend payment, which notice shall include the amount of such payment and any other information with respect thereto as Agent

may request, (C) such dividend shall be declared and paid on or before December 31, 2005, and (D) as of the date of any such dividend payment and after giving effect thereto, no Default or Event of Default shall exist or have occurred and is continuing or would result therefrom.

9.12 Transactions with Affiliates. Each of Borrower and Guarantor shall not, directly or indirectly:

(a) purchase, acquire or lease any property from, or sell, transfer or lease any property to, any officer, director or other Affiliate of Borrower or Guarantor, except in the ordinary course of and pursuant to the reasonable requirements of Borrower's or Guarantor's business (as the case may be) and upon fair and reasonable terms no less favorable to Borrower or Guarantor than Borrower or Guarantor would obtain in a comparable arm's length transaction with an unaffiliated person and, in the case of the Unitary Leases, Borrowers and Guarantors shall also comply with Section 9.22 hereof; or

(b) make any payments (whether by dividend, loan or otherwise) of management, consulting or other fees for management or similar services, or of any Indebtedness owing to any officer, employee, shareholder, director or any other Affiliate of Borrower or Guarantor, except:

(i) reasonable compensation to officers, employees and directors for services rendered to Borrower or Guarantor in the ordinary course of business;

(ii) payments by Borrower or Guarantor to Sun, Cerberus and/or Lubert-Adler and their respective Affiliates of a management fee in an aggregate amount per calendar quarter not to exceed \$750,000 for all such payments in such calendar quarter (the "Quarterly Amount"); provided, that, as to any such payment, as of the date of such payment and after giving effect thereto, (A) no Event of Default has occurred and is continuing or would result therefrom and (B) Excess Availability for the thirty (30) consecutive days immediately preceding the date of such payment, and the Excess Availability on the date of any such payment and after giving effect thereto, shall, in each case, be not less than the lesser of: (1) \$50,000,000; or (2) the Minimum Amount; provided, that, if the aggregate amount of management fees paid by Borrower and Guarantor under this Section 9.12(b)(ii) during any calendar quarter is less than the Quarterly Amount for such calendar quarter, then the Quarterly Amount for the immediately succeeding calendar quarter shall be increased by an amount equal to such shortfall until such shortfall is paid in full to Sun, Cerberus or Lubert-Adler pursuant to this Section 9.12(b)(ii);

(iii) reimbursement of reasonable out-of-pocket costs and expenses incurred by Sun, Lubert-Adler or Cerberus and their respective Affiliates for the direct benefit of Borrower and Guarantor in the ordinary course and pursuant to the reasonable requirements of Borrower's and Guarantor's business; provided, that, (A) as of the date of any such reimbursement and after giving effect thereto, no Event of Default has occurred and is continuing or would result therefrom, (B) the aggregate amount of such reimbursements shall not exceed \$1,500,000 during any twelve (12) month period. and (C) no payments made under this Section 9.12(b)(iii) shall be duplicative of any amount paid in accordance with Section 9.11(d) hereof;

(iv) payments by Borrower and Guarantor to Parent for the payment of Taxes which are directly attributable to such Borrower or Guarantor by or on behalf of Parent;

(v) payments by Borrower to Sun, Cerberus and/or Lubert-Adler and their respective affiliates of the Discretionary Management Fee in an aggregate amount per year not to exceed \$4,500,000, provided, that, each of the following conditions is satisfied as determined by Agent: (A) Agent shall have received not less than ten (10) Business Days prior written notice of any such proposed fee payment, which notice shall include the amount of such payment and any other information with respect thereto as Agent may request, (B) such fee shall not be declared and paid at any time prior to the second anniversary of the date hereof, (C) such fee may be paid no more frequently than annually, (D) Excess Availability (calculated without including Qualified Cash) for the sixty (60) consecutive days immediately preceding the date of such payment, and Excess Availability (calculated without including Qualified Cash) on the date of any such payment and after giving effect thereto, shall, in each case, be not less than \$50,000,000; and (E) as of the date of any such fee payment and after giving effect thereto, no Default or Event of Default shall exist or have occurred and is continuing or would result therefrom;

(vi) the dividends payments permitted by Section 9.11 hereof; and

(vii) amounts payable to any Sponsor Affiliated Lender pursuant to this Agreement.

9.13 Credit Card Agreements. Each of Borrower shall (a) observe and perform all material terms, covenants, conditions and provisions of the Credit Card Agreements to be observed and performed by it at the times set forth therein; (b) not do, permit, suffer or refrain from doing anything, as a result of which there could be a material default under or material breach of any of the terms of any of the Credit Card Agreements and (c) at all times maintain in full force and effect the Credit Card Agreements and not terminate, cancel, surrender, modify, amend, waive or release any of the Credit Card Agreements, or consent to or permit to occur any of the foregoing; except, that, (i) Borrower may terminate or cancel any of the Credit Card Agreements in the ordinary course of the business of Borrower; provided, that, Borrower shall give Agent not less than fifteen (15) days prior written notice of its intention to so terminate or cancel any of the Credit Card Agreements; (d) not enter into any new Credit Card Agreements with any new Credit Card Issuer or Credit Card Processor unless (i) Agent shall have received not less than thirty (30) days prior written notice of the intention of Borrower to enter into such agreement (together with such other information with respect thereto as Agent may request) and (ii) Borrower delivers, or causes to be delivered to Agent, a Credit Card Acknowledgment in favor of Agent duly authorized, executed and delivered by the new Credit Card Issuer or Credit Card Processor; (e) give Agent immediate written notice of any Credit Card Agreement entered into by Borrower after the date hereof, together with a true, correct and complete copy thereof and such other information with respect thereto as Agent may request; and (f) furnish to Agent, promptly upon the request of Agent, such information and evidence as Agent may require from time to time concerning the observance, performance and compliance by Borrower or the other party or parties thereto with the terms, covenants or provisions of the Credit Card Agreements.

9.14 Compliance with ERISA. Each of Borrower and Guarantor shall, and shall cause each of its ERISA Affiliates, to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal and State law; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; (c) not terminate any of such Plans so as to incur any material liability to the Pension Benefit Guaranty Corporation; (d) not allow or suffer to exist any prohibited transaction involving any of such Plans or any trust created thereunder which would subject Borrower, Guarantor or such ERISA Affiliate to a material tax or penalty or other liability on prohibited transactions imposed under Section 4975 of the Code or ERISA; (e) make all required contributions to any Plan which it is obligated to pay under Section 302 of ERISA, Section 412 of the Code or the terms of such Plan; (f) not allow or suffer to exist any accumulated funding deficiency, whether or not waived, with respect to any such Plan; or (g) allow or suffer to exist any occurrence of a reportable event or any other event or condition which presents a material risk of termination by the Pension Benefit Guaranty Corporation of any such Plan that is a single employer plan, which termination could result in any material liability to the Pension Benefit Guaranty Corporation.

9.15 End of Fiscal Years; Fiscal Quarters. Each of Borrower and Guarantor shall, for financial reporting purposes, cause its, and each of its Subsidiaries' (a) fiscal years to end on the Saturday closest to the 31st day of January of each year, and (b) fiscal quarters to end on the last day of the thirteenth (13th) week following the end of the immediately preceding fiscal quarter, provided, that, the end of the fourth fiscal quarter shall be on the last day of the fourteenth (14th) week following the end of the third fiscal quarter whenever necessary to have the fourth fiscal quarter end on the Saturday closest to January 31 of each year.

9.16 Change in Business. Each of Borrower and Guarantor shall not engage in any business other than the business of Borrower or Guarantor on the date hereof and any business reasonably related, ancillary or complimentary to the business in which Borrower or Guarantor is engaged on the date hereof.

9.17 Limitation of Restrictions Affecting Subsidiaries. Each of Borrower and Guarantor shall not, directly, or indirectly, create or otherwise cause or suffer to exist any encumbrance or restriction which prohibits or limits the ability of any Subsidiary of Borrower or Guarantor to (a) pay dividends or make other distributions or pay any Indebtedness owed to Borrower or Guarantor or any Subsidiary of Borrower or Guarantor; (b) make loans or advances to Borrower or Guarantor or any Subsidiary of Borrower or Guarantor, (c) transfer any of its properties or assets to Borrower or Guarantor or any Subsidiary of Borrower or Guarantor; or (d) create, incur, assume or suffer to exist any lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than encumbrances and restrictions arising under (i) applicable law, (ii) this Agreement, (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of Borrower or Guarantor or any Subsidiary of Borrower or Guarantor, (iv) customary restrictions on dispositions of real property interests found in reciprocal easement agreements of Borrower or Guarantor or any Subsidiary of Borrower or Guarantor, (v) customary provisions in license agreements restricting assignments or transfers of the rights of a licensee under such license agreement, (vi) any agreement relating to permitted Indebtedness incurred by a Subsidiary of Borrower or Guarantor prior to the date on

which such Subsidiary was acquired by Borrower or Guarantor and outstanding on such acquisition date, and (vii) the extension, refinancing or continuation of contractual obligations in existence on the date hereof; provided, that, any such encumbrances or restrictions contained in such extension, refinancing or continuation are no less favorable to Agent and Lenders than those encumbrances and restrictions under or pursuant to the contractual obligations so extended, refinanced or continued.

#### 9.18 Financial Covenant.

(a) At all times on or before February 28, 2005, the Excess Availability shall be not less than \$35,000,000.

(b) During any Compliance Period which occurs at any time after February 28, 2005, Borrower and Guarantor, on a consolidated basis shall, when measured as of the month most recently ended for which Agent has received financial statements in accordance with Section 9.6(a)(i), for the twelve (12) immediately preceding consecutive month period prior to such month end, maintain, a Fixed Charge Coverage Ratio of not less than 1.1 to 1; provided, that, for each month ending from January 31, 2005 through July 31, 2005, the period measured shall begin on the date hereof and end as of such month end.

#### 9.19 License Agreements.

(a) Each of Borrower and Guarantor shall (i) promptly and faithfully observe and perform all of the material terms, covenants, conditions and provisions of the material License Agreements to which it is a party to be observed and performed by it, at the times set forth therein, if any, (ii) not do, permit, suffer or refrain from doing anything that could reasonably be expected to result in a default under or breach of any of the terms of any material License Agreement, (iii) not cancel, surrender, modify, amend, waive or release any material License Agreement in any material respect or any term, provision or right of the licensee thereunder in any material respect, or consent to or permit to occur any of the foregoing; except, that, subject to Section 9.19(b) below, Borrower or Guarantor may cancel, surrender or release any material License Agreement in the ordinary course of the business of Borrower or Guarantor; provided, that, Borrower or Guarantor (as the case may be) shall give Agent not less than fifteen (15) days prior written notice of its intention to so cancel, surrender and release any such material License Agreement, (iv) give Agent prompt written notice of any material License Agreement entered into by Borrower or Guarantor after the date hereof, together with a true, correct and complete copy thereof and such other information with respect thereto as Agent may request, (v) give Agent prompt written notice of any material breach of any obligation, or any default, by any party under any material License Agreement, and deliver to Agent (promptly upon the receipt thereof by Borrower or Guarantor in the case of a notice to Borrower or Guarantor and concurrently with the sending thereof in the case of a notice from Borrower or Guarantor) a copy of each notice of default and every other notice and other communication received or delivered by Borrower or Guarantor in connection with any material License Agreement which relates to the right of Borrower or Guarantor to continue to use the property subject to such License Agreement, and (vi) furnish to Agent, promptly upon the request of Agent, such information and

evidence as Agent may reasonably require from time to time concerning the observance, performance and compliance by Borrower or Guarantor or the other party or parties thereto with the material terms, covenants or provisions of any material License Agreement.

(b) Each of Borrower and Guarantor will either exercise any option to renew or extend the term of each material License Agreement to which it is a party in such manner as will cause the term of such material License Agreement to be effectively renewed or extended for the period provided by such option and give prompt written notice thereof to Agent or give Agent prior written notice that Borrower or Guarantor does not intend to renew or extend the term of any such material License Agreement or that the term thereof shall otherwise be expiring, not less than forty-five (45) days prior to the date of any such non-renewal or expiration. In the event of the failure of Borrower or Guarantor to extend or renew any material License Agreement to which it is a party, Agent shall have, and is hereby granted, the irrevocable right and authority, at its option, to renew or extend the term of such material License Agreement, whether in its own name and behalf, or in the name and behalf of a designee or nominee of Agent or in the name and behalf of Borrower or Guarantor, as Agent shall determine at any time that an Event of Default shall exist or have occurred and be continuing. Agent may, but shall not be required to, perform any or all of such obligations of Borrower or Guarantor under any of the License Agreements, including, but not limited to, the payment of any or all sums due from Borrower or Guarantor thereunder. Any sums so paid by Agent shall constitute part of the Obligations.

9.20 After Acquired Real Property. If Borrower or Guarantor hereafter acquires any Real Property or fixtures (other than an sublease of a Restricted Lease which is transferred to MDS Realty I, MDS Realty II, MDS Realty III, MDS Realty IV, MDS Texas Realty I and MDS Realty Texas Realty II in accordance with the terms of Section 9.7(b)(vii) hereof) and such Real Property, fixtures, or other similar property has a fair market value in an amount equal to or greater than \$5,000,000 (or if a Default or Event of Default exists, then regardless of the fair market value of such assets), without limiting any other rights of Agent or any Lender, or duties or obligations of Borrower or Guarantor, promptly upon Agent's request, Borrower or Guarantor shall execute and deliver to Agent a mortgage, deed of trust or deed to secure debt, as Agent may determine, in form and substance satisfactory to Agent in good faith and in form appropriate for recording in the real estate records of the jurisdiction in which such Real Property or other property is located granting to Agent a first and only lien and mortgage on and security interest in such Real Property, fixtures or other property (except as Borrower or Guarantor would otherwise be permitted to incur hereunder or as otherwise consented to in writing by Agent) and such other agreements, documents and instruments as Agent may require in connection therewith.

9.21 Liquidation Cooperation. To the extent Agent deems it necessary or desirable in connection with the exercise of its rights and remedies under this Agreement or any of the other Financing Agreements for the purpose of distributing, selling or otherwise disposing of, dealing with, or realizing upon any of the Collateral of Borrower and Guarantor bearing or using any of the Intellectual Property which is licensed or used pursuant to the License Agreements (the "Licensed Intellectual Property") or any other Intellectual Property licensed or used by Borrower

or Guarantor after the date hereof, Borrower and Guarantor shall, upon the request of Agent, fully cooperate with Agent and Lenders to assist Agent in the distribution, sale, other disposition or realization upon any of the Collateral bearing or using the Licensed Intellectual Property and any other Intellectual Property licensed or used by Borrower and Guarantor now or after the date hereof pursuant to the terms of the License Agreements and Borrower and Guarantor shall execute any such further documents requested by Agent in connection therewith.

9.22 Unitary Leases. Borrower and Guarantor shall:

(a) not directly or indirectly amend, modify, alter or otherwise change the terms of the Unitary Leases, as in effect on the date hereof, except that Borrower or Guarantor may, after ten (10) Business Days prior written notice to Agent, amend, modify, alter or change the terms of the Unitary Leases to:

(i) increase the annual rent payable under the Unitary Leases to an amount in excess of \$52,139,000 (the aggregate amount of annual rent payable under the Unitary Leases as in effect on the date hereof) so long as the annual rent payable thereunder in any fiscal year shall not exceed the amount equal to (A) \$82,000,000 (less any permanent reductions thereto pursuant to Sections 9.7(b)(v)(C) and 9.22(a)(vi) hereof) in the aggregate at any time minus (B) the Monthly Restricted Lease Dividend payable in such fiscal year, or

(ii) reduce the rent or other amounts payable thereunder, or

(iii) transfer any Unrestricted Lease subject to one of the Unitary Leases to another Unitary Lease; provided, that,

(A) in the case of the transfer of any Unrestricted Lease from the Fifteen Month Unitary Lease to the Three Year Unitary Lease or the Ten Year Unitary Lease, Agent shall have received in form and substance satisfactory to Agent, (1) not less than ten (10) Business Days prior written notice of such proposed transfer, which notice shall set forth in reasonable detail satisfactory to Agent, the Unrestricted Lease to be transferred, and such other information with respect thereto as Agent may request, (2) a written statement by Borrower certifying that the new rent payable by Borrower in respect of such Unrestricted Lease is a fair market rental rate for such premises under the new proposed terms of such new Unrestricted Lease and including a letter from a real estate broker or other real estate professional demonstrating rental rates for comparable properties and leases, and (3) after giving effect to any such increase in the rent payable under the Three Year Unitary Lease or the Ten Year Unitary Lease (as applicable) the total annual rent payable under the Unitary Leases shall not exceed the amount set forth in Section 9.22(a)(i) hereof and (4) such other information with respect thereto as Agent may reasonably request;

(B) in the case of the transfer of any Unrestricted Lease from the Three Year Unitary Lease or the Ten Year Unitary Lease to the Fifteen Month Unitary Lease, Agent shall have received in form and substance satisfactory to Agent, (1) Agent shall have received not less than ten (10) Business Days prior written notice of such proposed transfer, which notice shall set forth in reasonable detail satisfactory to Agent, the Unrestricted Lease to be transferred,



and such other information with respect thereto as Agent may request, and (2) such other information with respect thereto as Agent may reasonably request;

(iv) transfer or sell any Unrestricted Lease pursuant to Section 9.7(b)(v)(C) hereof;

(v) make the terms of the Unitary Leases less restrictive or burdensome to Borrower or Guarantor than the terms of the Unitary Leases in effect on the date hereof, or

(vi) remove or sever one of the Unrestricted Leases from a Unitary Lease in connection with the sale or other disposition of the lessor's interest therein to a third party subject to the occupancy rights of Borrower under the Unrestricted Lease so long as (A) Agent shall have received not less than ten (10) Business Days prior written notice of such proposed removal or severance, which notice shall set forth in reasonable detail satisfactory to Agent, the Unrestricted Lease to be removed or severed, and such other information with respect thereto as Agent may request, and (B) the aggregate amount of Rent (as such term is defined in the Unitary Leases) and any other amounts payable by Borrower under the Unitary Leases (without such Unrestricted Lease) in any year plus all of the rent and other amounts payable by Borrower under the new lease for such location in any year does not exceed the annual amount set forth in clause (i) above,

(b) not make any payments in respect of the Unitary Leases other than regularly scheduled payments of Rent (as defined in the Unitary Leases) in respect of the Unitary Leases in accordance with the terms of such agreements as in effect on the date hereof or modified after the date hereof in accordance with clause (a) hereof and the payment of reserves and/or security deposits by Borrower on the date hereof in an amount not to exceed \$12,000,000, and

(c) furnish to Agent all material notices or demands in connection with the Unitary Leases either received by Borrower or Guarantor or on its behalf, promptly after the receipt thereof, or sent by Borrower or Guarantor or on its behalf, concurrently with the sending thereof, as the case may be.

**9.23 Costs and Expenses.** Borrower and Guarantor shall pay to Agent on demand all costs, expenses, filing fees and taxes paid or payable in connection with the preparation, negotiation, execution, delivery, recording, syndication, administration, collection, liquidation, enforcement and defense of the Obligations, Agent's rights in the Collateral, this Agreement, the other Financing Agreements and all other documents related hereto or thereto, including any amendments, supplements or consents which may hereafter be contemplated (whether or not executed) or entered into in respect hereof and thereof, including: (a) all costs and expenses of filing or recording (including Uniform Commercial Code financing statement filing taxes and fees, documentary taxes, intangibles taxes and mortgage recording taxes and fees, if applicable); (b) costs and expenses and fees for insurance premiums, environmental audits, title insurance premiums, surveys, assessments, engineering reports and inspections, personnel background checks, appraisal fees and search fees, costs and expenses of remitting loan proceeds, collecting checks and other items of payment, and establishing and maintaining the Blocked Accounts, together with Agent's customary charges and fees with respect thereto; (c) charges, fees or

expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations; (d) costs and expenses of preserving and protecting the Collateral; (e) costs and expenses paid or incurred in connection with obtaining payment of the Obligations, enforcing the security interests and liens of Agent, selling or otherwise realizing upon the Collateral, and otherwise enforcing the provisions of this Agreement and the other Financing Agreements or defending any claims made or threatened against Agent or any Lender arising out of the transactions contemplated hereby and thereby (including preparations for and consultations concerning any such matters); (f) all out-of-pocket expenses and costs heretofore and from time to time hereafter incurred by Agent during the course of periodic field examinations of the Collateral and Borrower's or Guarantor's operations, plus a per diem charge at Agent's then standard rate for Agent's examiners in the field and office (which rate as of the date hereof is \$1000 per person per day); and (g) the fees and disbursements of counsel (including legal assistants) to Agent in connection with any of the foregoing.

9.24 Further Assurances. At the request of Agent at any time and from time to time, Borrower and Guarantor shall, at their expense, duly execute and deliver, or cause to be duly executed and delivered, such further agreements, documents and instruments, and do or cause to be done such further acts as may be necessary or proper to evidence, perfect, maintain and enforce the security interests and the priority thereof in the Collateral and to otherwise effectuate the provisions or purposes of this Agreement or any of the other Financing Agreements. Agent may at any time and from time to time request a certificate from an officer of Borrower or Guarantor representing that all conditions precedent to the making of Loans and providing Letter of Credit Accommodations contained herein are satisfied. In the event of such request by Agent, Agent and Lenders may, at Agent's option, cease to make any further Loans or provide any further Letter of Credit Accommodations until Agent has received such certificate and, in addition, Agent has determined that such conditions are satisfied.

## **SECTION 10. EVENTS OF DEFAULT AND REMEDIES**

10.1 Events of Default. The occurrence or existence of any one or more of the following events are referred to herein individually as an "Event of Default", and collectively as "Events of Default":

(a) (i) Borrower fails to pay any of the Obligations when due or (ii) Borrower or Obligor fails to perform any of the covenants contained in Sections 9.1(b), 9.3, 9.4, 9.6, 9.14, 9.15 and 9.17 of this Agreement and, in the case of this clause (ii), such failure shall continue for fifteen (15) days; provided, that, such fifteen (15) day period shall not apply in the case of: (A) any failure to observe any such covenant which is not capable of being cured at all or within such fifteen (15) day period or which has been the subject of a prior failure within a six (6) month period or (B) an intentional breach by Borrower or Obligor of any such covenant or (iii) Borrower or Obligor fails to perform any of the terms, covenants, conditions or provisions contained in this Agreement or any of the other Financing Agreements other than those described in Sections 10.1(a)(i) and 10.1(a)(ii) above;

(b) any representation, warranty or statement of fact made by Borrower or any Obligor to Agent in this Agreement, the other Financing Agreements or any other written agreement, schedule, confirmatory assignment or otherwise shall when made or deemed made be false or misleading in any material respect;

(c) any Obligor revokes or terminates or purports to revoke or terminate or fails to perform any of the terms, covenants, conditions or provisions of any guarantee, endorsement or other agreement of such party in favor of Agent or any Lender;

(d) any judgment for the payment of money is rendered against Borrower or Obligor in excess of \$10,000,000 in the aggregate (to the extent not covered by insurance where the insurer has assumed responsibility in writing for such judgment) and shall remain undischarged or unvacated for a period in excess of forty-five (45) days or execution shall at any time not be effectively stayed, or any judgment other than for the payment of money, or injunction, attachment, garnishment or execution is rendered against Borrower or Obligor or any of the Collateral having a value in excess of \$10,000,000;

(e) any Obligor (being a natural person or a general partner of an Obligor which is a partnership) dies or Borrower or Obligor, which is a partnership, limited liability company, limited liability partnership or a corporation, dissolves or suspends or discontinues doing business (except as expressly permitted under Section 9.7(a) hereof);

(f) Borrower or Obligor makes an assignment for the benefit of creditors, makes or sends notice of a bulk transfer or calls a meeting of its creditors or principal creditors in connection with a moratorium or adjustment of the Indebtedness due to them;

(g) a case or proceeding under the bankruptcy laws of the United States of America now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed against Borrower or Obligor or all or any part of its properties and such petition case, proceeding or application is not dismissed within forty-five (45) days after the date of its filing or Borrower or Obligor shall file any answer admitting or not contesting such petition or application or indicates its consent to, acquiescence in or approval of, any such action or proceeding or the relief requested is granted sooner;

(h) a case or proceeding under the bankruptcy laws of the United States of America now or hereafter in effect or under any insolvency, reorganization, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at a law or equity) is filed by Borrower or Obligor or for all or any part of its property;

(i) any default in respect of any Indebtedness of Borrower or Obligor (other than Indebtedness owing to Agent and Lenders hereunder), in any case in an amount in excess of \$10,000,000, which default continues for more than the applicable cure period, if any, with respect thereto or any default by Borrower or Obligor under any Material Contract (including, without limitation, any of the Credit Card Agreements), which default continues for more than the applicable cure period, if any, with respect thereto and which default has a Material Adverse

Effect or could reasonably be expected to have a Material Adverse Effect or any Credit Card Issuer or Credit Card Processor withholds payment of amounts otherwise payable to Borrower to fund a reserve account or otherwise hold as collateral, or shall require Borrower to pay funds into a reserve account or for such Credit Card Issuer or Credit Card Processor to otherwise hold as collateral, or Borrower shall provide a letter of credit, guarantee, indemnity or similar instrument to or in favor of such Credit Card Issuer or Credit Card Processor such that in the aggregate all of such funds in the reserve account, other amounts held as collateral and the amount of such letters of credit, guarantees, indemnities or similar instruments shall exceed \$15,000,000 or any Credit Card Issuer or Credit Card Processor shall debit or deduct any amounts in excess of \$15,000,000 in the aggregate in any fiscal year of Borrower and Guarantor from any amounts or proceeds otherwise payable to Borrower;

(j) any Credit Card Issuer or Credit Card Processor shall send notice to Borrower that it is ceasing to make or suspending payments to Borrower of amounts due or to become due to Borrower or shall cease or suspend such payments, or shall send notice to Borrower that it is terminating its arrangements with Borrower or such arrangements shall terminate as a result of any event of default under such arrangements, which continues for more than the applicable cure period, if any, with respect thereto, unless Borrower shall have entered into arrangements with another Credit Card Issuer or Credit Card Processor, as the case may be, within sixty (60) days after the date of any such notice;

(k) any bank at which any deposit account of Borrower or Guarantor is maintained shall fail to comply with any of the material terms of any Deposit Account Control Agreement to which such bank is a party or any securities intermediary, commodity intermediary or other financial institution at any time in custody, control or possession of any investment property of Borrower or Guarantor shall fail to comply with any of the material terms of any Investment Property Control Agreement to which such person is a party;

(l) any material provision hereof or of any of the other Financing Agreements shall for any reason cease to be valid, binding and enforceable with respect to any party hereto or thereto (other than Agent) in accordance with its terms, or any such party shall challenge the enforceability hereof or thereof, or shall assert in writing, or take any action or fail to take any action based on the assertion that any provision hereof or of any of the other Financing Agreements has ceased to be or is otherwise not valid, binding or enforceable in accordance with its terms, or any security interest provided for herein or in any of the other Financing Agreements shall cease to be a valid and perfected first priority security interest in any of the Collateral purported to be subject thereto (except as otherwise permitted herein or therein);

(m) an ERISA Event shall occur which results in or could reasonably be expected to result in liability of Borrower in an aggregate amount in excess of \$10,000,000;

(n) any Change of Control shall occur;

(o) the indictment by any Governmental Authority, or as Agent may reasonably and in good faith determine, the threatened indictment by any Governmental Authority of Borrower or Obligor of which Borrower, Obligor or Agent receives notice, in either case, as to which there

is a reasonable likelihood of an adverse determination, in the good faith determination of Agent, under any criminal statute, or commencement or threatened commencement of criminal or civil proceedings against Borrower or Obligor, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture of (i) any of the Collateral having a value in excess of \$5,000,000 or (ii) any other property of Borrower or Guarantor which is necessary or material to the conduct of its business;

(p) any material default under any of the Unitary Leases;

(q) there shall occur any event, development or condition that would constitute or have a Material Adverse Effect after the date hereof; or

(r) there shall be an event of default (after applicable cure period, if any) under any of the other Financing Agreements.

## 10.2 Remedies.

(a) At any time an Event of Default exists or has occurred and is continuing, Agent and Lenders shall have all rights and remedies provided in this Agreement, the other Financing Agreements, the UCC and other applicable law, all of which rights and remedies may be exercised without notice to or consent by Borrower or Obligor, except as such notice or consent is expressly provided for hereunder or required by applicable law. All rights, remedies and powers granted to Agent and Lenders hereunder, under any of the other Financing Agreements, the UCC or other applicable law, are cumulative, not exclusive and enforceable, in Agent's discretion, alternatively, successively, or concurrently on any one or more occasions, and shall include, without limitation, the right to apply to a court of equity for an injunction to restrain a breach or threatened breach by Borrower or Obligor of this Agreement or any of the other Financing Agreements. Subject to Section 12 hereof, Agent may, and at the direction of the Required Lenders shall, at any time or times, proceed directly against Borrower or Obligor to collect the Obligations without prior recourse to the Collateral.

(b) Without limiting the generality of the foregoing, at any time an Event of Default exists or has occurred and is continuing, Agent may, at its option and shall upon the direction of the Required Lenders, (i) upon notice to Borrower, accelerate the payment of all Obligations and demand immediate payment thereof to Agent for itself and the benefit of Lenders and the Bank Product Providers (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), all Obligations shall automatically become immediately due and payable), and (ii) terminate the Commitments and this Agreement (provided, that, upon the occurrence of any Event of Default described in Sections 10.1(g) and 10.1(h), the Commitments and any other obligation of the Agent or a Lender hereunder shall automatically terminate).

(c) Without limiting the foregoing, at any time an Event of Default exists or has occurred and is continuing, Agent may, in its discretion (i) with or without judicial process or the aid or assistance of others, enter upon any premises on or in which any of the Collateral may be located and take possession of the Collateral or complete processing, manufacturing and repair of all or any portion of the Collateral, (ii) require Borrower or Obligor, at Borrower's expense, to

assemble and make available to Agent any part or all of the Collateral at any place and time designated by Agent, (iii) collect, foreclose, receive, appropriate, setoff and realize upon any and all Collateral, (iv) remove any or all of the Collateral from any premises on or in which the same may be located for the purpose of effecting the sale, foreclosure or other disposition thereof or for any other purpose, (v) sell, lease, transfer, assign, deliver or otherwise dispose of any and all Collateral (including entering into contracts with respect thereto, public or private sales at any exchange, broker's board, at any office of Agent or elsewhere) at such prices or terms as Agent may deem reasonable, for cash, upon credit or for future delivery, with the Agent having the right to purchase the whole or any part of the Collateral at any such public sale, all of the foregoing being free from any right or equity of redemption of Borrower or Obligor, which right or equity of redemption is hereby expressly waived and released by Borrower and Obligors and/or (vi) terminate this Agreement. If any of the Collateral is sold or leased by Agent upon credit terms or for future delivery, the Obligations shall not be reduced as a result thereof until payment therefor is finally collected by Agent. If notice of disposition of Collateral is required by law, ten (10) days prior notice by Agent to Borrower designating the time and place of any public sale or the time after which any private sale or other intended disposition of Collateral is to be made, shall be deemed to be reasonable notice thereof and Borrower and Obligors waive any other notice. In the event Agent institutes an action to recover any Collateral or seeks recovery of any Collateral by way of prejudgment remedy, each of Borrower and Obligor waives the posting of any bond which might otherwise be required. At any time an Event of Default exists or has occurred and is continuing, upon Agent's request, Borrower will either, as Agent shall specify, furnish cash collateral to the issuer to be used to secure and fund Agent's reimbursement obligations to the issuer in connection with any Letter of Credit Accommodations or furnish cash collateral to Agent for the Letter of Credit Accommodations. Such cash collateral shall be in the amount equal to one hundred five (105%) percent of the aggregate undrawn amount of the Letter of Credit Accommodations plus the amount of any fees and expenses payable in connection therewith through the end of the latest expiration date of such Letter of Credit Accommodations.

(d) At any time or times that an Event of Default exists or has occurred and is continuing, Agent may, in its discretion, enforce the rights of Borrower or Obligor against any account debtor, secondary obligor or other obligor in respect of any of the Accounts or other Receivables. Without limiting the generality of the foregoing, at any time an Event of Default exists or has occurred and is continuing, Agent may, in its discretion, at such time or times (i) notify any or all account debtors, secondary obligors or other obligors in respect thereof that the Receivables have been assigned to Agent and that Agent has a security interest therein and Agent may direct any or all accounts debtors, secondary obligors and other obligors to make payment of Receivables directly to Agent, (ii) extend the time of payment of, compromise, settle or adjust for cash, credit, return of merchandise or otherwise, and upon any terms or conditions, any and all Receivables or other obligations included in the Collateral and thereby discharge or release the account debtor or any secondary obligors or other obligors in respect thereof without affecting any of the Obligations, (iii) demand, collect or enforce payment of any Receivables or such other obligations, but without any duty to do so, and Agent and Lenders shall not be liable for any failure to collect or enforce the payment thereof nor for the negligence of its agents or attorneys with respect thereto and (iv) take whatever other action Agent may deem necessary or

desirable for the protection of its interests and the interests of Lenders. At any time that an Event of Default exists or has occurred and is continuing, at Agent's request, all invoices and statements sent to any account debtor shall state that the Accounts and such other obligations have been assigned to Agent and are payable directly and only to Agent and Borrower and Obligors shall deliver to Agent such originals of documents evidencing the sale and delivery of goods or the performance of services giving rise to any Accounts as Agent may require. In the event any account debtor returns Inventory when an Event of Default exists or has occurred and is continuing, Borrower shall, upon Agent's request, hold the returned Inventory in trust for Agent, segregate all returned Inventory from all of its other property, dispose of the returned Inventory solely according to Agent's instructions, and not issue any credits, discounts or allowances with respect thereto without Agent's prior written consent.

(e) To the extent that applicable law imposes duties on Agent or any Lender to exercise remedies in a commercially reasonable manner (which duties cannot be waived under such law and to the extent not prohibited by Section 9-602 of the UCC), each of Borrower and Guarantor acknowledges and agrees that it is not commercially unreasonable for Agent or any Lender (i) to fail to incur expenses reasonably deemed significant by Agent or any Lender to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain consents of any Governmental Authority or other third party for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against account debtors, secondary obligors or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral, (iv) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other persons, whether or not in the same business as Borrower or Guarantor, for expressions of interest in acquiring all or any portion of the Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, (xi) to purchase insurance or credit enhancements to insure Agent or Lenders against risks of loss, collection or disposition of Collateral or to provide to Agent or Lenders a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Agent in the collection or disposition of any of the Collateral. Each of Borrower and Guarantor acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Agent or any Lender would not be commercially unreasonable in the exercise by Agent or any Lender of remedies against the Collateral and that other actions or omissions by Agent or any Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section. Without limitation of the foregoing, nothing contained in this Section shall be construed to grant any

rights to Borrower or Guarantor or to impose any duties on Agent or Lenders that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section.

(f) For the purpose of enabling Agent to exercise the rights and remedies hereunder, each of Borrower and Obligor hereby grants to Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable at any time an Event of Default shall exist or have occurred and for so long as the same is continuing) without payment of royalty or other compensation to Borrower or Obligor, to use, assign, license or sublicense any of the trademarks, service-marks, trade names, business names, trade styles, designs, logos and other source of business identifiers and other Intellectual Property and general intangibles now owned or hereafter acquired by Borrower or Obligor, wherever the same may be located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

(g) At any time an Event of Default exists or has occurred and is continuing, Agent may apply the cash proceeds of Collateral actually received by Agent from any sale, lease, foreclosure or other disposition of the Collateral to payment of the Obligations, in whole or in part and in accordance with the terms hereof, whether or not then due or may hold such proceeds as cash collateral for the Obligations. Borrower and Guarantor shall remain liable to Agent and Lenders for the payment of any deficiency with interest at the highest rate provided for herein and all costs and expenses of collection or enforcement, including reasonable attorneys' fees and expenses.

(h) Without limiting the foregoing, upon the occurrence of a Default or an Event of Default, (i) Agent and Lenders may, at Agent's option, and upon the occurrence of an Event of Default at the direction of the Required Lenders, Agent and Lenders shall, without notice, (A) cease making Loans or arranging for Letter of Credit Accommodations or reduce the lending formulas or amounts of Loans and Letter of Credit Accommodations available to Borrower and/or (B) terminate any provision of this Agreement providing for any future Loans or Letter of Credit Accommodations to be made by Agent and Lenders to Borrower and (ii) Agent may, at its option, establish such Reserves as Agent determines, without limitation or restriction, notwithstanding anything to the contrary contained herein.

## **SECTION 11. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW**

### **11.1 Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.**

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements (except as otherwise provided therein) and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.



(b) Borrower, Guarantor, Agent and Lenders irrevocably consent and submit to the non-exclusive jurisdiction of the Supreme Court of New York County, New York and the United States District Court for the Southern District of New York, whichever Agent may elect, and waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Financing Agreements or in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Agreement or any of the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Agent and Lenders shall have the right to bring any action or proceeding against Borrower or Guarantor or its or their property in the courts of any other jurisdiction which Agent deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against Borrower or Guarantor or its or their property).

(c) Each of Borrower and Guarantor hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Agent's option, by service upon Borrower or Guarantor in any other manner provided under the rules of any such courts.

(d) BORROWER, GUARANTOR, AGENT AND LENDERS EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. BORROWER, GUARANTOR, AGENT AND LENDERS EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT BORROWER, GUARANTOR, AGENT OR ANY LENDER MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Agent and Lenders shall not have any liability to Borrower or Guarantor (whether in tort, contract, equity or otherwise) for losses suffered by Borrower or Guarantor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Agent and such Lender, that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. In any such litigation, Agent and Lenders shall be entitled to the benefit

of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement. Each of Borrower and Guarantor: (i) certifies that neither Agent, any Lender nor any representative, agent or attorney acting for or on behalf of Agent or any Lender has represented, expressly or otherwise, that Agent and Lenders would not, in the event of litigation, seek to enforce any of the waivers provided for in this Agreement or any of the other Financing Agreements and (ii) acknowledges that in entering into this Agreement and the other Financing Agreements, Agent and Lenders are relying upon, among other things, the waivers and certifications set forth in this Section 11.1 and elsewhere herein and therein.

11.2 Waiver of Notices. Each of Borrower and Guarantor hereby expressly waives demand, presentment, protest and notice of protest and notice of dishonor with respect to any and all instruments and chattel paper, included in or evidencing any of the Obligations or the Collateral, and any and all other demands and notices of any kind or nature whatsoever with respect to the Obligations, the Collateral and this Agreement, except such as are expressly provided for herein. No notice to or demand on Borrower or Guarantor which Agent or any Lender may elect to give shall entitle Borrower or Guarantor to any other or further notice or demand in the same, similar or other circumstances.

### 11.3 Amendments and Waivers.

(a) Neither this Agreement nor any other Financing Agreement nor any terms hereof or thereof may be amended, waived, discharged or terminated unless such amendment, waiver, discharge or termination is in writing signed by Agent and the Required Lenders or at Agent's option, by Agent with the authorization of the Required Lenders, and as to amendments to any of the Financing Agreements (other than with respect to any provision of Section 12 hereof), by Borrower; except, that, no such amendment, waiver, discharge or termination shall:

(i) reduce the interest rate or any fees or extend the time of payment of principal, interest or any fees or reduce the principal amount of any Loan or Letter of Credit Accommodations, in each case without the consent of each Lender directly affected thereby,

(ii) increase the Commitment of any Lender over the amount thereof then in effect or provided hereunder, in each case without the consent of the Lender directly affected thereby,

(iii) release any Collateral (except as expressly required hereunder or under any of the other Financing Agreements or applicable law and except as permitted under Section 12.11(b) hereof), without the consent of Agent and all of Lenders other than the Sponsor Affiliated Lenders,

(iv) reduce any percentage specified in the definition of Required Lenders or Required Super-Majority Lenders, without the consent of Agent and all of Lenders other than the Sponsor Affiliated Lenders,

(v) consent to the assignment or transfer by Borrower or Guarantor of any of their rights and obligations under this Agreement, without the consent of Agent and all of Lenders other than the Sponsor Affiliated Lenders,

(vi) amend, modify or waive any terms of Section 11.3(a)(ii) or this subsection (vi) hereof, without the consent of Agent and all of Lenders including the Sponsor Affiliated Lenders,

(vii) amend, modify or waive any terms of Section 11.3(a)(i), (iii), (iv), (v), (vii) and (viii) hereof, without the consent of Agent and all of Lenders other than the Sponsor Affiliated Lenders, or

(viii) increase the advance rates constituting part of the Borrowing Base or increase the sublimits with respect to Letter of Credit Accommodations, or amend, modify or waive any provisions of the definition of Borrowing Base or of any of the defined terms referred to in the definition of Borrowing Base if the effect thereof increases the amount of the Borrowing Base, or a change in the methodology for calculating the Reserves provided for in Section 1.138(c) hereof, without the consent of Agent and Required Super-Majority Lenders.

(b) Agent and Lenders shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its or their rights, powers and/or remedies unless such waiver shall be in writing and signed as provided herein. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Agent or any Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Agent or any Lender would otherwise have on any future occasion, whether similar in kind or otherwise.

(c) Notwithstanding anything to the contrary contained in Section 11.3(a) above, in connection with any amendment, waiver, discharge or termination, in the event that any Lender whose consent thereto is required shall fail to consent or fail to consent in a timely manner (such Lender being referred to herein as a "Non-Consenting Lender"), but the consent of any other Lenders to such amendment, waiver, discharge or termination that is required are obtained, if any, then Congress shall have the right, but not the obligation, at any time thereafter, and upon the exercise by Congress of such right, such Non-Consenting Lender shall have the obligation, to sell, assign and transfer to Congress or such Eligible Transferee as Congress may specify, the Commitment of such Non-Consenting Lender and all rights and interests of such Non-Consenting Lender pursuant thereto. Congress shall provide the Non-Consenting Lender with prior written notice of its intent to exercise its right under this Section, which notice shall specify on date on which such purchase and sale shall occur. Such purchase and sale shall be pursuant to the terms of an Assignment and Acceptance (whether or not executed by the Non-Consenting Lender), except that on the date of such purchase and sale, Congress, or such Eligible Transferee specified by Congress, shall pay to the Non-Consenting Lender (except as Congress and such Non-Consenting Lender may otherwise agree) the amount equal to: (i) the principal balance of the Loans held by the Non-Consenting Lender outstanding as of the close of business on the business day immediately preceding the effective date of such purchase and sale, plus (ii)

amounts accrued and unpaid in respect of interest and fees payable to the Non-Consenting Lender to the effective date of the purchase (but in no event shall the Non-Consenting Lender be deemed entitled to any early termination fee), minus (iii) the amount of the closing fee received by the Non-Consenting Lender pursuant to the terms hereof or of any of the other Financing Agreements multiplied by the fraction, the numerator of which is the number of months remaining in the then current term of the Credit Facility and the denominator of which is the number of months in the then current term thereof. Such purchase and sale shall be effective on the date of the payment of such amount to the Non-Consenting Lender and the Commitment of the Non-Consenting Lender shall terminate on such date.

(d) The consent of Agent shall be required for any amendment, waiver or consent affecting the rights or duties of Agent hereunder or under any of the other Financing Agreements, in addition to the consent of the Lenders otherwise required by this Section and the exercise by Agent of any of its rights hereunder with respect to Reserves or Eligible Credit Card Receivables or Eligible Inventory shall not be deemed an amendment to the advance rates or Borrowing Base provided for in this Section 11.3.

(e) Notwithstanding anything to the contrary contained in this Agreement or any other Financing Agreement, in no event shall any Sponsor Affiliated Lender be entitled to (i) consent to any amendment, modification, waiver, consent or other such action with respect to any of the terms of this Agreement or any other Financing Agreement, (ii) require any Agent or other Lender to undertake any action (or refrain from taking any action) with respect to this Agreement or any other Financing Agreement or (iii) otherwise vote on any matter related to this Agreement or any other Financing Agreement; provided, however, no amendment, modification or waiver shall deprive any Sponsor Affiliate Lender of its Pro Rata Share of any payments to which the Lenders are entitled to share on a pro rata basis hereunder or any rights it may have under Section 11.3(a)(ii) or (vi) hereof.

11.4 Waiver of Counterclaims. Each of Borrower and Guarantor waives all rights to interpose any claims, deductions, setoffs or counterclaims of any nature (other than compulsory counterclaims) in any action or proceeding with respect to this Agreement, the Obligations, the Collateral or any matter arising therefrom or relating hereto or thereto.

11.5 Indemnification. Each of Borrower and Guarantor shall, jointly and severally, indemnify and hold Agent and each Lender, and its officers, directors, agents, employees, advisors and counsel and their respective Affiliates (each such person being an "Indemnitee"), harmless from and against any and all losses, claims, damages, liabilities, costs or expenses (including attorneys' fees and expenses) imposed on, incurred by or asserted against any of them in connection with any litigation, investigation, claim or proceeding commenced or threatened related to the negotiation, preparation, execution, delivery, enforcement, performance or administration of this Agreement, any other Financing Agreements, the Purchase Agreements, or any undertaking or proceeding related to any of the transactions contemplated hereby or any act, omission, event or transaction related or attendant thereto, including amounts paid in settlement, court costs, and the fees and expenses of counsel except that Borrower and Guarantor shall not have any obligation under this Section 11.5 to indemnify an Indemnitee with respect to a matter

covered hereby resulting from the gross negligence or willful misconduct of such Indemnitee as determined pursuant to a final, non-appealable order of a court of competent jurisdiction (but without limiting the obligations of Borrower or Guarantor as to any other Indemnitee (other than any officers, directors, agents or employees of the Indemnitee whose gross negligence or willful misconduct resulted in such losses, claims, damages, liabilities, costs or expenses)). To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section may be unenforceable because it violates any law or public policy, Borrower and Guarantor shall pay the maximum portion which it is permitted to pay under applicable law to Agent and Lenders in satisfaction of indemnified matters under this Section. To the extent permitted by applicable law, neither Borrower nor Guarantor shall assert, and each of Borrower and Guarantor hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Financing Agreements or any undertaking or transaction contemplated hereby. All amounts due under this Section shall be payable upon demand. The foregoing indemnity shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

## **SECTION 12. THE AGENT**

12.1 Appointment, Powers and Immunities. Each Lender irrevocably designates, appoints and authorizes Congress to act as Agent hereunder and under the other Financing Agreements with such powers as are specifically delegated to Agent by the terms of this Agreement and of the other Financing Agreements, together with such other powers as are reasonably incidental thereto. Agent (a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Financing Agreements, and shall not by reason of this Agreement or any other Financing Agreement be a trustee or fiduciary for any Lender; (b) shall not be responsible to Lenders for any recitals, statements, representations or warranties contained in this Agreement or in any of the other Financing Agreements, or in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or any other Financing Agreement, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Agreement or any other document referred to or provided for herein or therein or for any failure by Borrower or any Obligor or any other Person to perform any of its obligations hereunder or thereunder; and (c) shall not be responsible to Lenders for any action taken or omitted to be taken by it hereunder or under any other Financing Agreement or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith, except for its own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. Agent may deem and treat the payee of any note as the holder thereof for all purposes hereof unless and until the assignment thereof pursuant to an agreement (if and to the extent permitted herein) in form and substance satisfactory to Agent shall have been delivered to and acknowledged by Agent. The identification of Goldman Sachs Credit Partners L.P. as a joint lead arranger, joint bookrunner and co-syndication agent, General Electric Capital Corporation and The CIT Group/Business

Credit, Inc., as co-documentation agents shall not create any rights in favor of such parties in such capacities nor subject such parties to any duties or obligations in such capacities.

12.2 Reliance by Agent. Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopy, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Agent. As to any matters not expressly provided for by this Agreement or any other Financing Agreement, Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Required Lenders or all of Lenders as is required in such circumstance, and such instructions of such Agents and any action taken or failure to act pursuant thereto shall be binding on all Lenders.

### 12.3 Events of Default.

(a) Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or an Event of Default or other failure of a condition precedent to the Loans and Letter of Credit Accommodations hereunder, unless and until Agent has received written notice from a Lender, or Borrower specifying such Event of Default or any unfulfilled condition precedent, and stating that such notice is a "Notice of Default or Failure of Condition". In the event that Agent receives such a Notice of Default or Failure of Condition, Agent shall give prompt notice thereof to the Lenders. Agent shall (subject to Section 12.7) take such action with respect to any such Event of Default or failure of condition precedent as shall be directed by the Required Lenders to the extent provided for herein; provided, that, unless and until Agent shall have received such directions, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to or by reason of such Event of Default or failure of condition precedent, as it shall deem advisable in the best interest of Lenders. Without limiting the foregoing, and notwithstanding the existence or occurrence and continuance of an Event of Default or any other failure to satisfy any of the conditions precedent set forth in Section 4 of this Agreement to the contrary, unless and until otherwise directed by the Required Lenders, Agent may, but shall have no obligation to, continue to make Loans and issue or cause to be issued Letter of Credit Accommodations for the ratable account and risk of Lenders from time to time if Agent believes making such Loans or issuing or causing to be issued such Letter of Credit Accommodations is in the best interests of Lenders.

(b) Except with the prior written consent of Agent, no Lender may assert or exercise any enforcement right or remedy in respect of the Loans, Letter of Credit Accommodations or other Obligations, as against Borrower or Obligor or any of the Collateral or other property of Borrower or Obligor.

12.4 Congress in its Individual Capacity. With respect to its Commitment and the Loans made and Letter of Credit Accommodations issued or caused to be issued by it (and any successor acting as Agent), so long as Congress shall be a Lender hereunder, it shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it

were not acting as Agent, and the term “Lender” or “Lenders” shall, unless the context otherwise indicates, include Congress in its individual capacity as Lender hereunder. Congress (and any successor acting as Agent) and its Affiliates may (without having to account therefor to any Lender) lend money to, make investments in and generally engage in any kind of business with Borrower (and any of its Subsidiaries or Affiliates) as if it were not acting as Agent, and Congress and its Affiliates may accept fees and other consideration from Borrower or Guarantor and any of its Subsidiaries and Affiliates for services in connection with this Agreement or otherwise without having to account for the same to Lenders.

12.5 Indemnification. Lenders agree to indemnify Agent (to the extent not reimbursed by Borrower hereunder and without limiting any obligations of Borrower hereunder) ratably, in accordance with their Pro Rata Shares, for any and all claims of any kind and nature whatsoever that may be imposed on, incurred by or asserted against Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other Financing Agreement or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including the costs and expenses that Agent is obligated to pay hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents, provided, that, no Lender shall be liable for any of the foregoing to the extent it arises from the gross negligence or willful misconduct of the party to be indemnified as determined by a final non-appealable judgment of a court of competent jurisdiction. The foregoing indemnity shall survive the payment of the Obligations and the termination or non-renewal of this Agreement.

12.6 Non-Reliance on Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on Agent or other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of Borrower and Obligors and has made its own decision to enter into this Agreement and that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any of the other Financing Agreements. Agent shall not be required to keep itself informed as to the performance or observance by Borrower or Obligor of any term or provision of this Agreement or any of the other Financing Agreements or any other document referred to or provided for herein or therein or to inspect the properties or books of Borrower or Obligor. Agent will use reasonable efforts to provide Lenders with any information received by Agent from Borrower or Obligor which is required to be provided to Lenders or deemed to be requested by Lenders hereunder and with a copy of any Notice of Default or Failure of Condition received by Agent from Borrower or any Lender; provided, that, Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Agent's own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Except for notices, reports and other documents expressly required to be furnished to Lenders by Agent or deemed requested by Lenders hereunder, Agent shall not have any duty or responsibility to provide any Lender with any other credit or other information concerning the affairs, financial condition or business of Borrower or Obligor that may come into the possession of Agent.

12.7 Failure to Act. Except for action expressly required of Agent hereunder and under the other Financing Agreements, Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from Lenders of their indemnification obligations under Section 12.5 hereof against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

12.8 Additional Loans. Agent shall not make any Loans or provide any Letter of Credit Accommodations on behalf of Lenders intentionally and with actual knowledge that such Loans or Letter of Credit Accommodations would cause the aggregate amount of the total outstanding Loans and Letter of Credit Accommodations to exceed the Borrowing Base, without the prior consent of all Lenders, except, that, Agent may make such additional Loans or provide such additional Letter of Credit Accommodations on behalf of Lenders, intentionally and with actual knowledge that such Loans or Letter of Credit Accommodations will cause the total outstanding Loans and Letter of Credit Accommodations to exceed the Borrowing Base, as Agent may deem necessary or advisable in its discretion, provided, that: (a) without the consent of Required Super-Majority Lenders, the total principal amount of the additional Loans or additional Letter of Credit Accommodations which Agent may make or provide after obtaining such actual knowledge that the aggregate principal amount of the Loans equal or exceed the Borrowing Base, plus the amount of Special Agent Advances made pursuant to Section 12.11(a)(ii) hereof then outstanding, shall not exceed the amount (determined as of the date each advance is made) equal to the greater of: (i) ten (10%) of the net book value of the Inventory as determined by Agent or (ii) \$40,000,000, and, without consent of all Lenders other than Sponsor Affiliated Lenders, shall not cause the total principal amount of the Loans or Letter of Credit Accommodations (including additional Loans and additional Letter of Credit Accommodations made pursuant to this Section plus the amount of Special Agent Advances made pursuant to Section 12.11(a)(ii) hereof) to exceed the Maximum Credit, and (b) Agent shall not make any such additional Loans or Letter of Credit Accommodations more than ninety (90) days after the date such additional Loan or Letter of Credit Accommodation is made or issued (as the case may be), except as the Required Lenders may otherwise agree. Each Lender shall be obligated to pay Agent the amount of its Pro Rata Share of any such additional Loans or Letter of Credit Accommodations.

12.9 Concerning the Collateral and the Related Financing Agreements. Each Lender authorizes and directs Agent to enter into this Agreement and the other Financing Agreements. Each Lender agrees that any action taken by Agent or Required Lenders (or such greater percentage as may be required hereunder) in accordance with the terms of this Agreement or the other Financing Agreements and the exercise by Agent or Required Lenders (or such greater percentage as may be required hereunder) of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

12.10 Field Audit, Examination Reports and other Information; Disclaimer by Lenders. By signing this Agreement, each Lender:



(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report and a report with respect to the Borrowing Base prepared or received by Agent (each field audit or examination report and report with respect to the Borrowing Base being referred to herein as a "Report" and collectively, "Reports"), appraisals with respect to the Collateral and financial statements with respect to Borrower and its Subsidiaries received by Agent;

(b) expressly agrees and acknowledges that Agent (i) does not make any representation or warranty as to the accuracy of any Report, appraisal or financial statement or (ii) shall not be liable for any information contained in any Report, appraisal or financial statement;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or any other party performing any audit or examination will inspect only specific information regarding Borrower and Guarantor and will rely significantly upon Borrower' and Guarantor' books and records, as well as on representations of Borrower' and Guarantor' personnel; and

(d) agrees to keep all Reports confidential and strictly for its internal use in accordance with the terms of Section 13.5 hereof, and not to distribute or use any Report in any other manner.

#### 12.11 Collateral Matters.

(a) Agent may, at its option, from time to time, at any time on or after an Event of Default and for so long as the same is continuing or upon any other failure of a condition precedent to the Loans and Letter of Credit Accommodations hereunder, make such disbursements and advances ("Special Agent Advances") which Agent, in its sole discretion, deems necessary or desirable (i) to preserve or protect the Collateral or any portion thereof or (ii) to enhance the likelihood or maximize the amount of repayment by Borrower and Guarantor of the Loans and other Obligations, provided, that, the aggregate principal amount of the Special Agent Advances pursuant to this clause (ii), plus the then outstanding principal amount of the additional Loans and Letter of Credit Accommodations which Agent may make or provide as set forth in Section 12.8 hereof, shall not, the without the consent of Required Super-Majority Lenders, exceed the amount (determined as of the date each advance is made) equal to the greater of: (A) ten (10%) of the net book value of the Inventory as determined by Agent or (B) \$40,000,000, or (iii) to pay any other amount chargeable to Borrower or Guarantor pursuant to the terms of this Agreement or any of the other Financing Agreements consisting of (A) costs, fees and expenses and (B) payments to any issuer of Letter of Credit Accommodations. Special Agent Advances shall be repayable on demand and together with all interest thereon shall constitute Obligations secured by the Collateral. Special Agent Advances shall not constitute Loans but shall otherwise constitute Obligations hereunder. Interest on Special Agent Advances shall be payable at the Interest Rate then applicable to Prime Rate Loans and shall be payable on demand. Without limitation of its obligations pursuant to Section 6.10, each Lender agrees that it shall make available to Agent, upon Agent's demand, in immediately available funds, the

amount equal to such Lender's Pro Rata Share of each such Special Agent Advance. If such funds are not made available to Agent by such Lender, such Lender shall be deemed a Defaulting Lender and Agent shall be entitled to recover such funds, on demand from such Lender together with interest thereon for each day from the date such payment was due until the date such amount is paid to Agent at the Federal Funds Rate for each day during such period (as published by the Federal Reserve Bank of New York or at Agent's option based on the arithmetic mean determined by Agent of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York City time) on that day by each of the three leading brokers of Federal funds transactions in New York City selected by Agent) and if such amounts are not paid within three (3) days of Agent's demand, at the highest Interest Rate provided for in Section 3.1 hereof applicable to Prime Rate Loans.

(b) Lenders hereby irrevocably authorize Agent, at its option and in its discretion to release any security interest in, mortgage or lien upon, any of the Collateral (i) upon termination of the Commitments and payment and satisfaction of all of the Obligations and delivery of cash collateral to the extent required under Section 13.1 below, or (ii) constituting property being sold or disposed of if Borrower or Guarantor certifies to Agent that the sale or disposition is made in compliance with Section 9.7 hereof (and Agent may rely conclusively on any such certificate, without further inquiry), or (iii) constituting property in which Borrower or Guarantor did not own an interest at the time the security interest, mortgage or lien was granted or at any time thereafter, or (iv) having a value in the aggregate in any twelve (12) month period of less than \$10,000,000, and to the extent Agent may release its security interest in and lien upon any such Collateral pursuant to the sale or other disposition thereof, such sale or other disposition shall be deemed consented to by Lenders, or (v) if required or permitted under the terms of any of the other Financing Agreements, including any intercreditor agreement, or (vi) approved, authorized or ratified in writing by all of Lenders. Except as provided above, Agent will not release any security interest in, mortgage or lien upon, any of the Collateral without the prior written authorization of all of Lenders. Upon request by Agent at any time, Lenders will promptly confirm in writing Agent's authority to release particular types or items of Collateral pursuant to this Section.

(c) Without in any manner limiting Agent's authority to act without any specific or further authorization or consent by the Required Lenders, each Lender agrees to confirm in writing, upon request by Agent, the authority to release Collateral conferred upon Agent under this Section. Agent shall (and is hereby irrevocably authorized by Lenders to) execute such documents as may be necessary to evidence the release of the security interest, mortgage or liens granted to Agent upon any Collateral to the extent set forth above; provided, that, (i) Agent shall not be required to execute any such document on terms which, in Agent's opinion, would expose Agent to liability or create any obligations or entail any consequence other than the release of such security interest, mortgage or liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any security interest, mortgage or lien upon (or obligations of Borrower or Guarantor in respect of) the Collateral retained by Borrower or Guarantor.

(d) Agent shall have no obligation whatsoever to any Lender or any other Person to investigate, confirm or assure that the Collateral exists or is owned by Borrower or Guarantor or is cared for, protected or insured or has been encumbered, or that any particular items of Collateral meet the eligibility criteria applicable in respect of the Loans or Letter of Credit Accommodations hereunder, or whether any particular reserves are appropriate, or that the liens and security interests granted to Agent pursuant hereto or any of the Financing Agreements or otherwise have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent in this Agreement or in any of the other Financing Agreements, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, subject to the other terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its discretion, given Agent's own interest in the Collateral as a Lender and that Agent shall have no duty or liability whatsoever to any other Lender.

(e) Without limiting the generality of the foregoing, each Lender agrees that it is and will be bound (as a Lender) by the terms and conditions of the Real Estate Intercreditor Agreement, whether or not such Lender executes the Real Estate Intercreditor Agreement.

12.12 Agency for Perfection. Each Lender hereby appoints Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral of Agent in assets which, in accordance with Article 9 of the UCC can be perfected only by possession (or where the security interest of a secured party with possession has priority over the security interest of another secured party) and Agent and each Lender hereby acknowledges that it holds possession of any such Collateral for the benefit of Agent as secured party. Should any Lender obtain possession of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver such Collateral to Agent or in accordance with Agent's instructions.

12.13 Successor Agent. Agent may resign as Agent upon thirty (30) days' notice to Lenders and Borrower. If Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for Lenders with consent of Borrower which shall not be unreasonably withheld, delayed or conditioned. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with Lenders and Borrower, a successor agent from among Lenders other than Sponsor Affiliated Lenders. Upon the acceptance by the Lender so selected of its appointment as successor agent hereunder, such successor agent shall succeed to all of the rights, powers and duties of the retiring Agent and the term "Agent" as used herein and in the other Financing Agreements shall mean such successor agent and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 12 shall inure to its benefit as to any actions taken or omitted by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days after the date of a retiring Agent's notice of resignation, the retiring Agent's resignation shall nonetheless thereupon become effective and Lenders shall perform all

of the duties of Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

### **SECTION 13. TERM OF AGREEMENT; MISCELLANEOUS**

#### **13.1 Term.**

(a) This Agreement and the other Financing Agreements shall become effective as of the date set forth on the first page hereof and shall continue in full force and effect for a term ending on August 1, 2006 (the "Renewal Date"), and from year to year thereafter until the date that is five (5) years from the date hereof ("Final Maturity Date"), unless sooner terminated pursuant to the terms hereof. The Arrangers may jointly, but not severally, terminate this Agreement and the other Financing Agreements, at their option, effective on the Renewal Date or on the anniversary of the Renewal Date (prior to the Final Maturity Date) in any year by giving Borrower at least sixty (60) days prior written notice; provided, that, this Agreement and all other Financing Agreements must be terminated simultaneously. In addition, Borrower may terminate this Agreement at any time upon ten (10) days prior written notice to Agent which notice shall be irrevocable and Agent may, at its option, and shall at the direction of Required Lenders, terminate this Agreement at any time on or after an Event of Default has occurred and so long as same is continuing. This Agreement and all other Financings must be terminated simultaneously. Upon the Final Maturity Date or any other effective date of termination of the Financing Agreements, Borrower shall pay to Agent all outstanding and unpaid Obligations (other than unasserted contingent indemnification Obligations) and shall furnish cash collateral to Agent (or at Agent's option, a letter of credit issued for the account of Borrower and at Borrower's expense, in form and substance satisfactory to Agent, by an issuer acceptable to Agent and payable to Agent as beneficiary) in such amounts as Agent determines are reasonably necessary to secure Agent and Lenders from loss, cost, damage or expense, including attorneys' fees and expenses, in connection with any contingent Obligations, including issued and outstanding Letter of Credit Accommodations and checks or other payments provisionally credited to the Obligations and/or as to which Agent or any Lender has not yet received final and indefeasible payment and any continuing obligations of Agent or any Lender pursuant to any Deposit Account Control Agreement and for any of the Obligations arising under or in connection with any Bank Products in such amounts as the party providing such Bank Products may require (unless such Obligations arising under or in connection with any Bank Products are paid in full in cash and terminated in a manner satisfactory to such other party). The amount of such cash collateral (or letter of credit, as Agent may determine) as to any Letter of Credit Accommodations shall be in the amount equal to one hundred five (105%) percent of the amount of the Letter of Credit Accommodations plus the amount of any fees and expenses payable in connection therewith through the end of the latest expiration date of such Letter of Credit Accommodations. Such payments in respect of the Obligations and cash collateral shall be remitted by wire transfer in Federal funds to the Agent Payment Account or such other bank account of Agent, as Agent may, in its discretion, designate in writing to Borrower for such purpose. Interest shall be due until and including the next Business Day, if the amounts so paid by Borrower to the Agent Payment Account or other bank account designated by Agent are received in such bank account later than 12:00 noon, New York time.

(b) No termination of this Agreement or the other Financing Agreements shall relieve or discharge Borrower or Guarantor of its respective duties, obligations and covenants under this Agreement or the other Financing Agreements until all Obligations have been fully and finally discharged and paid, and Agent's continuing security interest in the Collateral and the rights and remedies of Agent and Lenders hereunder, under the other Financing Agreements and applicable law, shall remain in effect until all such Obligations have been fully and finally discharged and paid. Accordingly, each of Borrower and Guarantor waives any rights it may have under the UCC to demand the filing of termination statements with respect to the Collateral and Agent shall not be required to send such termination statements to Borrower or Guarantor, or to file them with any filing office, unless and until this Agreement shall have been terminated in accordance with its terms and all Obligations paid and satisfied in full in immediately available funds.

### 13.2 Interpretative Provisions.

(a) All terms used herein which are defined in Article 1, Article 8 or Article 9 of the UCC shall have the meanings given therein unless otherwise defined in this Agreement.

(b) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(c) All references to Borrower, Guarantor, Agent and Lenders pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns.

(d) The words "hereof", "herein", "hereunder", "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(e) The word "including" when used in this Agreement shall mean "including, without limitation" and the word "will" when used in this Agreement shall be construed to have the same meaning and effect as the word "shall".

(f) An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 11.3 or is cured in a manner satisfactory to Agent, if such Event of Default is capable of being cured as determined by Agent.

(g) All references to the terms "good faith" "or "reasonable" or "reasonably" used herein or in the other Financing Agreements when applicable to Agent or any Lender shall mean, notwithstanding anything to the contrary contained herein or in the UCC, honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing based on how an asset-based lender with similar rights providing a credit facility of the type set forth herein would act in similar circumstances at the time with the information then available to it. Borrower and Guarantor shall have the burden of proving any lack of good faith the part of Agent or any Lender alleged by Borrower or Guarantor at any time.

(h) Any accounting term used in this Agreement shall have, unless otherwise specifically provided herein, the meaning customarily given in accordance with GAAP, and all financial computations hereunder shall be computed unless otherwise specifically provided herein, in accordance with GAAP as consistently applied and using the same method for inventory valuation as used in the preparation of the financial statements of Borrower most recently received by Agent prior to the date hereof. Notwithstanding anything to the contrary contained in GAAP or any interpretations or other pronouncements by the Financial Accounting Standards Board or otherwise, the term “unqualified opinion” as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is unqualified and also does not include any explanation, supplemental comment or other comment concerning the ability of the applicable person to continue as a going concern or the scope of the audit.

(i) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”, the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including”.

(j) Unless otherwise expressly provided herein, (i) references herein to any agreement, document or instrument shall be deemed to include all subsequent amendments, modifications, supplements, extensions, renewals, restatements or replacements with respect thereto, but only to the extent the same are not prohibited by the terms hereof or of any other Financing Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, recodifying, supplementing or interpreting the statute or regulation.

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

(l) This Agreement and other Financing Agreements may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(m) This Agreement and the other Financing Agreements are the result of negotiations among and have been reviewed by counsel to Agent and the other parties, and are the products of all parties. Accordingly, this Agreement and the other Financing Agreements shall not be construed against Agent or Lenders merely because of Agent's or any Lender's involvement in their preparation.

13.3 Notices. All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next Business Day, one (1) Business Day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

If to Borrower or Guarantor:

Mervyn's LLC  
22301 Foothill Boulevard  
Hayward, California 94541  
Attention: Chief Executive Officer  
Telephone No.: 510-727-5123  
Telecopy No.: 510-727-5125

with a copy to:

SCSF Mervyn's (US), LLC  
c/o Sun Capital Partners, Inc.  
5200 Town Center Circle, Suite 470  
Boca Raton, Florida 33486  
Attention: Marc J. Leder, Rodger R.  
Krouse and C. Deryl Couch, Esq.  
Telephone No.: 561-394-0550  
Telecopy No.: 561-394-0540

with a copy to:

Cerberus Capital Management, L.P.  
299 Park Avenue, 22<sup>nd</sup> Floor  
New York, New York 10171  
Attention: Mr. Lenard Tessler  
Telephone No.: 212-909-1464  
Telecopy No.: 212-755-3009

Lubert-Adler Real Estate Fund IV, L.P.  
1811 Chestnut Street, 8<sup>th</sup> Floor  
Philadelphia, Pennsylvania 19103  
Attention: Dean Adler, Esq.  
Telephone No.: 215-972-2203  
Telecopy No.: 215-972-2246

with a copy to:

Kirkland & Ellis LLP  
Aon Center  
200 East Randolph Drive  
Chicago, Illinois 60601  
Attention: Douglas C. Gessner, Esq.  
Telephone No.: 312-861-2000  
Telecopy No.: 312-861-2200

If to Agent:

Congress Financial Corporation  
(Western)  
251 South Lake Avenue, Suite 900  
Pasadena, California 91101  
Attention: Portfolio Manager  
Telephone No.: 626-304-4900  
Telecopy No.: 626-304-4949

13.4 Partial Invalidation. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

13.5 Confidentiality.

(a) Agent and each Lender shall use all reasonable efforts to keep confidential, in accordance with its customary procedures for handling confidential information and safe and sound lending practices, any non-public information supplied to it by Borrower pursuant to this Agreement, provided, that, nothing contained herein shall limit the disclosure of any such information: (i) to the extent required by statute, rule, regulation, subpoena or court order, (ii) to bank examiners and other regulators, auditors and/or accountants, in connection with any litigation to which Agent or such Lender is a party, (iii) to any Lender or Participant (or prospective Lender or Participant) or to any Affiliate of any Lender so long as such Lender or Participant (or prospective Lender or Participant) or Affiliate shall have been instructed to treat such information as confidential in accordance with this Section 13.5, or (iv) to counsel for Agent or any Lender or Participant (or prospective Lender or Participant) as long as such prospective Lender or Participant agrees to be bound by the terms of this Section 13.5).

(b) In the event that Agent or any Lender receives a request or demand to disclose any confidential information pursuant to any subpoena or court order, Agent or such Lender, as the case may be, agrees (i) to the extent permitted by applicable law, statute or regulation or if permitted by applicable law, to the extent Agent or such Lender determines in good faith that it will not create any risk of liability to Agent or such Lender, Agent or such Lender will promptly notify Borrower of such request so that Borrower may seek a protective order or other appropriate relief or remedy and (ii) if disclosure of such information is required, disclose such information and, subject to reimbursement by Borrower of Agent's or such Lender's reasonable expenses, cooperate with Borrower in the reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the disclosed information which Borrower so designates, to the extent permitted by applicable law or if permitted by applicable law, to the extent Agent or such Lender determines in good faith that it will not create any risk of liability to Agent or such Lender.

(c) In no event shall this Section 13.5 or any other provision of this Agreement, any of the other Financing Agreements or applicable law be deemed: (i) to apply to or restrict disclosure of information that has been or is made public by Borrower, Guarantor or any third party or otherwise becomes generally available to the public other than as a result of a disclosure in violation hereof, (ii) to apply to or restrict disclosure of information that was or becomes available to Agent or any Lender (or any Affiliate of any Lender) on a non-confidential basis from a person other than Borrower or Guarantor, (iii) to require Agent or any Lender to return any materials furnished by Borrower or Guarantor to Agent or a Lender or prevent Agent or a Lender from responding to routine informational requests in accordance with the Code of Ethics for the Exchange of Credit Information promulgated by The Robert Morris Associates or other



applicable industry standards relating to the exchange of credit information. The obligations of Agent and Lenders under this Section 13.5 shall supersede and replace the obligations of Agent and Lenders under any confidentiality letter signed prior to the date hereof or any other arrangements concerning the confidentiality of information provided by Borrower or Guarantor to Agent or any Lender.

(d) Borrower and Guarantor each acknowledge and agree that Agent and Lenders may share with their respective affiliates any information relating to the Credit Facility and Borrower and Guarantor. Borrower and Guarantor each further acknowledge and agree to the disclosure by Agent and Lenders and their respective affiliates of information relating to the Credit Facility to Gold Sheets and other similar bank trade publications, with such information to consist of deal terms and other information customarily found in such publications. In addition, Borrower and Guarantor hereby authorizes Agent and Lenders and their respective affiliates to use the name, logos and other insignia of Borrower and Guarantor and the amount of the Credit Facility in any “tombstone” or comparable advertising, on its website or in other marketing materials of the Agent and Lenders and their respective affiliates.

13.6 Successors. This Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon and inure to the benefit of and be enforceable by Agent, Lenders, Borrower, Guarantor and their respective successors and assigns, except that Borrower may not assign its rights under this Agreement, the other Financing Agreements and any other document referred to herein or therein without the prior written consent of Agent and Lenders. Any such purported assignment without such express prior written consent shall be void. No Lender may assign its rights and obligations under this Agreement without the prior written consent of Agent, except as provided in Section 13.7 below. The terms and provisions of this Agreement and the other Financing Agreements are for the purpose of defining the relative rights and obligations of Borrower, Guarantor, Agent and Lenders with respect to the transactions contemplated hereby and there shall be no third party beneficiaries of any of the terms and provisions of this Agreement or any of the other Financing Agreements.

### 13.7 Assignments; Participations.

(a) Each Lender may, with the prior written consent of Agent, assign all or, if less than all, a portion equal to at least \$10,000,000 in the aggregate for the assigning Lender, of such rights and obligations under this Agreement to one or more Eligible Transferees (but not including for this purpose any assignments in the form of a participation), each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment and Acceptance; provided, that, (i) such transfer or assignment will not be effective until recorded by Agent on the Register, (ii) Agent shall have received for its sole account payment of a processing fee from the assigning Lender or the assignee in the amount of \$5,000 and (iii) so long as no Default or Event of Default exists or has occurred and is continuing, any such transfer and assignment with respect to the rights and obligations under this Loan and Security Agreement will not be effective without the consent of Borrower (which consent shall not be unreasonably withheld) in the event that the Eligible Transferee with respect thereto is not entitled to the

benefit of an exemption from United States backup withholding tax. Upon receipt by Agent of any notice from a Lender of the intention of such Lender to assign all or a portion of its rights and obligations under this Agreement to a specified Eligible Transferee, Agent shall notify the Borrower of such Eligible Transferee prior to Agent giving its written consent to an assignment to such Eligible Transferee.

(b) Agent shall maintain a register of the names and addresses of Lenders, their Commitments and the principal amount of their Loans (the "Register"). Agent shall also maintain a copy of each Assignment and Acceptance delivered to and accepted by it and shall modify the Register to give effect to each Assignment and Acceptance. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and Borrower, Obligors, Agent and Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(c) Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, (i) the assignee thereunder shall be a party hereto and to the other Financing Agreements and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations (including, without limitation, the obligation to participate in Letter of Credit Accommodations) of a Lender hereunder and thereunder and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement.

(d) By execution and delivery of an Assignment and Acceptance, the assignor and assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any of the other Financing Agreements or the execution, legality, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Financing Agreements furnished pursuant hereto, (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower, Obligor or any of their Subsidiaries or the performance or observance by Borrower or Obligor of any of the Obligations; (iii) such assignee confirms that it has received a copy of this Agreement and the other Financing Agreements, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such assignee will, independently and without reliance upon the assigning Lender, Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Financing Agreements, (v) such assignee appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Financing Agreements as are delegated to Agent by the terms hereof and thereof, together with such powers as are

reasonably incidental thereto, and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Financing Agreements are required to be performed by it as a Lender. Agent and Lenders may furnish any information concerning Borrower or Obligor in the possession of Agent or any Lender from time to time to assignees and Participants.

(e) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Financing Agreements (including, without limitation, all or a portion of its Commitments and the Loans owing to it and its participation in the Letter of Credit Accommodations, without the consent of Agent or the other Lenders); provided, that, (i) such Lender's obligations under this Agreement (including, without limitation, its Commitment hereunder) and the other Financing Agreements shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and Borrower, Guarantor, the other Lenders and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Financing Agreements, (iii) the Participant shall not have any rights under this Agreement or any of the other Financing Agreements (the Participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the Participant relating thereto) and all amounts payable by Borrower or Obligor hereunder shall be determined as if such Lender had not sold such participation, and (iv) the agreements between such Lender and such Participant if such Participant is a Sponsor Affiliated Lender, shall not grant such Participant the right to consent to or vote on any matters which pursuant to Section 11.3 hereof, a Sponsor Affiliated Lender is not permitted to consent to or vote on.

(f) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans hereunder to a Federal Reserve Bank in support of borrowings made by such Lenders from such Federal Reserve Bank; provided, that, no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee for such Lender as a party hereto.

(g) Borrower and Guarantor shall assist Agent or any Lender permitted to sell assignments or participations under this Section 13.7 in whatever manner reasonably necessary in order to enable or effect any such assignment or participation, including (but not limited to) the execution and delivery of any and all agreements, notes and other documents and instruments as shall be requested and the delivery of informational materials, appraisals or other documents for, and the participation of relevant management in meetings and conference calls with, potential Lenders or Participants. Borrower shall certify the correctness, completeness and accuracy, in all material respects, of all descriptions of Borrower and Guarantor and their affairs provided, prepared or reviewed by Borrower or Guarantor that are contained in any selling materials and all other information provided by it and included in such materials.

13.8 Entire Agreement. This Agreement, the other Financing Agreements, any supplements hereto or thereto, and any instruments or documents delivered or to be delivered in connection herewith or therewith represents the entire agreement and understanding concerning the subject matter hereof and thereof between the parties hereto, and supersede all other prior

agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written. In the event of any inconsistency between the terms of this Agreement and any schedule or exhibit hereto, the terms of this Agreement shall govern.

13.9 USA Patriot Act. Each Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the requirements of such Act and any other applicable law.

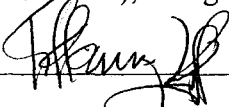
13.10 Counterparts, Etc. This Agreement or any of the other Financing Agreements may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement or any of the other Financing Agreements by telefacsimile shall have the same force and effect as the delivery of an original executed counterpart of this Agreement or any of such other Financing Agreements. Any party delivering an executed counterpart of any such agreement by telefacsimile shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Agent, Lenders, Borrower and Guarantor have caused these presents to be duly executed as of the day and year first above written.

AGENT

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent

By:   
Title: **Sr. Vice President**

BORROWER

MERVYN'S LLC

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

GUARANTOR

MERVYN'S BRANDS, LLC

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

LENDERS

CONGRESS FINANCIAL CORPORATION  
(WESTERN)

By:   
Title: **Sr. Vice President**

Commitment: \$225,000,000

GOLDMAN SACHS CREDIT PARTNERS  
L.P.

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

Commitment: \$100,000,000

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, Agent, Lenders, Borrower and Guarantor have caused these presents to be duly executed as of the day and year first above written.

AGENT

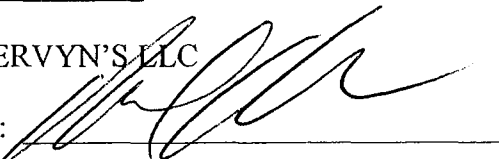
CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent

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

Title: \_\_\_\_\_

BORROWER

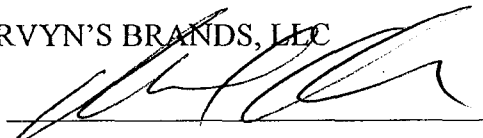
MERVYN'S LLC

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

Title: **Vice-President** \_\_\_\_\_

GUARANTOR

MERVYN'S BRANDS, LLC

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

Title: **Vice-President** \_\_\_\_\_

LENDERS

CONGRESS FINANCIAL CORPORATION  
(WESTERN)

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

Title: \_\_\_\_\_

Commitment: \$225,000,000

GOLDMAN SACHS CREDIT PARTNERS  
L.P.

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

Title: \_\_\_\_\_

Commitment: \$100,000,000

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, Agent, Lenders, Borrower and Guarantor have caused these presents to be duly executed as of the day and year first above written.

AGENT

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent

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

Title: \_\_\_\_\_

BORROWER

MERVYN'S LLC

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

Title: \_\_\_\_\_

GUARANTOR

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

LENDERS


CONGRESS FINANCIAL CORPORATION  
(WESTERN)

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

Title: \_\_\_\_\_

Commitment: \$225,000,000

GOLDMAN SACHS CREDIT PARTNERS  
L.P.

By:  \_\_\_\_\_  
ROBERT WAGNER

Title: ~~Authorized Signatory~~ \_\_\_\_\_

Commitment: \$100,000,000

[SIGNATURES CONTINUE ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

GENERAL ELECTRIC CAPITAL  
CORPORATION

By: *TAGhi*

Title: *Duly Authorized Signer*

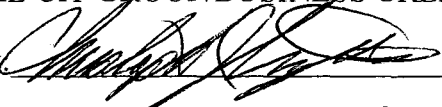
Commitment: \$150,000,000

[SIGNATURES CONTINUE ON NEXT PAGE]



[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

THE CIT GROUP/BUSINESS CREDIT, INC.

By 

**Christopher J. Esposito**  
**Vice President**

Title: \_\_\_\_\_

Commitment: \$75,000,000

EXHIBIT A  
TO  
LOAN AND SECURITY AGREEMENT

ASSIGNMENT AND ACCEPTANCE AGREEMENT

This ASSIGNMENT AND ACCEPTANCE AGREEMENT (this "Assignment and Acceptance") dated as of \_\_\_\_\_, 200\_ is made between \_\_\_\_\_ (the "Assignor") and \_\_\_\_\_ (the "Assignee").

W I T N E S S E T H:

WHEREAS, Congress Financial Corporation (Western), in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lenders (in such capacity, "Agent"), and the financial institutions which are parties to the Loan Agreement as lenders (individually, each a "Lender" and collectively, "Lenders") have entered or are about to enter into financing arrangements pursuant to which Agent and Lenders may make loans and advances and provide other financial accommodations to Mervyn's LLC, ("Borrower") as set forth in the Loan and Security Agreement, dated September 2, 2004, by and among Borrower, certain of its affiliates, Agent and Lenders (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements");

WHEREAS, as provided under the Loan Agreement, Assignor committed to making Loans (the "Committed Loans") to Borrower in an aggregate amount not to exceed \$\_\_\_\_\_ (the "Commitment");

WHEREAS, Assignor wishes to assign to Assignee [part of the] [all] rights and obligations of Assignor under the Loan Agreement in respect of its Commitment in an amount equal to \$\_\_\_\_\_ (the "Assigned Commitment Amount") on the terms and subject to the conditions set forth herein and Assignee wishes to accept assignment of such rights and to assume such obligations from Assignor on such terms and subject to such conditions;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

1. Assignment and Acceptance.

(a) Subject to the terms and conditions of this Assignment and Acceptance, Assignor hereby sells, transfers and assigns to Assignee, and Assignee hereby purchases, assumes and undertakes from Assignor, without recourse and without representation or warranty (except as

provided in this Assignment and Acceptance) an interest in (i) the Commitment and each of the Committed Loans of Assignor and (ii) all related rights, benefits, obligations, liabilities and indemnities of the Assignor under and in connection with the Loan Agreement and the other Financing Agreements, so that after giving effect thereto, the Commitment of Assignee shall be as set forth below and the Pro Rata Share of Assignee shall be \_\_\_\_\_ (\_\_\_\_%) percent.

(b) With effect on and after the Effective Date (as defined in Section 5 hereof), Assignee shall be a party to the Loan Agreement and succeed to all of the rights and be obligated to perform all of the obligations of a Lender under the Loan Agreement, including the requirements concerning confidentiality and the payment of indemnification, with a Commitment in an amount equal to the Assigned Commitment Amount. Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of the Loan Agreement are required to be performed by it as a Lender. It is the intent of the parties hereto that the Commitment of Assignor shall, as of the Effective Date, be reduced by an amount equal to the Assigned Commitment Amount and Assignor shall relinquish its rights and be released from its obligations under the Loan Agreement to the extent such obligations have been assumed by Assignee; provided, that, Assignor shall not relinquish its rights under Sections 2.2, 6.4, 6.8, 11.5 and 12.5 of the Loan Agreement to the extent such rights relate to the time prior to the Effective Date.

(c) After giving effect to the assignment and assumption set forth herein, on the Effective Date Assignee's Commitment will be \$ \_\_\_\_\_.

(d) After giving effect to the assignment and assumption set forth herein, on the Effective Date Assignor's Commitment will be \$ \_\_\_\_\_ (as such amount may be further reduced by any other assignments by Assignor on or after the date hereof).

## 2. Payments.

(a) As consideration for the sale, assignment and transfer contemplated in Section 1 hereof, Assignee shall pay to Assignor on the Effective Date in immediately available funds an amount equal to \$ \_\_\_\_\_, representing Assignee's Pro Rata Share of the principal amount of all Committed Loans.

(b) Assignee shall pay to Agent the processing fee in the amount specified in Section 13.7(a) of the Loan Agreement.

3. Reallocation of Payments. Any interest, fees and other payments accrued to the Effective Date with respect to the Commitment, Committed Loans and outstanding Letter of Credit Accommodations shall be for the account of Assignor. Any interest, fees and other payments accrued on and after the Effective Date with respect to the Assigned Commitment Amount shall be for the account of Assignee. Each of Assignor and Assignee agrees that it will hold in trust for the other party any interest, fees and other amounts which it may receive to which the other party is entitled pursuant to the preceding sentence and pay to the other party any such amounts which it may receive promptly upon receipt.

4. Independent Credit Decision. Assignee acknowledges that it has received a copy of the Loan Agreement and the Schedules and Exhibits thereto, together with copies of the most recent financial statements of \_\_\_\_\_ and its Subsidiaries, and such other documents and information as it has deemed appropriate to make its own credit and legal analysis and decision to enter into this Assignment and Acceptance and agrees that it will, independently and without reliance upon Assignor, Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit and legal decisions in taking or not taking action under the Loan Agreement.

5. Effective Date; Notices.

(a) As between Assignor and Assignee, the effective date for this Assignment and Acceptance shall be \_\_\_\_\_, 200\_ (the "Effective Date"); provided, that, the following conditions precedent have been satisfied on or before the Effective Date:

(i) this Assignment and Acceptance shall be executed and delivered by Assignor and Assignee;

(ii) the consent of Agent as required for an effective assignment of the Assigned Commitment Amount by Assignor to Assignee shall have been duly obtained and shall be in full force and effect as of the Effective Date;

(iii) written notice of such assignment, together with payment instructions, addresses and related information with respect to Assignee, shall have been given to Borrower and Agent;

(iv) Assignee shall pay to Assignor all amounts due to Assignor under this Assignment and Acceptance; and

(v) the processing fee referred to in Section 2(b) hereof shall have been paid to Agent.

(b) Promptly following the execution of this Assignment and Acceptance, Assignor shall deliver to Borrower and Agent for acknowledgment by Agent, a Notice of Assignment in the form attached hereto as Schedule 1.

6. Agent. [INCLUDE ONLY IF ASSIGNOR IS AN AGENT]

(a) Assignee hereby appoints and authorizes Assignor in its capacity as Agent to take such action as agent on its behalf to exercise such powers under the Loan Agreement as are delegated to Agent by Lenders pursuant to the terms of the Loan Agreement.

(b) Assignee shall assume no duties or obligations held by Assignor in its capacity as Agent under the Loan Agreement.]

7. Withholding Tax. Assignee (a) represents and warrants to Assignor, Agent and Borrower that under applicable law and treaties no tax will be required to be withheld by Assignee, Agent or Borrower with respect to any payments to be made to Assignee hereunder or under any of the Financing Agreements, (b) agrees to furnish (if it is organized under the laws of any jurisdiction other than the United States or any State thereof) to Agent and Borrower are to the time that Agent or Borrower is required to make any payment of principal, interest or fees hereunder, duplicate executed originals of either U.S. Internal Revenue Service Form 4224 or U.S. Internal Revenue Service Form 1001 (wherein Assignee claims entitlement to the benefits of a tax treaty that provides for a complete exemption from U.S. federal income withholding tax on all payments hereunder) and agrees to provide new such Forms 4224 or 1001 upon the expiration of any previously delivered form or comparable statements in accordance with applicable U.S. law and regulations and amendments thereto, duly executed and completed by Assignee, and (c) agrees to comply with all applicable U.S. laws and regulations with regard to such withholding tax exemption.

8. Representations and Warranties.

(a) Assignor represents and warrants that (i) it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any security interest, lien, encumbrance or other adverse claim, (ii) it is duly organized and existing and it has the full power and authority to take, and has taken, all action necessary to execute and deliver this Assignment and Acceptance and any other documents required or permitted to be executed or delivered by it in connection with this Assignment and Acceptance and to fulfill its obligations hereunder, (iii) no notices to, or consents, authorizations or approvals of, any Person are required (other than any already given or obtained) for its due execution, delivery and performance of this Assignment and Acceptance, and apart from any agreements or undertakings or filings required by the Loan Agreement, no further action by, or notice to, or filing with, any Person is required of it for such execution, delivery or performance, and (iv) this Assignment and Acceptance has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of Assignor, enforceable against Assignor in accordance with the terms hereof, subject, as to enforcement, to bankruptcy, insolvency, moratorium, reorganization and other laws of general application relating to or affecting creditors' rights and to general equitable principles.

(b) Assignor makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Agreement or any of the other Financing Agreements or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Agreement or any other instrument or document furnished pursuant thereto. Assignor makes no representation or warranty in connection with, and assumes no responsibility with respect to, the solvency, financial condition or statements of Borrower, Guarantor or any of their respective Affiliates, or the performance or observance by Borrower, Guarantor or any other Person, of any of its respective obligations under the Loan Agreement or any other instrument or document furnished in connection therewith.

(c) Assignee represents and warrants that (i) it is duly organized and existing and it has full power and authority to take, and has taken, all action necessary to execute and deliver this Assignment and Acceptance and any other documents required or permitted to be executed or delivered by it in connection with this Assignment and Acceptance, and to fulfill its obligations hereunder, (ii) no notices to, or consents, authorizations or approvals of, any Person are required (other than any already given or obtained) for its due execution, delivery and performance of this Assignment and Acceptance, and apart from any agreements or undertakings or filings required by the Loan Agreement, no further action by, or notice to, or filing with, any Person is required of it for such execution, delivery or performance; and (iii) this Assignment and Acceptance has been duly executed and delivered by it and constitutes the legal, valid and binding obligation of Assignee, enforceable against Assignee in accordance with the terms hereof, subject, as to enforcement, to bankruptcy, insolvency, moratorium, reorganization and other laws of general application relating to or affecting creditors' rights to general equitable principles.

9. Further Assurances. Assignor and Assignee each hereby agree to execute and deliver such other instruments, and take such other action, as either party may reasonably request in connection with the transactions contemplated by this Assignment and Acceptance, including the delivery of any notices or other documents or instruments to Borrower or Agent, which may be required in connection with the assignment and assumption contemplated hereby.

#### 10. Miscellaneous

(a) Any amendment or waiver of any provision of this Assignment and Acceptance shall be in writing and signed by the parties hereto. No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof and any waiver of any breach of the provisions of this Assignment and Acceptance shall be without prejudice to any rights with respect to any other for further breach thereof.

(b) All payments made hereunder shall be made without any set-off or counterclaim.

(c) Assignor and Assignee shall each pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Assignment and Acceptance.

(d) This Assignment and Acceptance may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

(e) THIS ASSIGNMENT AND ACCEPTANCE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK. Assignor and Assignee each irrevocably submits to the non-exclusive jurisdiction of any State or Federal court sitting in New York County, New York over any suit, action or proceeding arising out of or relating to this Assignment and Acceptance and irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State or

Federal court. Each party to this Assignment and Acceptance hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding.

(f) ASSIGNOR AND ASSIGNEE EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS ASSIGNMENT AND ACCEPTANCE, THE LOAN AGREEMENT, ANY OF THE OTHER FINANCING AGREEMENTS OR ANY RELATED DOCUMENTS AND AGREEMENTS OR ANY COURSE OF CONDUCT, COURSE OF DEALING, OR STATEMENTS (WHETHER ORAL OR WRITTEN).

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Acceptance to be executed and delivered by their duly authorized officers as of the date first above written.

[ASSIGNOR]

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

Title: \_\_\_\_\_

[ASSIGNEE]

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

Title: \_\_\_\_\_

SCHEDULE 1  
NOTICE OF ASSIGNMENT AND ACCEPTANCE

\_\_\_\_, 20\_\_

Congress Financial Corporation (Western)  
251 South Lake Avenue, Suite 900  
Pasadena, California 91101  
Attn.: \_\_\_\_\_

Re: Mervyn's LLC

Ladies and Gentlemen:

Congress Financial Corporation (Western), in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lenders (in such capacity, "Agent"), and the financial institutions which are parties to the Loan Agreement as lenders (individually, each a "Lender" and collectively, "Lenders") have entered or are about to enter into financing arrangements pursuant to which Agent and Lenders may make loans and advances and provide other financial accommodations to Mervyn's LLC ("Borrower") as set forth in the Loan and Security Agreement, dated September \_\_, 2004, by and among Borrower, Mervyn's Brands, LLC, Agent and Lenders (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements"). Capitalized terms not otherwise defined herein shall have the respective meanings ascribed thereto in the Loan Agreement.

1. We hereby give you notice of, and request your consent to, the assignment by \_\_\_\_\_ (the "Assignor") to \_\_\_\_\_ (the "Assignee") such that after giving effect to the assignment Assignee shall have an interest equal to \_\_\_\_\_ ( \_\_ %) percent of the total Commitments pursuant to the Assignment and Acceptance Agreement attached hereto (the "Assignment and Acceptance"). We understand that the Assignor's Commitment shall be reduced by \$ \_\_\_\_\_, as the same may be further reduced by other assignments on or after the date hereof.

2. Assignee agrees that, upon receiving the consent of Agent to such assignment, Assignee will be bound by the terms of the Loan Agreement as fully and to the same extent as if the Assignee were the Lender originally holding such interest under the Loan Agreement.



3. The following administrative details apply to Assignee:

(A) Notice address:

Assignee name: \_\_\_\_\_

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

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopier: \_\_\_\_\_

(B) Payment instructions:

Account No.: \_\_\_\_\_

At: \_\_\_\_\_

Reference: \_\_\_\_\_

Attention: \_\_\_\_\_

4. You are entitled to rely upon the representations, warranties and covenants of each of Assignor and Assignee contained in the Assignment and Acceptance.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Notice of Assignment and Acceptance to be executed by their respective duly authorized officials, officers or agents as of the date first above mentioned.

Very truly yours,

[NAME OF ASSIGNOR]

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

Title: \_\_\_\_\_

[NAME OF ASSIGNEE]

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

Title: \_\_\_\_\_

ACKNOWLEDGED AND ASSIGNMENT  
CONSENTED TO:

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent

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

Title: \_\_\_\_\_



EXHIBIT B  
TO  
LOAN AND SECURITY AGREEMENT

INFORMATION CERTIFICATE  
OF  
MERVYN'S LLC  
AND  
MERVYN'S BRANDS, LLC

September 2, 2004

Congress Financial Corporation (Western),  
as Agent  
251 South Lake Avenue  
Suite 900  
Pasadena, California 91101

In connection with certain financing provided or to be provided or arranged for Congress Financial Corporation (Western) ("Congress") and certain other lenders (together with Congress in its individual capacity, collectively, "Lenders") and for whom Congress will be acting as agent (in such capacity, "Agent"), each of the undersigned (individually, a "Company" and, collectively, the "Companies") jointly and severally represents and warrants to Agent and Lenders the following information about it, its organizational structure and other matters of interest to Agent and Lenders:

1. The full and exact name of each Company as set forth in its certificate of incorporation (or its certificate of formation or other organizational document filed with the applicable state governmental authority, as the case may be) is as follows:

Mervyn's LLC

Mervyn's Brands, LLC

2. Each Company uses and owns the following trade name(s) in the operation of its business (e.g. billing, advertising, etc.; note: do not include names which are product names only):

Mervyn's

3. Each Company is a registered organization of the following type (for example, corporation, limited partnership, limited liability company, etc.):

<u>Company</u>	<u>Date of Organization</u>	<u>Jurisdiction of Organization</u>
Mervyn's LLC, a limited liability company	Mervyn's, a California corporation, was incorporated on June 30, 1954 and was converted to a California limited liability company on August 27, 2004.	California

Mervyn's Brands, LLC, a limited liability company	Mervyn's Brands, Inc., a Minnesota corporation, was incorporated on July 28, 1999 and was converted to a Minnesota limited liability company on August 26, 2004.	Minnesota
---	--	-----------

4. The organizational identification number of each Company issued by its jurisdiction of organization is set forth below:

<u>Company</u>	<u>ID No.</u>
Mervyn's LLC	C0200424010002
Mervyn's Brands, LLC	1021705-2

5. The Federal Employer Identification Number of each Company is as follows:

<u>Company</u>	<u>FEIN</u>
Mervyn's LLC	94-1274456
Mervyn's Brands, LLC	41-1948850

6. Each Company is duly qualified and authorized to transact business and is in good standing (i) as a domestic organization in its state of organization and (ii) as a foreign organization in the following states:

Mervyn's LLC

Arizona	Michigan	Oregon
Arkansas	Minnesota	Rhode Island
Colorado	Missouri	Tennessee
Florida	Nevada	Texas
Idaho	New Mexico	Utah
Illinois	New York	Washington
Louisiana	Oklahoma	Wisconsin

Mervyn's Brands, LLC

None

7. Since the date of its organization, the name of each Company as set forth in its organizational documentation as filed of record with the applicable state authority has not changed except that,

in connection with the conversion of each Company from a corporation to a limited liability company, the name of each Company was changed as indicated below:

<u>Company</u>	<u>Prior Name</u>
Mervyn's LLC	Mervyn's
Mervyn's Brands, LLC	Mervyn's Brands, Inc.

8. Since the date of five (5) years prior to the date hereof, each Company has made or entered into the following mergers or acquisitions:

None

9. The chief executive office and mailing address of each Company is located at the address indicated for such Company on Schedule 8.2 hereto.
10. The books and records of each Company pertaining to accounts, contract rights, inventory, and other assets are located at the addresses indicated for such Company on Schedule 8.2 hereto.
11. Each Company has other places of business and/or maintains inventory or other assets only at the addresses (indicate whether locations are owned, leased or operated by third parties and if leased or operated by third parties, their name and address) indicated for such Company on Schedule 8.2 hereto.
12. The places of business or other locations of any assets used by each Company during the last four (4) months other than those listed above are as indicated for such Company on Schedule 8.2 hereto.
13. Each Company's assets are owned and held free and clear of liens, mortgages, pledges, security interests, encumbrances or charges except as set forth on Schedule 8.4 hereto.
14. There is no litigation pending by or against any Company, its subsidiaries and/or affiliates or any of its officers/principals involving monetary liability of or to any Person in an amount in excess of \$1,000,000, except as set forth on Schedule 8.6 hereto. There are no judgments against any Company, its subsidiaries and/or affiliates or any of its officers/principals, which if adversely determined could reasonably be expected to have a material adverse effect on the business, assets, condition (financial or otherwise) or results of operations or prospects of such Company, except as set forth on Schedule 8.6 hereto.
15. Except for noncompliance that would not be expected to have a material adverse effect on the business, assets, condition (financial or otherwise) or results of operations or prospects of the Company, each Company is in compliance with all environmental laws applicable to its business or operations except as set forth on Schedule 8.8 hereto.
16. No Company has any deposit accounts, investment accounts, securities account or similar accounts with any bank, savings and loan or other financial institution, except as set forth on Schedule 8.10 hereto for the purposes and of the types indicated therein.

17. No Company owns any material trademark registrations, trademark applications, patents, patent applications, or copyright registrations, or is a party to a material license for any patent, trademark, copyright or other intellectual property (other than non-negotiated licenses for intellectual property embedded in equipment or fixtures, non-exclusive implied licenses, and non-exclusive, non-negotiated licenses for the use of third-party intellectual property in connection with the sale of products or services), except as set forth on Schedule 8.11 hereto.
18. Each Company is affiliated with, or has ownership in, the corporations (including subsidiaries) and other organizations set forth on Schedule 8.12 hereto.
19. The names of the stockholders (or members or partners, including general partners and limited partners) of each Company and their holdings are as set forth on Schedule 8.12 hereto (if stock or other interests are widely held indicate only holders owning 10% or more of the voting stock or other interests).
20. No Company is a party to or bound by a collective bargaining or similar agreement with any union, labor organization or other bargaining agent except as set forth on Schedule 8.13 hereto (indicate date of agreement, parties to agreement, description of employees covered, and date of termination).
21. No Company is a party to or bound by any "material contract" except as set forth on Schedule 8.15 hereto. For this purpose a "material contract" means any contract or other agreement, written or oral, of such Company involving monetary liability of or to any Person in an amount in excess of \$5,000,000 in any fiscal year and any other contract or other agreement, whether written or oral, to which such Company is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a material adverse effect on the business, assets, condition (financial or otherwise) or results of operations or prospects of such Company or the validity or enforceability of any agreements of such Company with Agent and Lenders or any of the rights and remedies of Agent and Lenders under any of such agreements.
22. No Company has any "indebtedness" except as set forth on Schedule 9.9 hereto. For this purpose, the term "indebtedness" means any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Company or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (except any such balance that constitutes an account payable to a trade creditor (whether or not an affiliate) created, incurred, assumed or guaranteed by such Company in the ordinary course of business of such Company in connection with obtaining goods, materials or services that is not overdue by more than ninety (90) days, unless the trade payable is being contested in good faith); (c) all obligations as lessee under leases which have been, or should be, in accordance with generally accepted accounting principles recorded as capital leases; (d) any contractual obligation, contingent or otherwise, of such Company to pay or be liable for the payment of any indebtedness described in this definition of another person or entity, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; (e) all obligations with respect to redeemable stock and redemption or repurchase obligations under any capital stock or other equity securities issued by such Company; (f) all reimbursement obligations and other liabilities of such Company with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such

Company's account; (g) all indebtedness of such Company in respect of indebtedness of another person or entity for borrowed money or indebtedness of another person or entity otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Company, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Company, all as of such time; (h) all obligations, liabilities and indebtedness of such Company (marked to market) arising under swap agreements, cap agreements and collar agreements and other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency or commodity values; (i) all obligations owed by such Company under license agreements with respect to non-refundable, advance or minimum guarantee royalty payments; and (j) the principal and interest portions of all rental obligations of such Company under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with generally accepted accounting principles.

23. No Company has made any loans or advances or guaranteed or otherwise become liable for the obligations of any others, except as set forth on Schedule 9.10 hereto.

24. No Company has any chattel paper (whether tangible or electronic) or instruments as of the date hereof, except as follows:

None, other than as disclosed on Schedule 8.4.

25. No Company has any commercial tort claims, except as follows:

None.

26. There is no provision in the certificate of incorporation, certificate of formation, articles of organization, by-laws or operating agreement of any Company (as applicable) or the other organizational documents of such Company, or in the laws of the State of its organization, requiring any vote or consent of its shareholders, members or other holders of the equity interests therein to borrow or to authorize the mortgage or pledge of or creation of a security interest in any assets of such Company or any subsidiary. Such power is vested exclusively in its governing body or certain of its officers, including the officer that is the signatory hereto.

27. The officers of each Company (or managers in the case of Mervyn's Brands, LLC) and their respective titles are as follows:

Mervyn's LLC

Diane Neal	President and Chief Operating Officer
Clay Creasey	Senior Vice President, Finance and Chief Financial Officer
George Sherman	Senior Vice President, Stores
Shelley Rounds	Senior Vice President, Human Resources
Aline Tews	Vice President, MM-Jewelry and Accessories
Chris Daniel	Vice President, Trend Merchandising
Judy Howard	Vice President, MM-Kids
Tim Keegan	Vice President, Distribution Services
Lynn Schirmer	Vice President, Merchandise Planning
Janet Taake	Vice President, Women's Sportswear
Pete Daleiden	Vice President, MM-Home
Lee Walker deSarvide	Vice President, Marketing



David Kreilein	Vice President
Michael Kalb	Vice President
Jason Leach	Vice President and Assistant Secretary
Pennock J. Yeatman	Vice President and Secretary

<u>Mervyn's Brands, LLC</u>	
Diane Neal	President and Chief Manager
Clay Creasey	Chief Treasurer
David Kreilein	Vice President
Michael Kalb	Vice President
Jason Leach	Assistant Secretary
Pennock J. Yeatman	Vice President and Secretary

The following will have signatory powers as to all transactions of each Company with Agent and Lenders:

Michael Kalb, Vice President  
 Jason Leach, Vice President and Assistant Secretary

28. The members of the Board of Managers (or Board of Governors in the case of Mervyn's Brands, LLC) of each Company are:

<u>Mervyn's LLC</u>	<u>Mervyn's Brands, LLC</u>
None	Marc Leder
	Clarence Terry
	PJ Yeatman
	Gerry Ronon
	Raymond Wechsler
	Kurt Larsen

29. At the present time, there are no delinquent taxes due (including, but not limited to, all payroll taxes, personal property taxes, real estate taxes or income taxes) except as follows:

None.

30. Certified Public Accountants for each Company is the firm of:

Name: A nationally recognized firm to be determined post closing.

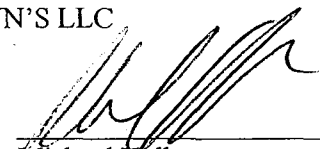
Were statements uncertified for any of the last 3 fiscal years? No.

Agent and Lenders shall be entitled to rely upon the foregoing in all respects and each of the undersigned is duly authorized to execute and deliver this Information Certificate on behalf of the Company for which he or she is signing.

\* \* \* \* \*

Very truly yours,

MERVYN'S LLC

By:   
Name: Michael Kalb  
Its: Vice President

MERVYN'S BRANDS LLC

By:   
Name: Michael Kalb  
Its: Vice President

SCHEDULE 8.2  
to  
INFORMATION CERTIFICATE

Locations

Mervyn's LLC

1. Chief Executive Office

22301 Foothill Boulevard  
Hayward, CA 95541

2. Location of Books and Records

22301 Foothill Boulevard  
Hayward, CA 95541

3. Locations of Inventory, Equipment and Other Assets

A. Locations Leased under the Unitary Leases

(i) The locations listed below are leased under the Unitary Lease dated September 2, 2004 by and among MDS Realty I, LLC, MDS Texas Realty I, LP, MDS Realty II, LLC, MDS Texas Realty II, LP, MDS Realty III, LLC, MDS Realty IV, LLC and Mervyn's LLC.

MDS Realty I, LLC, MDS Texas Realty I, LP,  
MDS Realty II, LLC, MDS Texas Realty II, LP,  
MDS Realty III, LLC and MDS Realty IV, LLC

c/o Klaff Realty, LP  
122 S. Michigan Avenue, Suite 1000  
Chicago, IL 60603  
Attention: Mr. Hersch Klaff

And c/o Lubert-Adler Management Company, LLC  
575 E. Swedesford Road, Suite 210  
Wayne, PA 19087  
Attention: Mr. Dean Adler

State	Store	Location	County	Address	City
CA	2	New Park	Alameda County	300 New Park Mall	Newark
CA	6	Pinole	Contra Costa County	1350 Fitzgerald Drive	Pinole
CA	11	Antioch	Contra Costa County	2602 Country E. Mall	Antioch
CA	34	Santa Rosa	Sonoma County	600 Santa Rosa Plaza	Santa Rosa
CA	36	Capitola	Santa Cruz County	1855 41st Ave.	Capitola
AZ	57	Westridge Mall	Maricopa County	7537 W. Thomas Rd.	Phoenix
CA	73	Fairfield	Solano County	1451 Gateway Blvd.	Fairfield
CA	77	Plaza Bonita	San Diego County	3010 Plaza Bonita Road	National City
CA	83	Monrovia	Los Angeles County	504 Huntington Drive	Monrovia
CA	85	Garden Grove	Orange County	13092 Harbor Blvd.	Garden Grove
CA	104	Glendale	Los Angeles County	101 South Brand Blvd.	Glendale
CO	105	Grand Junction	Mesa County	2424 Highway 6 & 50	Grand Junction

State	Store	Location	County	Address	City
TX	110	Irving	Dallas County	3751 Irving Mall	Irving
TX	111	Redbird	Dallas County	3663 W. Camp Wisdom Rd.	Dallas
TX	112	Garland	Dallas County	1201 W. Centerville Rd.	Garland
TX	113	Richardson	Dallas County	300 South Plano Rd.	Richardson
TX	114	Carrollton	Dallas County	2625 Old Denton Rd.	Carrollton
TX	115	Brodie Oaks	Travis County	4040 South Lamar	Austin
TX	116	Anderson Square	Travis County	8000 Research Drive	Austin
TX	117	Deerbrook	Harris County	20131 Highway 59	Humble
TX	121	Pasadena	Harris County	1004 E. Southmore Ave.	Pasadena
TX	122	Baybrook	Harris/Galveston County	1408 Baybrook Mall Drive	Friendswood
TX	127	Willowchase	Harris County	12990 Willowchase	Houston
TX	132	Plano/Collin Creek	Collin County	831 Central Expressway	Plano
TX	133	West Oaks	Harris County	15310 Westheimer Rd.	Houston
TX	134	Baytown	Harris County	8000 San Jacinto Mall	Baytown
CA	135	Redondo Beach	Los Angeles County	1799 Hawthorne Boulevard	Redondo Beach
TX	138	North Richland Hills	Tarrant County	7550 Grapevine Highway	N. Richland Hills
TX	139	Ridgmar	Tarrant County	1200 Green Oaks Road	Fort Worth
TX	140	Ingram Park	Bexar County	6157 North Loop 410 NW	San Antonio
NM	143	Santa Fe	Santa Fe County	4250 Cerrillos Road	Santa Fe
OR	144	Albany	Linn County	410 Airport Road SE	Albany
CA	145	Horton Plaza	San Diego County	120 Horton Plaza	San Diego
CA	147	Montebello	Los Angeles County	1800 Montebello Town Center	Montebello
TX	148	Denton	Denton County	2322 San Jacinto Blvd.	Denton
LA	151	Kenner	Jefferson Parish	1401 W. Esplanade Avenue	Kenner
CA	153	Canoga Park	Los Angeles County	6605 Fallbrook Avenue	Canoga Park
TX	156	Sherman	Grayson County	4800 Texoma Parkway	Sherman
TX	158	Longview	Gregg County	103 W. Loop 281	Longview
LA	160	Alexandria	Rapides Parish	3437 Masonic Drive	Alexandria
OK	161	Woodland Hills	Tulsa County	6612 South Memorial	Tulsa
OK	162	Promenade Center	Tulsa County	4103 South Yale	Tulsa
OK	163	Eastland Mall	Tulsa County	14002 East 21st Street	Tulsa
OR	169	Medford	Jackson County	1900 Nort Riverside Avenue	Medford
CO	170	Chapel Hills	El Paso County	1730 Jamboree Drive	Colorado Springs
LA	180	Gretna	Jefferson Parish	197 W. Bank Expressway	Gretna
OR	188	Salem	Marion County	450 Marion Street N.E.	Salem
TX	190	Mesquite	Dallas County	1649 Town East Boulevard	Mesquite
LA	192	Cortana	East Baton Rouge Parish	9389 Cortana Place	Baton Rouge
CA	193	Cerritos	Los Angeles County	200 Los Cerritos Mall	Cerritos
MI	197	Dearborn	Wayne County	16301 Ford Road	Dearborn
MI	199	Novi	Oakland County	26100 Imgersol Drive	Novi
MI	200	Pontiac	Oakland County	250 North Telegraph Road	Pontiac
MI	201	Shelby	Macomb County	13361 Hall Road	Utica
MI	202	Westland	Wayne County	35555 W. Warren Avenue	Westland
CO	205	Citadel	El Paso County	820 Citadel Drive East	Colorado Springs
CA	206	Eureka	Humboldt County	3300 Broadway	Eureka
TX	209	Arlington Park	Tarrant County	3881 South Cooper Street	Arlington
ID	220	Boise	Ada County	400 North Milwaukee Street	Boise
CO	221	Highlands Ranch	Douglas County	1980 E. County Line Road	Littleton

State	Store	Location	County	Address	City
MI	223	Portage	Kalamazoo County	6720 Ring Road	Portage
TX	225	Sunland	El Paso County	750 Sunland Park	El Paso
CA	226	El Cajon	San Diego County	565 Fletcher Parkway	El Cajon
CO	227	Fort Collins	Larimer County	235 E. Foothills Parkway	Fort Collins
MI	229	Madison Heights	Oakland County	32399 John R. Road	Madison Heights
AZ	234	Superstition Springs	Maricopa County	6555 East Southern Ave.	Mesa
WA	247	North Town Mall	Spokane County	4740 N Division Street	Spokane
CA	248	Westchester	Los Angeles County	8739 S Sepulveda Blvd.	Los Angeles
CA	249	North Fullerton	Orange County	200 Imperial Highway	Fullerton
CA	263	Palm Desert	Riverside County	70-2280 Highway 111	Palm Desert
TX	271	Harlingen	Cameron County	2020 South Expressway 83	Harlingen
TX	272	North Star Mall	Bexar County	500 North Star Mall	San Antonio
CA	276	Livermore	Alameda County	4500 Las Positas Rd.	Livermore
MI	279	Genesee Valley Mall	Genesee County	3341 South Linden Road	Flint
AZ	282	Arrowhead Mall	Maricopa County	7650 W. Arrowhead Towne Ctr.	Glendale
CA	283	Sonora	Tuolumne County	1151 Sanguinetti Rd.	Sonora
CO	286	Denver Central	Arapahoe/Denver County	4300 E Alameda	Denver
CA	288	Chula Vista	San Diego County	555 I Street	Chula Vista
CA	291	Foothill Ranch	Orange County	26732 Portola Parkway	Foothill Ranch
CA	292	Laguna Niguel	Orange County	27200 Alicia Parkway	Laguna Niguel
UT	294	Sandy	Salt Lake County	10450 S. State St.	Sandy
TX	295	Woodlands	Montgomery County	1201 Lake Woodlands Drive Suite 100	The Woodlands
TX	300	Lakeline - Austin	Williamson/Travis County	11230 Lakestop Blvd.	Cedar Park
NV	310	Henderson	Clark County	1316 W. Sunset	Henderson
TX	311	Sugarland	Fort Bend County	16523 Southwest Freeway	Sugarland
NM	313	Cottonwood Mall	Bernalillo County	10000 Coors Blvd. Bypass	Albuquerque
NV	319	Las Vegas Far SW	Clark County	4265 South Grand Canyon Dr	Las Vegas
CA	320	Folsom	Sacramento County	420 Blue Ravine Road	Folsom
CA	321	Slatten Ranch	Contra Costa County	5849 Lone Tree Way	Antioch
TX	986	Distribution Center	Collin County	1600 E. Plano Parkway	Plano
UT	993	Distribution Center	Salt Lake County	2455 South 3600 West	West Valley City

(ii) The locations listed below are leased under the Unitary Lease dated September 2, 2004 by and among MDS Realty II and Mervyn's LLC. The name and address of the Landlord is:

MDS Realty II, LLC

c/o Klaff Realty, LP  
122 S. Michigan Avenue, Suite 1000  
Chicago, IL 60603  
Attention: Mr. Hersch Klaff

and

c/o Lubert-Adler Management Company, LLC  
575 E. Swedesford Road, Suite 210  
Wayne, PA 19087  
Attention: Mr. Dean Adler

State	Store	Location	County	Address	City
OR	59	Gateway Center	Multnomah County	10010 NE Halsey	Portland
OR	60	Clackamas	Clackamas County	8500 S.E. Sunnyside Rd.	Clackamas
WA	76	Vancouver	Clark County	4921 Thurston Way	Vancouver
WA	164	Lynnwood	Snohomish County	3301 184 Street S.W.	Lynnwood
WA	208	Silverdale	Kitsap County	10315 Silverdale Way NW	Silverdale

State	Store	Location	County	Address	City
WA	215	Bellingham	Whatcom County	40 Bellis Fair Parkway	Bellingham
WA	218	Puyallup	Pierce County	3700 South Meridian	Puyallup
WA	260	Olympia	Thurston County	400 Capital Mall	Olympia
OR	293	Hillsboro - Tansabourne	Washington County	18085 NW Evergreen Pkwy	Hillsboro
WA	297	Redmond	King County	17601 NE Union Hill Road	Redmond

(iii) The locations listed below are leased under the Unitary Lease dated September 2, 2004 by and among MDS Realty II, LLC, MDS Texas Realty II, LP, MDS Realty IV, LLC and Mervyn's LLC. The name and address of the landlord

MDS Realty II, LLC,  
MDS Texas Realty II, LP and  
MDS Realty IV, LLC

c/o Klaff Realty, LP  
122 S. Michigan Avenue, Suite 1000  
Chicago, IL 60603  
Attention: Mr. Hersch Klaff

and  
c/o Lubert-Adler Management Company, LLC  
575 E. Swedesford Road, Suite 210  
Wayne, PA 19087  
Attention: Mr. Dean Adler

State	Store	Location	County	Address	City
CA	4	Princeton Plaza	Santa Clara County	1375 Blossom Hill RD.	San Jose
CA	8	Napa	Napa County	1116 First St.	Napa
CA	10	Petaluma	Sonoma County	389 So. McDowell St.	Petaluma
CA	15	Point West	Sacramento County	1896 Arden Way	Sacramento
CA	30	Cypress	Orange County	10201 Valley View	Cypress
CA	37	Bakersfield	Kern County	4450 California Avenue	Bakersfield
CA	40	Tustin	Orange County	18182 Irvine Boulevard	Tustin
CA	49	Marysville	Yuba County	202 "D" St.	Marysville
NV	51	W. Las Vegas	Clark County	4700 Meadows Lane	Las Vegas
CA	53	Lodi	San Joaquin County	530 W. Kettleman Lane	Lodi
AZ	55	Deer Valley	Maricopa County	4255 W. Thunderbird Rd.	Phoenix
CA	61	Sun Valley	Los Angeles County	8501 Laurel Canyon	Sun Valley
UT	67	Layton	Davis County	1200 N 400 West Hillfield Rd.	Layton
AZ	69	Village Square	Maricopa County	4643 East Cactus Rd.	Phoenix
CA	75	Redlands	San Bernardino County	1520 Industrial Park Blvd.	Redlands
CA	78	Rancho Cordova	Sacramento County	11051 Olson Drive	Rancho Cordova
TX	80	Yarborough	El Paso County	10501 Gateway West	El Paso
CA	81	Milpitas	Santa Clara County	749 East Calaveras Blvd.	Milpitas
CA	86	Oceanside	San Diego County	2335 Vista Way	Oceanside
CA	87	Ventura	Ventura County	4750 Telephone Road	Ventura
CA	89	South San Diego	San Diego County	575 Saturn Boulevard	San Diego
TX	91	Amarillo	Potter County	7701 Interstate 40	Amarillo
AZ	92	Yuma	Yuma County	475 West 32nd Street	Yuma
NV	100	Carson City	Carson City County	3871 S. Carson St.	Carson City
CA	101	Roseville	Placer County	1815 Douglas Blvd.	Roseville
AZ	103	Tucson Santa Cruz	Pima County	3660 South 16th Ave.	Tucson
CA	106	Fontana	San Bernardino County	17204 Slover Avenue	Fontana

CA	108	Riverside	Riverside County	3520 Tyler Avenue	Riverside
CA	124	Redding	Shasta County	1755 Hilltop Drive	Redding
CA	126	Alhambra	Los Angeles County	150 East Main St.	Alhambra
LA	152	North Shore	St. Tammany Parish	150 Airport Road	Slidell
AZ	154	Chandler	Maricopa County	2994 North Alma School Rd	Chandler
TX	157	Midland	Midland County	3001 W. Loop 250 North	Midland
LA	159	Monroe	Ouachita Parish	4700 Milhaven	Monroe
CA	166	Victorville	San Bernardino County	14370 Bear Valley Rd.	Victorville
CO	171	Westminster	Jefferson County	5483 West 88th Avenue	Westminster
CO	172	Aurora	Arapahoe County	1301 South Kenton Wwy	Aurora
CO	173	Northglenn	Adams County	10602 Melody DriveE	Northglenn
CO	174	Bowles Crossing	Jefferson County	8055 W. Bowles Avenue	Littleton
CA	183	Turlock	Stanislaus County	2480 Geer Road	Turlock
CA	184	Chino	San Bernardino County	5517 Philadelphia Street	Chino
TX	186	Waco	McLennan County	5050 W. Waco Drive	Waco
NV	189	Nellis	Clark County	1300 South Nellis Boulevard	Las Vegas
CA	195	Escondido	San Diego County	1200 Auto Park Way	Escondido
CO	207	Pueblo	Pueblo County	3323 Dillon Drive	Pueblo
CA	214	Moreno Valley	Riverside County	12625 Fredrick Street	Moreno Valley
CA	216	Clovis	Fresno County	1000 Shaw Avenue	Clovis
CA	217	East Hills Mall	Kern County	2800 Bernard Street	Bakersfield
CA	219	Santa Maria	Santa Barbara County	201 Town Center West	Santa Maria
CA	224	Morgan Hill	Santa Clara County	990 Cochran Road	Morgan Hill
CA	230	Rancho Cucamonga	San Bernardino County	10640 Foothill Blvd.	Rancho Cucamonga
CA	231	Ukiah	Mendocino County	437 N. Orchard Ave.	Ukiah
CA	232	Madera	Madera County	1467 Country Club Drive	Madera
CA	233	Ridgecrest	Kern County	700 N. China Lake Blvd.	Ridgecrest
CA	235	Temecula	Riverside County	26443 Ynez Road	Temecula
CA	250	Tulare	Tulare County	1675 Hillman Street	Tulare
CA	251	Porterville	Tulare County	1275 W Henderson Avenue E	Porterville
CA	262	Manteca	San Joaquin County	1055 S Main Street	Manteca
CA	264	Lompoc	Santa Barbara County	1600 North H Street	Lompoc
CA	265	Palmdale	Los Angeles County	1305 West Avenue P	Palmdale
CA	266	Anaheim Hills	Orange County	8100 E Santa Ana Canyon Rd.	Anaheim
CA	268	Vacaville	Solano County	2021 Harbison Blvd.	Vacaville
TX	270	McAllen	Hidalgo County	700 East Expressway 83	McAllen
CA	277	Hanford Mall	Kings County	1677 W Lacey Blvd.	Hanford
CA	278	Carmel Mountain Plaza	San Diego County	11940 Carmel Mountain Rd.	San Diego
CA	284	Elk Grove	Sacramento County	9175 East Stockton Blvd.	Elk Grove
CA	285	Arbor Faire	Fresno County	3380 W Shaw Avenue	Fresno
CA	289	Highland	San Bernardino County	4010 E. Highland Avenue	Highland
AZ	290	Silver Creek Plaza	Maricopa County	4710 E. Ray Rd.	Phoenix
NV	318	Reno (Rel M-0033)	Washoe County	6895 Sierra Center Parkway	Reno
CA	900	Headquarters	Alameda County	22301 Foothill Blvd.	Hayward
CA	996	Distribution Center	San Bernardino County	1015 Vintage Ave.	Ontario
CA	997	Distribution Center	Alameda County	48200 Fremont Boulevard	Fremont

B. Leased Locations other than those leased under the Unitary Lease

(i) Locations

State	Store	Location	County	Address	City
CA	M-0001	Southland Mall	Alameda County	545 Southland Drive	Hayward
CA	M-0003	East San Jose	Santa Clara County	2855 Story RD.	San Jose
CA	M-0005	Cupertino	Santa Clara County	20730 Stevens Creek Blvd.	Cupertino
CA	M-0007	Dublin	Alameda County	7117 Regional St.	Dublin
CA	M-0009	Modesto	Stanislaus County	2801 McHenry Ave.	Modesto
CA	M-0012	Alameda	Alameda County	2201 So. Shore Center	Alameda
CA	M-0013	Campbell	Santa Clara County	950 W. Hamilton Ave.	Campbell
CA	M-0014	Serramonte	San Mateo County	63 Serramonte Center	Daly City
CA	M-0016	Vallejo	Solano County	501 Sereno Dr.	Vallejo
CA	M-0017	Greenback	Sacramento County	6135 San Juan Ave.	Citrus Heights
CA	M-0020	Visalia	Tulare County	3231 So. Mooney Blvd.	Visalia
CA	M-0021	Merced	Merced County	400 Merced Mall	Merced
CA	M-0022	Millbrae	San Mateo County	855 Broadway	Millbrae
CA	M-0023	Mountain View	Santa Clara County	350 Showers Dr.	Mountain View
CA	M-0024	Salinas	Monterey County	300 Northridge Center	Salinas
CA	M-0025	Huntington Beach	Orange County	9811 Adams Avenue	Huntington Beach
CA	M-0026	Fullerton	Orange County	3204 E. Yorba Linda Blvd.	Fullerton
CA	M-0027	San Diego	San Diego County	5505 Balboa Ave.	San Diego
CA	M-0028	Oxnard	Ventura County	2701 So. Saviers Rd.	Oxnard
NV	M-0029	Sparks	Washoe County	520 N. McCarran Blvd.	Sparks
CA	M-0031	Pleasant Hill	Contra Costa County	707 Contra Costa Blvd.	Pleasant Hill
CA	M-0032	Santa Clara	Santa Clara County	2010 El Camino Real	Santa Clara
CA	M-0035	Chico	Butte County	801 East Ave #101	Chico
CA	M-0038	Fresno	Fresno County	4150 N. Blackstone Avenue	Fresno
CA	M-0039	Anaheim	Orange County	500 North Euclid	Anaheim
CA	M-0041	Stockton	San Joaquin County	1155 March Lane	Stockton
CA	M-0042	Simi Valley	Ventura County	2801 E. Cochran Street	Simi Valley
CA	M-0043	Corona	Riverside County	720 Main Street	Corona
AZ	M-0044	Mesa	Maricopa County	1240 E. Main Street	Mesa
AZ	M-0045	Tempe	Maricopa County	800 E. Southern Avenue	Tempe
CA	M-0046	College Grove	San Diego County	3450 College Ave.	San Diego
CA	M-0047	Upland	San Bernardino County	233 Mountain Ave.	Upland
CA	M-0050	Redwood City	San Mateo County	205 Walnut St.	Redwood City
NM	M-0052	Albuquerque	Bernalillo County	300 Cornado Center	Albuquerque
CA	M-0054	West Covina	Los Angeles County	2753 Eastland	West Covina
AZ	M-0056	Colonnade	Maricopa County	1869 E. Camelback Rd.	Phoenix
OR	M-0058	Washington Square	Washington County	9400 SW Washington Sq. Rd.	Portland
UT	M-0064	Brickyard	Salt Lake County	1154 Brickyard	Salt Lake City
UT	M-0065	Family Center	Salt Lake County	1146 East Ft. Union Blvd.	Midvale
UT	M-0066	Valley Fair	Salt Lake County	3601 South 2700 West	Salt Lake City
CA	M-0068	Northridge	Los Angeles County	8800 Corbin Avenue	Northridge
CA	M-0070	Downey	Los Angeles County	9080 Stonewood St.	Downey
CA	M-0071	Whittier	Los Angeles County	15602 Whittwood Lane	Whittier
CA	M-0072	El Centro	Imperial County	1050 N. Imperial Highway	El Centro
UT	M-0074	Orem	Utah County	400 University Mall	Orem



State	Store	Location	County	Address	City
TX	M-0079	Bassett	El Paso County	6000 Montana Ave.	El Paso
UT	M-0082	Ogden	Weber County	3000 Newgate Mall	Ogden
AZ	M-0084	Tucson Mall	Pima County	4510 North Oracle Road	Tucson
CA	M-0090	Hillsdale	San Mateo County	398 Hillsdale Mall	San Mateo
CA	M-0102	San Luis Obispo	San Luis Obispo County	205 Madonna Road	San Luis Obispo
CA	M-0107	Sports Arena	San Diego County	3345 Sports Arena Blvd.	San Diego
AZ	M-0109	Broadway	Pima County	5555 East Broadway Blvd.	Tucson
TX	M-0120	Memorial City	Harris County	600 Memorial City	Houston
CA	M-0123	Torrance	Los Angeles County	22015 Hawthorne Blvd.	Torrance
CA	M-0125	Monterey	Monterey County	1500 Del Monte Centerr	Monterey
CA	M-0126	Alhambra (See Note 1)	Los Angeles County	150 East Main Street	Alhambra
WA	M-0129	Lacey	Thurston County	100 Southsound Center	Lacey
CA	M-0131	Puente Hills	Los Angeles County	17651 Colima Road	City of Industry
TX	M-0137	Hulen	Tarrant County	5201 South Hulen	Fort Worth
TX	M-0141	Windsor Park	Bexar County	7900 Interstate Highway 35 N.	San Antonio
TX	M-0142	South Park	Bexar County	2310 SW Military Drive	San Antonio
CA	M-0146	San Rafael	Marin County	5010 North Gate Drive	San Raphael
TX	M-0149	Odessa	Ector County	4101 E. 42nd Street	Odessa
TX	M-0150	Lubbock	Lubbock County	6002 Slide Road	Lubbock
CA	M-0165	Woodland	Yolo County	1242 East Gibson Street	Woodland
CA	M-0167	Mira Mesa	San Diego County	8140 Mira Mesa Boulevard	San Diego
CA	M-0168	Huntington Center	Orange County	7777 Edinger Avenue #100	Huntington Beach
WA	M-0182	Bellevue	King County	4096 Factoria Sq. Mall S.E.	Bellevue
CA	M-0185	Valencia	Los Angeles County	24235 W Magic Mountain Pkwy.	Valencia
WA	M-0187	Everett	Snohomish County	1402 SE Everett Mall Way	Everett
CA	M-0194	Irvine	Orange County	3960 Barranca Parkway	Irvine
TX	M-0196	Sunrise Mall	Nueces County	5858 South Padre Island Dr.	Corpus Christi
MI	M-0198	Livonia	Wayne County	29650 W. Seven Mile Road	Livonia
MI	M-0203	Lansing	Eaton County	5780 West Saginaw Hwy	Lansing
MI	M-0204	Okemos	Ingham County	1982 West Grand River	Okemos
MI	M-0211	Ann Arbor	Washtenaw County	990 W. Eisenhower Parkway	Ann Arbor
MI	M-0212	Taylor	Wayne County	23000 Eureka Road	Taylor
MI	M-0213	Warren	Macomb County	28498 Dequindre Road	Warren
WA	M-0215	Bellingham (See Note 2)	Whatcom County	40 Bellis Fair Parkway	Bellingham
CA	M-0236	Burbank	Los Angeles County	245 E Magnolia Boulevard	Burbank
FL	M-0243	Hialeah	Dade County	700 W 49th Street	Hialeah
WA	M-0259	Tacoma	Pierce County	4502 S Steele Street	Tacoma
AZ	M-0261	Scottsdale	Maricopa Indian Community	9109 E Indian Bend Rd.	Scottsdale
CA	M-0267	Mission Viejo	Orange County	24491 Alicia Parkway	Mission Viejo
CA	M-0269	San Francisco	San Francisco County	2675 Geary Blvd.	San Francisco
WA	M-0275	Southcenter	King County	1100 Southcenter Mall	Seattle
MI	M-0280	Courtland Center Mall	Genesee County	4090 East Court Road	Burton
UT	M-0287	Crossroads Plaza	Salt Lake County	50 S Maine Street Box 57	Salt Lake City
TX	M-0296	Laredo - Mall del Norte	Webb County	5300 San Dario	Laredo
CA	M-0298	Thousand Oaks	Ventura County	285 N. Moore Park Road	Thousand Oaks
CA	M-0317	Lakewood Center Mall	Los Angeles County	326 Lakewood Center Mall	Lakewood
CA	M-900B	San Francisco (Warehouse)	San Francisco County	Unit U, 2000 Jerrold	San Francisco

Note 1: Additional parking lot located across the street from the store site

Note 2: Supplemental storage space only

(ii) Landlord's name and address for each location listed in 3(B)(i):

Location	Landlord Information
----------	----------------------

State	Store	Name	Address	City	State	Zip
CA	M-0001	Southland Mall Attention: General Manager	One south Mall Drive	Hayward	CA	94545
CA	M-0003	Meryn's East Shopping Center	P.O. Box 28386	San Jose	CA	95159
CA	M-0005	Allen G. Byer and Marian Byer, d.b.a. Byer Properties	66 Potrero Avenue	San Francisco	CA	94103
CA	M-0007	Regional Street Joint Venture c/o The Cortana Corporation	800 El Camino Real, Suite 175	Menlo Park	CA	94025
CA	M-0009	Modesto Plaza Attention: Raymond V. Castello	1790 S. Winchester Blvd. Suite 1	Campbell	CA	95008
CA	M-0012	Harsch Investment Realty, LLC, Series C	523 South Shore Center West	Alameda	CA	94501
CA	M-0013	Stanford W. Jones and Vincent P. O'Leary c/o Marcus and Millichap	2626 Hanover Street	Palo Alto	CA	94304
CA	M-0014	Daly City Serramonte Center, LLC c/o Jones Lang LaSalle	3 Serramonte Blvd.	Daly City	CA	94015
CA	M-0016	The Willows Limited	309 Second Street #7	Los Altos	CA	94022
CA	M-0017	Massie & Company c/o KCM Commercial Real Estate Management	2600 Capitol Avenue, Suite 405	Sacramento	CA	95816
CA	M-0020	Centro Watt Operating Partnership, LLC c/o Watt Management Company	2716 Ocean Park Boulevard, Suite 3040	Santa Monica	CA	90405
CA	M-0021	Merced Mall LTD c/o Codding Enterprises	6400 Redwood Drive	Rohnert Park	CA	94928
CA	M-0022	Millbrae Square Company	717 Broadway	Millbrae	CA	94030
CA	M-0023	San Antonio Center LLC	2550 West El Camino Real	Mountain View	CA	94040
CA	M-0024	Macerich Property Management Company, LLC Macerich Bristol Associates and Northridge Fashion Center LLC Attention: General Manager	401 Whilshire Blvd., Suite 700	Santa Monica	CA	90401
CA	M-0025	Towne House Plaza c/o Sork Company	140 Newport Center Drive, Suite 260	Newport Beach	CA	92660
CA	M-0026	The Ulmann Offices, Inc.	13245 Riverside Drive, Suite 500	Sherman Oaks	CA	91423
CA	M-0027	Bal-Gen Development Company	P.O. Box 40	Long Beach	CA	90801
CA	M-0028	Oxnard Center Company	345 North Maple Drive, Suite 190	Beverly Hills	CA	90210
NV	M-0029	Sparks Center Associates	15350 S.W. Sequoia Pkwy., Suite 300	Portland	OR	97224
CA	M-0031	Chicago Trust Company of California (f/k/a Security Trust Company) as Trustee under Trust Number P.T. 1862-0 c/o The Taubman Company Inc.	601 Gateway Boulevard, Suite 1200	South San Francisco	CA	94080
CA	M-0032	Byer Properties Attention: Alex B. Byer	1000 Brannan Street, Suite 201	San Francisco	CA	94103
CA	M-0035	M&H Realty Partners IV, L.P.	North Valley Plaza, 353 Sacramento Street - 21st. Floor	San Francisco	CA	99411
CA	M-0038, M0038 B; M0038C	Ochinero Development Company	2291 West Keats Avenue	Fresno	CA	93711
CA	M-0039	California State Teachers' Retirement System c/o Donahue Schriber	200 E. Baker Street, Suite 100	Costa Mesa	CA	92626
CA	M-0041	College Square Associates	2191 East Bayshore Road, Suite 220	Palo Alto	CA	94303
CA	M-0042	Peter W. Merner and John H.O. La Gatta, successor trustees of the Frances Brunel La Gatta Irrevocable Trust f/b/o John La Gatta II, William Garrett Skardon Baker (since deceased) and Jeffrey Lind Easton	50 West Liberty Street	Reo	NV	89501
CA	M-0043	Main River Partners, LLC c/o Arizona Partners	3200 No. Central Avenue, Suite 2450	Phoenix	AZ	85012

Location		Landlord Information				
State	Store	Name	Address	City	State	Zip
AZ	M-0044	Sears Roebuck and Co.	3333 Beverly Road, Department 824RE	Hoffman Estates	IL	60179
AZ	M-0045	Urstadt Biddle Properties, Inc.	321 Railroad Avenue	Greenwich	CT	6832
CA	M-0046	Terrace Capital, L.P. c/o Cornerstone Property Management	2727 Camino Del Rio, Suite 135	San Diego	CA	92108
CA	M-0047	San Diego Upland Limited c/o Carl-Perl Upland 5, L.P.	P.O. Box 8414	Newport Beach	CA	92658
CA	M-0050	Redmer Limited c/o Azalea II Corporation	150 East 57th Street, Suite 16-E	New York	NY	10022
NM	M-0052	Coronado Center L.L.C. c/o General Growth	110 North Wacker Drive	Chicago	IL	60606
CA	M-0054	Eastland Shopping Center LLC c/o Westfield Corporation, Inc.	11601 Wilshire Blvd., 12th Floor	Los Angeles	CA	90025
AZ	M-0056	Camelback Colonnade Associates (d/b/a Camelback Colonnade) c/o Westor Partners	11411 North Tatum Boulevard	Phoenix	AZ	85028- 2399
OR	M-0058	Macerich Company Attention: Legal Department	P.O. Box 2172 401 Wilshire Boulevard, Suite 700	Santa Monica	CA	90407
UT	M-0064	The Boyer Company	90 South 400 West, Suite 200	Salt Lake City	UT	
UT	M-0065	DDR Family Center, LP c/o Developer's Diversified Realty Corporation	3300 Enterprise Parkway	Beachwood	OH	44122
UT	M-0066	Excel Realty Trust, Inc.	3601 South 2700 West	West Valley City	UT	84119
CA	M-0068	Louis Borick and Juanita Borick c/o Superior Industries International, Inc.	7800 Woodley Avenue	Van Nuys	CA	91406
CA	M-0070	Macerich Stonewood LLC	251 Stonewood Street	Downey	CA	90241
CA	M-0071	Lennar Partners c/o Coreland Companies	156023 Whittwood Ln	Whittier	CA	90603
CA	M-0072	El Centro Mall LLC c/o Sequoia Property Management	P.O. Box 928170	San Diego	CA	92243
UT	M-0074	Woodbury Corporation	2733 East Parley's Way #300	Salt Lake City	UT	84097
TX	M-0079	C.E. Basset, L.P. Bassett Center Mall	6101 Gateway West, Suite M36	El Paso	TX	79925
UT	M-0082	GGP-Newgate Mall, Inc.	SDS 12-2377, P.O. Box 86	Minneapolis	MN	55486- 2377
AZ	M-0084	GCP - Tucson Mall, L.L.C c/o General Growth Properties, Inc.	110 North Wacker Drive	Chicago	IL	60606
CA	M-0090	Bohannon Development Company Attention: Robert L. Webster, Esq., General Counsel	60 Hillside Mall	San Mateo	CA	94403
CA	M-0102	MRP Institutional Associates, Inc.	180 North LaSalle Street, Suite 3600	Chicago	IL	60601
CA	M-0107	Nevada Holdings Co. L.P. Sunbelt Management Company	220 Congress Park Drive, P.O. Box 10	Delray Beach	FL	33495
AZ	M-0109	Tineb Associates c/o Benenson Capital Company	708 3rd Avenue, Floor 28	New York	NY	10017
TX	M-0120	MNC Mall Ltd. Attention: Legal Department	820 Gessner, Suite 1800	Houston	TX	77024
CA	M-0123	Pacific/Youngman-Torrance	One Corporate Plaza P.O. Box 3060	Newport Beach	CA	92660
CA	M-0125	Del Monte Regional Mall LLC c/o Farrallon Retail Services	1410 Del Monte Center	Monterey	CA	93940
CA	M-0126	Alhambra Place Partnership Attention: General Partner	309 W. Naomi Avenue	Arcadia	CA	90017
WA	M-0129	Capital Development Company	PO Box 3487, 711 Sleater Kinney Road, SE	Lacey	WA	98503
CA	M-0131	Estate of James Campbell Attention: E.V.P., Real Estate Investment Management	425 California Street, Suite 1000	San Francisco	CA	94104

Location		Landlord Information				
State	Store	Name	Address	City	State	Zip
TX	M-0137	River Ranch Properties and Cassco Land Co., Inc.	4200 South Hulen, Suite 614	Fort Worth	TX	76109
TX	M-0141	Simon Property Group (Texas), L.P.	Merchants Plaza, 115 West Washington Street	Indianapolis	IN	46204
TX	M-0142	SP San Antonio Partnership, L.P. Attention: Asset Manager, South Park Mall	124 Johnson Ferry Road	Atlanta	GA	30328
CA	M-0146	The Macerich Company	401 Wilshire Drive	Santa Monica	CA	90401
TX	M-0149	MCM Properties, Ltd.	PO Box 2969, 4101 East 42nd Street	Odessa	TX	79760
TX	M-0150	Macerich Lubbock Limited Partnership South Plains Mall Attention: Mall Manager	6002 Slide Road	Lubbock	TX	79414
CA	M-0165	NNN County Fair, LLC c/o Triple Net Properties	1551 N. Tustin Avenue, Suite 650	Santa Ana	CA	92705
CA	M-0167	Centro Watt Operating Partnership, LLC	c/o Watt Management Company 2716 Ocean Park Boulevard, Suite 3040	Santa Monica	CA	90405
CA	M-0168	Huntington Center Associates, LLC	c/o J.H. Snyder Company 5757 Wilshire Blvd., PH-30	Los Angeles	CA	90036
WA	M-0182	Factoria Square Limited Partnership	c/o Worldco Company Limited 1388 Sutter Street, Suite 730	San Francisco	CA	94109
CA	M-0185	Newhall Land and Farming Company	23823 Valencia Boulevard	Valencia	CA	91355
WA	M-0187	Equitalbe Life Assurance Society of the United States	c/o Lend Lease 324 Peachtree Road NE, Suite 800 Attention: Everett Mall Asset Manager	Atlanta	GA	
CA	M-0194	The Irvine Company c/o Diversified Shopping Centers	2910 Red Hill Avenue, Suite 200	Costa Mesa	CA	92626
TX	M-0196	Today Sunrise Mall, L.P. Attention: Tom Morris	105 N. Carrier Parkway Suite 101	Grand Prairie	TX	75050
MI	M-0198	Livonia Mall L.L.C. c/o Konover Investments Corporation	342 North Main Street Suite 200	West Hartford	CT	6117
MI	M-0203	Lansing Mall Limited Partnership c/o General Growth Management, Inc. Attention: Senior Vice President - Management	110 North Wacker	Chicago	IL	60606
MI	M-0204	Meridian Mall Limited Partnership c/o CBL & Associate Management, Inc.	CBL Center, Suite 500 2030 Hamilton Place Blvd.	Chattanooga	TN	37421
MI	M-0211	Cranbrook Village Limited Partnership c/o ATMF Cranbrook Village Manager LLC	6735 Telegraph Road Suite 110	Bloomfield Hills	MI	48031
MI	M-0212	Southland Joint Venture c/o the Rouse Company	10275 Little Patuxent Parkway	Columbia	MD	21044
MI	M-0213	Universal Mall Properties L.L.C. Attention: General Manager	28582 Dequindre Road	Warren	MI	48092
WA	M-0215	Bellis Fair General Partnership c/o General Growth Management, Inc.	110 North Wacker	Chicago	IL	60606
CA	M-0236	Burbank Mall Associates, LLC	18201 Von Karman Avenue Suite 950	Irvine	CA	92612
FL	M-0243	Mall on the Mile LLC	419 West 49th Street, Suite 300	Hialeah	FL	33012
WA	M-0259	Tacoma Mall Partnership c/o Simon DeBartolo Group	National City Center 115 W. Washington Street	Indianapolis	IN	46204
AZ	M-0261	PG Development II c/o RREEF Management Company Attention: Brian Holmes	1201 Main Street, Suite 930	Dallas	TX	75202

Location		Landlord Information				
State	Store	Name	Address	City	State	Zip
CA	M-0267	Park Aliso Commercial Center c/o Watt Management Company	2716 Ocean Park Boulevard, Suite 3040	Santa Monica	CA	90405
CA	M-0269	Pera City Center, Inc. c/o LaSalle Investment Management	950 17th Street, Suite 1850	Denver	CO	80202
WA	M-0275	WEA Southcenter LLC c/o Westfield Corporation, Inc. Attention: Lease Administration	11601 Wilshire Blvd., 12th Floor	Los Angeles	CA	90025
MI	M-0280	Center Courtland Inc.	10800 Brookpart Road	Cleveland	OH	44130
UT	M-0287	Urban Retail Properties SLC Crossroads Mall LLC	50 S. Main Street, #75	Salt Lake City	UT	84144
TX	M-0296	Enterprise Laredo Associates, L.P.	475 Fifth Avenue, 12th Floor	New York	NY	10017
CA	M-0298	Thousand Oaks Marketplace, L.P.	1801 Avenue of the Stars, Suite 421	Los Angeles	CA	90067

C. Warehouses

Name	Location
NYK Logistics (Americas, Inc.)	2417 East Carson Street Long Beach, California 90810
Consolidated Garments/Pacific Apparel Express Attn.: Gary Brown	203 North Sunset City of Industry, California 91744
Hudd Distribution, Inc. Attn.: Jeff Larson	5011 Firestone Place South Gate, California 90280
National Retail Systems Attn.: Paul Hennessy	2820 16th Street North Bergen, New Jersey 07047
NYK Logistics (Americas Inc.) Attn.: Scott Newton	2417 East Carson Street Long Beach, California 90810
Southeast Consolidators, Inc. Attn.: Mike Proctor	2590 Campbell Blvd. Ellenwood, Georgia 30294
UPS Freight Services - Coppell Attn.: Al Verpy	
UPS Supply Chain Solutions Attn.: Eddie Nothen	10801 6th Street Rancho Cucamonga, California 91730

D. Customs Brokers / Freight Forwarders

<b>Name</b>	<b>Location</b>
Stone Path Attn: Debbie Moore	1930 Sixth Ave So. Suite 410 Seattle, Washington 98134
Exediators International Attn: Connie Shannon	980 Lone Oak Road #128 Eagan, Minnesota 55121
Exel Attn: Vinay Halepet	980 Lone Oak Road Suite 108 Eagan, Minnesota 55121
US Group Consolidators Attn: Mike	1325 Eagandale Court Eagan, Minnesota 55121

4. Locations of Assets in Prior 4 Months not Listed Above

The Mervyn's stores located at the following addresses were transferred to one or more Target Corporation affiliates or third parties prior to the consummation of the Equity Purchase Agreement.

<u>Address</u>	<u>City</u>	<u>State</u>	<u>County</u>
901 County Road 42 West	Burnsville	MN	Dakota
1200 Brookdale Center	Brooklyn Center	MN	Hennepin
3001 White Bear Avenue	Maplewood	MN	Ramsey
301 Northtown Drive Northeast	Blaine	MN	Anoka
1370 University Avenue	Saint Paul	MN	Ramsey
1595 Highway 36 West	Roseville	MN	Ramsey
8348 Tamarack Village	Woodbury	MN	Washington
6601 France Avenue South	Edina	MN	Hennepin
8201 Flying Cloud Drive	Eden Prarie	MN	Hennepin

Mervyn's Brands, LLC

1. Chief Executive Office

22301 Foothill Boulevard  
Hayward, CA 94541

2. Location of Books and Records

22301 Foothill Boulevard  
Hayward, CA 94541

3. Locations of Inventory, Equipment and Other Assets

22301 Foothill Boulevard  
Hayward, CA 94541

4. Locations of Assets in Prior 4 Months not Listed Above

None.

SCHEDULE 8.4  
to  
INFORMATION CERTIFICATE

Existing Liens\*

Mervyn's LLC

<b>Creditor</b>	<b>Jurisdiction</b>	<b>File Date &amp; No.</b>	<b>Collateral / Description</b>
Canon Financial Services, Inc. 200 Commerce Square Blvd. Burlington, NJ 08016	Secretary of State, California	07/30/99 9922460181	Specific copy/graphics equipment.
Canon Financial Services, Inc. 158 Gaither Drive #200 Mt. Laurel, NJ 08054	Secretary of State, California	12/18/02 0235860412	Specific copy/graphics equipment.
Canon Financial Services, Inc. 158 Gaither Drive #200 Mt. Laurel, NJ 08054	Secretary of State, California	05/20/03 0314260387	Specific copy/graphics equipment.
IOS Capital, LLC 1738 Bass Road Macon, GA 31210	Secretary of State, California	07/01/03 0318960901	Specific equipment leased under Lease Agreement No. 359897- T44853.
Canon Financial Services, Inc. 158 Gaither Drive #200 Mt. Laurel, NJ 08054	Secretary of State, California	11/04/03 0331460250	Specific copy/graphics equipment.
Canon Financial Services, Inc. 158 Gaither Drive #200 Mt. Laurel, NJ 08054	Secretary of State, California	03/02/04 0406860463	Specific copy/graphics equipment.
Recycled Fibers of California	Secretary of State, California	06/08/99 9916660588	Specific equipment; Lapsed; plus one year record (no debt outstanding; financing statement expected to be terminated).
City of Fontana	San Bernadino County, California	08/04/03 2003-0573548	Notice of continuing special tax lien to secure each annual levy of the special tax imposed by the City Counsel of the City of Fontana on certain owners of real property.
ISI Commercial Refrigeration, Inc. PO Box 569060 Dallas, TX 75356-9060	Secretary of State, Texas	05/29/2001 0100104546	Specific Equipment
General Electric Capital Corp. 4333 Edgewood Road NE Cedar Rapids, Iowa 52499	Secretary of State, Utah	04/29/1999 99-641018	Specific copy/graphics equipment under lease agreement.



<b>Creditor</b>	<b>Jurisdiction</b>	<b>File Date &amp; No.</b>	<b>Collateral / Description</b>
Plaintiffs: City of Chandler	Maricopa County, Arizona	08/01/00 2000-0587624	Judgment lien relating to grant of temporary construction easement to the City of Chandler over certain parts of the real property, on which store M-0154 is located, in connection with the construction of a city intersection improvement project.
Plaintiff: Wayne Thompson Hoyt	Pima County, Arizona	10/05/00 00-1941310	Judgment lien in connection with judgment for Plaintiff declaring defendants not to have an interest in the property under the Deed of Trust (12 E. Palmdale, Tuscon, AZ), enjoining defendants from asserting any right or interest in the property adverse to the plaintiff, ordering defendants to quit claim any interests they may have to the plaintiffs.
Plaintiff: City of Temecula	Riverside County, California	10/19/00 411538	Judgment lien relating to eminent domain proceeding. Mervyn's disclaimed interest in the property. Court ordered property condemned upon payment of \$198,781.89 by the City of Temecula to Kimco upon which Kimco shall cease to have any interest in the property.
W.M. Grace Contractors	Bernalillo County, New Mexico	02/14/99	Claim of Lien filed in amount of \$38,501.03 in connection with contractor's request for additional compensation for work performed by sub-contractor allegedly beyond scope of contract.

Mervyn's Brands, LLC

None.

SCHEDULE 8.6  
to  
INFORMATION CERTIFICATE

Litigation

Californians for Disability Rights v. Mervyn's California, Inc., Case No. 2002-051738 (ADA claim; Plaintiff filed a notice of appeal on April 1, 2004)

In re Pillowtex Corporation, et al., Case No. 03-12339 (D. Del. (Bankr.)), and Pillowtex Corp. and Fieldcrest Cannon, Inc. v. Target Corp. and Mervyn's Inc., Adv. Proc. No. 03-57581 (D. Del. (Bankr.)) (Bankruptcy proceeding involving vendor Pillowtex; adversary proceeding within bankruptcy re: alleged failure to pay for goods delivered in the amount of approximately \$1.1 million by Mervyn's)

People of the State of California v. Burlington Coat Factory Warehouse Corporation, et al. (including Mervyn's) (Superior Court of the State of California, County of Alameda, Case # RG04162075) (Prop. 65 Jewelry claim)

Center for Environmental Health v. Hot Topic, Inc., et al. (including Mervyn's) (Superior Court of the State of California, County of Alameda, Case # RG04162037) (Prop. 65 Jewelry claim)

L.A. Printex Industries, Inc. v. Target, Inc., et al. (including Mervyn's) (Complaint filed on August 16, 2004 in US District Court, Central District of California, alleging copyright infringement)

Judgments

None.

SCHEDULE 8.8  
to  
INFORMATION CERTIFICATE

Environmental Compliance

People of the State of California v. Burlington Coat Factory Warehouse Corporation, et al. (including Mervyn's) (Superior Court of the State of California, County of Alameda, Case # RG04162075) (Prop. 65 Jewelry claim)

Center for Environmental Health v. Hot Topic, Inc. (including Mervyn's) (Superior Court of the State of California, County of Alameda, Case # RG04162037) (Prop. 65 Jewelry claim)

SCHEDULE 8.10  
to  
INFORMATION CERTIFICATE

Deposit Accounts; Investment Accounts

A. Part 1 - Deposit Accounts

Mervyn's LLC

<u>Name and Address of Bank</u>	<u>Account No.</u>	<u>Purpose</u>
Wachovia 350 E. Las Olas Blvd. Ft. Lauderdale, FL 3301	2000025633900 2000025633942 2000025633955	Master Concentration Account Wire Account Disbursement- Import Vendors
Bank of America 1850 Gateway Boulevard NAD Corp 1233 Concord, CA 94520	1233110110 3751830636 3751830623 3751782072 1233511085 1233900711 1233001234 1233210020	BofA Master Concentration Account Depository Account - Stores Depository Account - Stores Depository Account - Stores Depository Account - Civil Demand Depository Account - Amex Depository Account - Discover Disbursement - Import Vendors (SWIFT)
Bank One 300 South Riverside, 18 <sup>th</sup> Floor Mail Code IL 1-0196 Chicago, IL 60606	21883818 623133055	Depository Account - Stores Concentration Account - Stores
Fifth Third 38 Fountain Square Plaza MD 109046 Cincinnati, OH 45202	9990200082	Concentration Account - Stores
Hibernia PO Box 61540 New Orleans, LA 70161	812354337	Depository Account - Stores
Fleet Boston Mail Stop: MA DE 10510A 40 Broad Street Boston, MA 02109	0055108777	Disbursement - LCs
US Bank 9633 Lyndale Avenue South EP-MN-CCS Bloomington, MN 55420	1-539-1000-7787 1-264-0003-7597 1-500-8068-2720 1-539-1000-7795	Concentration Account Disbursement - Manual Checks Disbursement - Accounts Payable Depository - Stores (from sub accounts)
Wells Fargo MAC N9305-031	2391704570 9600030732	Concentration Account Disbursement - Van Wert Payroll

<u>Name and Address of Bank</u>	<u>Account No.</u>	<u>Purpose</u>
Sixth and Marquette Minneapolis, MN 55479	6355063999 6355067623	Disbursement - Customs Disbursement - Payroll

Mervyn's Brands, LLC

<u>Name and Address of Bank</u>	<u>Account No.</u>	<u>Purpose</u>
US Bank 9633 Lyndale Avenue South EP-MN-CCS Bloomington, MN 55420	1-539-1001-2381	Disbursement

B. Part 2 - Investment and Other Accounts

None.

SCHEDULE 8.11  
to  
INFORMATION CERTIFICATE

Intellectual Property

1. Owner: Mervyn's Brands, LLC
- (a) Trademark Applications and Registrations
- (i) U.S. Federal Registrations

<b>Trademark</b>	<b>Registration Number</b>	<b>Registration Date</b>	<b>Comments</b>
BAKER, HART & STUART	1,354,125	8/13/85	
BABY SPROCKETS DESIGN (Image of dog)	2,854,824	6/15/04	
CAMBRIA	2,557,350	4/2/02	
CARESS	1,460,966	10/13/87	
CARESS	1,844,485	7/12/94	
CASCADE BLUES	1,334,429	5/7/85	
CASCADE BLUES	1,489,460	5/24/88	
CASCADE BLUES	2,001,011	9/17/96	
CELEBRATION	1,442,140	6/9/87	Not used since February 2002.
CHEETAH	1,262,449	12/27/83	
CHEETAH	1,438,104	4/28/87	
CHEETAH	2,669,086	12/31/02	
COLOR CIRCUIT	2,320,990	2/22/00	Product phased out at end of 2003.
DESIGN ONLY (CURVED LINES)	2,116,264	11/25/97	Not used since November 2003.
DIAMONDSTAR	1,312,258	1/1/85	
E GIRL	2,381,884	8/29/00	
ELLEMENNO	2,135,128	2/10/98	

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Comments</u>
EXTEND THE CHEER, PAY NEXT YEAR	2,599,650	7/23/02	
FRENCH LAUNDRY	2,570,917	5/21/02	
GALLERIA	1,070,269	7/26/77	
HIGH SIERRA	1,344,538	11/29/82	
HIGH SIERRA	1,475,977	2/9/88	
HIGH SIERRA	2,819,984	3/2/04	
HILLARD & HANSON	2,121,733	12/16/97	
HILLARD & HANSON	2,121,787	12/16/97	
HILLARD & HANSON	2,828,600	3/30/04	
JUNIOR CONNECTION	1,312,435	1/1/85	Not used for at least 3 years.
LEFT COAST	2,133,640	2/3/98	
LOCAL HERO	2,706,820	4/15/03	
MERVYN'S	1,063,553	4/12/77	
MERVYN'S	1,068,170	6/21/77	
MERVYN'S AND DESIGN	1,946,614	1/9/96	
MERVYN'S CALIFORNIA	2,005,153	10/1/96	
MERVYN'S COMMUNITY CLOSET	2,786,644	11/25/03	
MERVYN'S UNIVERSITY	2,119,297	12/9/97	
PARTNERS	2,669,103	12/31/02	
PLAYFUL PALS	1,363,547	2/5/91	Not used for at least 3 years.
PRIVATE LUXURIES	2,672,095	1/17/03	
SPROCKETS	2,598,012	7/23/02	
SPROCKETS	2,611,384	8/27/02	

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Comments</u>
TJW	1,319,523	2/12/85	Not used for at least 3 years.
TOUCH OF LUXURY	1,394,925	5/27/56	
TOUCH OF LUXURY	1,436,485	4/14/92	
WINDRIDGE	1,596,584	6/22/99	Not used for at least 3 years.

(ii) U.S. Federal Applications

<u>Trademark Application</u>	<u>Application Date</u>	<u>Application/Serial No.</u>
BABY SPROCKETS	76/512,750	9/25/03
BIG REWARDS	78/203,564	1/15/03
COWBOYS & ANGELS	78/091,522	11/2/02
DIAMONSTAR*	78/303,594	9/22/03
FANCY FLING	78/388422	3/22/04
FRENCH LAUNDRY	78/146,594	7/23/02
FRENCH LAUNDRY	78/146,592	7/23/02
HILLARD & HANSON	78/420,495	5/24/04
PINKIE'S PALACE	78/312,626	10/13/03
SIERRA HOME COLLECTIONS	78/264,325	6/19/03
SPROCKETS	76/512,758	5/8/03
SPROCKETS DESIGN	76/512,765	5/8/03
VINTAGE LUXE**	78/165,640	9/19/02

\*This application is currently suspended.

\*\*This application is currently abandoned; however, Mervyn's Brands, LLC is attempting to reinstate the application.

(iii) Foreign Applications

<u>Country</u>	<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
----------------	-------------	-----------------	------------------



MEXICO	MERVYN'S	607,321	6/26/03
CANADA	MERVYN'S	1,174,171	4/16/03

(iv) Internet Domain Names

<u>Domain Name</u>	<u>Expiration Date</u>
babysprockets.com	7/15/2005
hillardandhanson.com	5/18/2006
hillardhanson.com	5/18/2006
mervens.com	8/22/2005
mervenys.com	10/3/04
mervinscalifornia.com	10/24/05
mervynes.com	5/20/05
mervyns.biz	11/18/04
mervyns.com	1/26/05
mervyns.info	9/12/04
mervyns.us	4/19/08
mervyns.kids.us	8/28/08
mervyns.net	12/20/06
mervynsbank.com	12/15/05
mervynscalifornia.com	12/20/05
mervynscalifornia.net	12/20/05
mervynscalifornia.org	12/20/05
cambridgeclassics.com	5/18/06
mervynscalifornia.us	4/19/07
mervynsdirect.com	4/24/06
mervynsgiftregistry.com	5/18/04
mervynsofcalifornia.com	10/25/05
mervynsservey.com	10/29/05
mervynssucks.biz	11/6/04
mervyns-sucks.biz	6/17/05
mervyns-sucks.info	6/18/05
mervynssucks.info	9/13/05

<u>Domain Name</u>	<u>Expiration Date</u>
mervyns-sucks.org	6/18/05
mervynssurvey.com	6/18/05
mervynssurvey.com	10/9/05
mervynsucks.biz	3/30/05
mervynsucks.info	11/6/04
mervynsurvey.com	9/12/04
paymervyns.com	2/4/05
wwwmervyns.com	10/10/04
wwwmervynscalifornia.com	12/12/04

(b) Patents

<u>Patent Description</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Expiration Date</u>
Shopping Stroller/Cart	D 366,546	January 23, 1996	January 23, 2010

(c) Copyright Registrations and Applications

(i) Registrations

<u>Copyright Title</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
Mervyn's California Vendor Policies Manual	TX 4-649-797	10/16/1997
Quality, a state of mind: Mervyn's guide to Successful Vendor Quality Assurance: Apparel	TX 4-643-457	10/16/1997
CARTOON CAT DESIGN (with Purse)	VA 1-233-304	03/10/2004
Sprockets dog	VA 937-669	01/14/1998
Cheetah logo	VA 912-857	01/26/1998
AN UNCOMMON MISSION	TX 5-618-297	01/15/2003
E-girl Web Site	VA 959-237	01/13/1999

(ii) Applications

<u>Copyright Title</u>	<u>Application Date</u>
------------------------	-------------------------

Cartoon Cat (Lying Down)	03/18/2004
Cartoon Cat (Front View)	03/18/2004
Cartoon Cat (Back View)	03/18/2004
Cartoon Cat (Stretching)	03/18/2004
Cartoon Cat (Head)	03/18/2004
Collection of Cartoon Female Dog Designs	05/12/2004
Collection of Cartoon Male Dog Designs	05/12/2004

## 2. License Agreements

Personal Services and Product Development Agreement, dated November 1, 2003, between Golden Boy Enterprises, LLC (furnishing the services of Oscar De La Hoya), Mervyn's Brands, Inc. and Mervyn's

Personal Services and Product Development Agreement, dated September 19, 2003, between HollyRod Entertainment, Inc. (furnishing services for Holly Robinson Peete) and Mervyn's Brands, Inc.

License Agreement, dated January 14, 1998, between Dan River, Inc. and Mervyn's (for "Bed in a Bag" trademark)

License Agreement, dated December 18, 2002, between Rachel Ashwell Designs, Inc. and Mervyn's Brands, Inc. (for "Treasures" trademark)

Personal Services and License Agreement, dated April 20, 2003, between Placido, Inc. (furnishing services of Aaron Sanchez) and Mervyn's Brands, Inc. [note: exercised right for 1 year renewal through October 19, 2005]

Product Development and License Agreement, dated March 17, 2003, between Mary Engelbreit Studios, Inc. (licensor for Mary Engelbreit Enterprises, Inc.) and Mervyn's Brands, Inc., as amended by Amendment No. 1 to Product Development and License Agreement (dated July 17, 2003), Amendment No. 2 to Product Development and License Agreement (dated April 8, 2004), and Amendment No. 3 to Product Development and License Agreement (dated June 28, 2004)

Personal Services and License Agreement, dated June 30, 2003, between Real Kitchen Brands, LLC (furnishing services of Tyler Florence) and Mervyn's Brands, Inc. [note: exercised right for 1 year renewal through December 29, 2005]

Sideout License Agreement (including Cover Agreement thereto), dated June 8, 1998, between Cherokee, Inc. and Dayton Hudson Corporation, as amended by Amendment No. 1 to License Agreement (dated April 26, 1999), Amendment No. 2 to License Agreement (dated December 1, 1999), Amendment No. 3 to License Agreement (dated September 26, 2000), and Assignment and Amendment No. 4 (dated January 29, 2003) [note: exercised right to renew for 3 years through January 31, 2005]

License Agreement, dated July 29, 1987, between The Joseph & Fiess Company and Mervyn's (for "Cambridge Classics" trademark)

Spokesperson Agreement, dated January 2, 2003, between Indra Zuno and Mervyn's, as amended by Renewal and Amendment (dated January 19, 2004)

Spokesperson Agreement, dated December 19, 2003, between Kate Rice and Mervyn's

Letter Agreement, dated March 18, 2004, between Chronicle Books LLC and Mervyn's (for "Bead Girl")

"Seal of Cotton" agreements between Cotton Incorporated and Mervyn's (2003 Promotion Agreement for Cambridge Classics Menswear, dated March 14, 2003; letter agreement for "Caress" towels, dated March 7, 2003; letter agreement for "Cambridge Classics" socks, dated February 25, 2003; letter agreement for "Cambridge Classics" apparel, dated February 25, 2003; letter agreement for "Sierra Home" bedding, dated February 25, 2003)

Assignment Agreement, dated March 5, 1986, between Mervyn's, The North Face and H. Bernbaum Import Export Co. (co-existence agreement for High Sierra trademark)

Trademark Agreement, dated February 27, 2004, between Mervyn's Brands, Inc. and Marla Katz (co-existence agreement for Cowboys & Angels trademark)

Proprietary Rights and Release Agreement, dated June 7, 2004, between Mervyn's and Ki Han (for Pinkie campaign)

Design and License Agreement, dated July 9, 2004, between Mervyn's and Kiku Obata & Company (for Real Kitchen merchandise)

Settlement Agreement, dated December 5, 1986, between Mervyn's and Naman Rainwear, Inc. (co-existence agreement for Cheetah trademark)

Settlement Agreement, dated April 30, 1998, between Mervyn's, Windridge Design, Inc., and Cheryl Cotton Nash (use of Windridge trademark)

Agreement, dated June 15, 2001, between Mervyn's Brands, Inc. and QVC, Inc. (Private Luxuries trademark)

Short Term License Agreement between Target Corporation and Mervyn's Brands, LLC, dated August 28, 2004

Sprockets-High Sierra License Agreement between The May Department Stores Company and Mervyn's dated July 31, 2004.

AMC-Boscov's License Agreement between Target Brands, Inc. and Associated Merchandising Corporation, dated July 27, 2004, as assigned to Mervyn's Brands, Inc.

License Agreement between Mervyn's LLC and Mervyn's Brands, LLC, dated August 28, 2004.

License Agreement by and between Target Corporation and Mervyn's Brands, LLC, dated August 28, 2004, pertaining to Target names

License Agreement by and between Target Corporation and Mervyn's Brands, LLC, dated August 28, 2004, pertaining to Mervyn's names

In Due Time License Agreement by and between Mervyn's Brands, LLC and Target Brands, Inc. dated August 28, 2004

Grantback Software License Agreement by and between Target Corporation and Mervyn's LLC dated August 28, 2004

SCHEDULE 8.12  
to  
INFORMATION CERTIFICATE

Subsidiaries; Affiliates; Investments

(a) Subsidiaries (More than 50% owned by Company indicated)

<u>Company</u>	<u>Subsidiary</u>	<u>Jurisdiction of Incorporation</u>	<u>Percentage Owned</u>
Mervyn's LLC	Mervyn's Brands, LLC	Minnesota	100%

(b) Affiliates (Less than 50% Owned by Company)

None

(c) Affiliates (Subject to common ownership with Company)

None

(d) Shareholders (If widely held, only holders with more than 10%)

<u>Company</u>	<u>Shareholders</u>	<u>Jurisdiction of Incorporation</u>	<u>Percentage Owned</u>
Mervyn's LLC	Mervyn's Holdings, LLC	Delaware	100%
Mervyn's Brands, LLC	Mervyn's LLC	California	100%

SCHEDULE 8.13  
to  
INFORMATION CERTIFICATE

Labor Matters

None

SCHEDULE 8.15  
to  
INFORMATION CERTIFICATE

Material Contracts

Equity Purchase Agreement dated July 29, 2004 by and among Target Corporation and Mervyn's Holdings, LLC

Transition Services Agreement dated August 28, 2004 by and among Target Corporation and Mervyn's LLC

Private Label Consumer Credit Card Program Agreement dated July 29, 2004 by and among Mervyn's Holdings, LLC, Mervyn's, Mervyn's Brands, Inc. and Monogram Credit Card Bank of Georgia

Unitary Lease dated of even date herewith by and among MDS Realty I, LLC, MDS Texas Realty I, LP, MDS Realty II, LLC, MDS Texas Realty II, LP, MDS Realty III, LLC, MDS Realty IV, LLC and Mervyn's LLC [15 Month]

Unitary Lease dated of even date herewith by and among MDS Realty II and Mervyn's LLC. [3 Year]

Unitary Lease dated of even date herewith by and among MDS Realty II, LLC, MDS Texas Realty II, LP, MDS Realty IV, LLC and Mervyn's LLC. [10 Year]

Buying Agency Agreement dated February 1, 1999 by and between The Associated Merchandising Corporation and Mervyn's, as amended.

Subordination, Non-Disturbance and Attornment Agreement dated of even date herewith by and among Greenwich Capital Financial Products, Inc., Archon Financial, L.P. and Mervyn's LLC.



SCHEDULE 8.16  
TO  
LOAN AGREEMENTS

Credit Card Agreements

<b>Agreement</b>	<b>% of Sales Payable to Credit Card Issuer or Credit Card Processor</b>	<b>Other Fees and Charges payable by Borrower</b>	<b>Term of Agreement</b>
Private Label Consumer Credit Card Program Agreement dated July 29, 2004 by and among Mervyn's Holdings, LLC (along with its successors and assigns), Mervyn's, a California corporation (along with its successors and assigns) and Mervyn's Brands, Inc. and Monogram Credit Card Bank of Georgia.	None	None	7 years ("Initial Term"); automatic 2 year renewal unless notice provided to other party 270 days prior to expiration of the Initial Term or any renewal term.

SCHEDULE 8.18(e)  
TO  
LOAN AGREEMENT

Certain Assumed Liabilities Under Employee Benefit Plans

Borrower will assume the obligations and liabilities for benefits payable under the following plans to the extent required by Section 9 of the Equity Purchase Agreement:

**Non-Qualified Retirement Plans/Benefits:**

Pursuant to an employment agreement between Mervyn's and former CEO Jack Kilmartin, Mervyn's has agreed to pay Mr. Kilmartin or his wife Patricia, a supplemental benefit for as long as either shall live, payable monthly in an amount of approximately \$6,633. In addition, Mervyn's pays Mr. Kilmartin a monthly supplemental benefit of approximately \$8,249 as a pension benefit earned in excess of the benefit allowed to be paid under Mervyn's qualified pension plan. These arrangements are not funded and benefits are paid from the general assets of Mervyn's. These arrangements have been in effect since 1987 and will remain in effect after the execution and delivery of the Purchase Agreements and the consummation of the transactions contemplated thereby.

**Medical & Dental:**

Target Corporation Comprehensive Medical Plan (Active only)

Target Corporation HMO Medical Plan (Active only)

Target Corporation Dental Plan (Active only)

(Note: These Plans include several different benefit options, including basic medical and dental benefits, and vision care benefits, but specifically excluding any retiree benefits.)

**Disability:**

Mervyn's Disability Plus (includes old self-insured long term disability liability)

Mervyn's Short Term Disability Program (for officers, DMGs & exempt employees in Michigan)

**Flex Benefit Plans:**

Target Stores Flex Benefits Plan (Health Care Spending Accounts, Dependent Care Spending Accounts)

**Severance Plans/Policies:**

Mervyn's Severance Pay Plan I (as adopted effective July 1, 2004)

Target Corporation Income Continuance Policy

**Vacation & Holiday Plans/Policies:**

Target Corporation Vacation Plan/Vacation Benefit

Target Corporation Personal Holiday Plan/Personal Holiday Benefit

Target Corporation National Holiday Benefit

**Deferred Compensation Plans and Incentive Programs:**

Short-term Incentive Plan (STIP)

Leadership Incentive Plan (LIP)

Support Incentive Plan (SIP)

SCHEDULE 9.9  
to  
INFORMATION CERTIFICATE

Existing Indebtedness

(a) Bonds

Mervyn's LLC

<u>Obligee</u>	<u>Amount</u>	<u>Type</u>
State of Michigan	\$100,000	Workers Compensation Bond
City of Mesquite, TX	\$1,000	Utility Bond
State of Georgia	\$250,000	Self-Insurers Guaranty Trust Fund Bond
City of Alexandria, LA	\$10,000	Utility Services Payment Bond
State of Colorado	\$480,000	Workers Compensation Bond
State of Oregon	\$500,000	Workers Compensation Bond
State of Arizona	\$100,000	Workers Compensation Bond
State of Nevada	\$351,000	Self-Insurer's Surety Bond

(b) Letters of Credit

None.

(c) Guarantees

None.

SCHEDULE 9.10  
to  
INFORMATION CERTIFICATE

Loans and Advances

None.



EXHIBIT C  
TO  
LOAN AND SECURITY AGREEMENT

Compliance Certificate

To: Congress Financial Corporation  
(Western), as Agent  
251 South Lake Avenue, Suite 900  
Pasadena, California 91101

Ladies and Gentlemen:

I hereby certify to you pursuant to Section 9.6 of the Loan Agreement (as defined below) as follows:

1. I am the duly elected as an Authorized Officer of Mervyn's LLC, a California limited liability company ("Borrower"). Capitalized terms used herein without definition shall have the meanings given to such terms in the Loan and Security Agreement, dated September \_\_, 2004, by and among Congress Financial Corporation (Western) as agent for the financial institutions party thereto as lenders (in such capacity, "Agent") and the financial institutions party thereto as lenders (collectively, "Lenders"), Borrower and certain of its affiliates (as such Loan and Security Agreement is amended, modified or supplemented, from time to time, the "Loan Agreement").

2. I have reviewed the terms of the Loan Agreement, and have made, or have caused to be made under my supervision, a review in reasonable detail of the transactions and the financial condition of Borrower and Guarantor (as such term is defined in the Loan Agreement), during the immediately preceding fiscal month.

3. The review described in Section 2 above did not disclose the existence during or at the end of such fiscal month, and I have no knowledge of the existence and continuance on the date hereof, of any condition or event which constitutes a Default or an Event of Default, except as set forth on Schedule I attached hereto. Described on Schedule I attached hereto are the exceptions, if any, to this Section 3 listing, in detail, the nature of the condition or event, the period during which it has existed and the action which Borrower or Guarantor has taken, is taking, or proposes to take with respect to such condition or event.

4. I further certify that, based on the review described in Section 2 above, neither Borrower nor Guarantor has not at any time during or at the end of such fiscal month, except as specifically described on Schedule II attached hereto or as permitted by the Loan Agreement, done any of the following:

- (a) Changed its respective corporate name, or transacted business under any trade name, style, or fictitious name, other than those previously described to you and set forth in the Financing Agreements.
- (b) Changed the location of its chief executive office, changed its jurisdiction of incorporation or formation, changed its type of organization or changed the location of or disposed of any of its properties or assets (other than pursuant to the sale of Inventory in the ordinary course of its business or as otherwise permitted by Section 9.7 of the Loan Agreement), or established any new asset locations.
- (c) Materially changed the terms upon which it sells goods (including sales on consignment) or provides services, nor has any vendor or trade supplier to Borrower or Guarantor during or at the end of such period materially adversely changed the terms upon which it supplies goods to Borrower or Guarantor.
- (d) Permitted or suffered to exist any security interest in or liens on any of its properties, whether real or personal, other than as specifically permitted in the Financing Agreements.
- (e) Received any notice of, or obtained knowledge of any of the following not previously disclosed to Agent: (i) the occurrence of any event involving the release, spill or discharge of any Hazardous Material in violation of applicable Environmental Law in a material respect or (ii) any investigation, proceeding, complaint, order, directive, claims, citation or notice with respect to: (A) any non-compliance with or violation of any applicable Environmental Law by Borrower or Guarantor in any material respect or (B) the release, spill or discharge of any Hazardous Material in violation of applicable Environmental Law in a material respect or (C) the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials in violation of applicable Environmental Laws in a material respect or (D) any other environmental, health or safety matter, which has a material adverse effect on Borrower or Guarantor or its business, operations or assets or any properties at which Borrower or Guarantor transported, stored or disposed of any Hazardous Materials.
- (f) Become aware of, obtained knowledge of, or received notification of, any breach or violation of any material covenant contained in any instrument or agreement in respect of Indebtedness for money borrowed by Borrower or Guarantor.

5. Attached hereto as Schedule III are the calculations used in determining, as of the end of such fiscal month whether Borrower and Guarantor are in compliance with the covenants set forth in Section 9.18 of the Loan Agreement for such fiscal month.

The foregoing certifications are made and delivered this day of \_\_\_\_\_, 20\_\_.

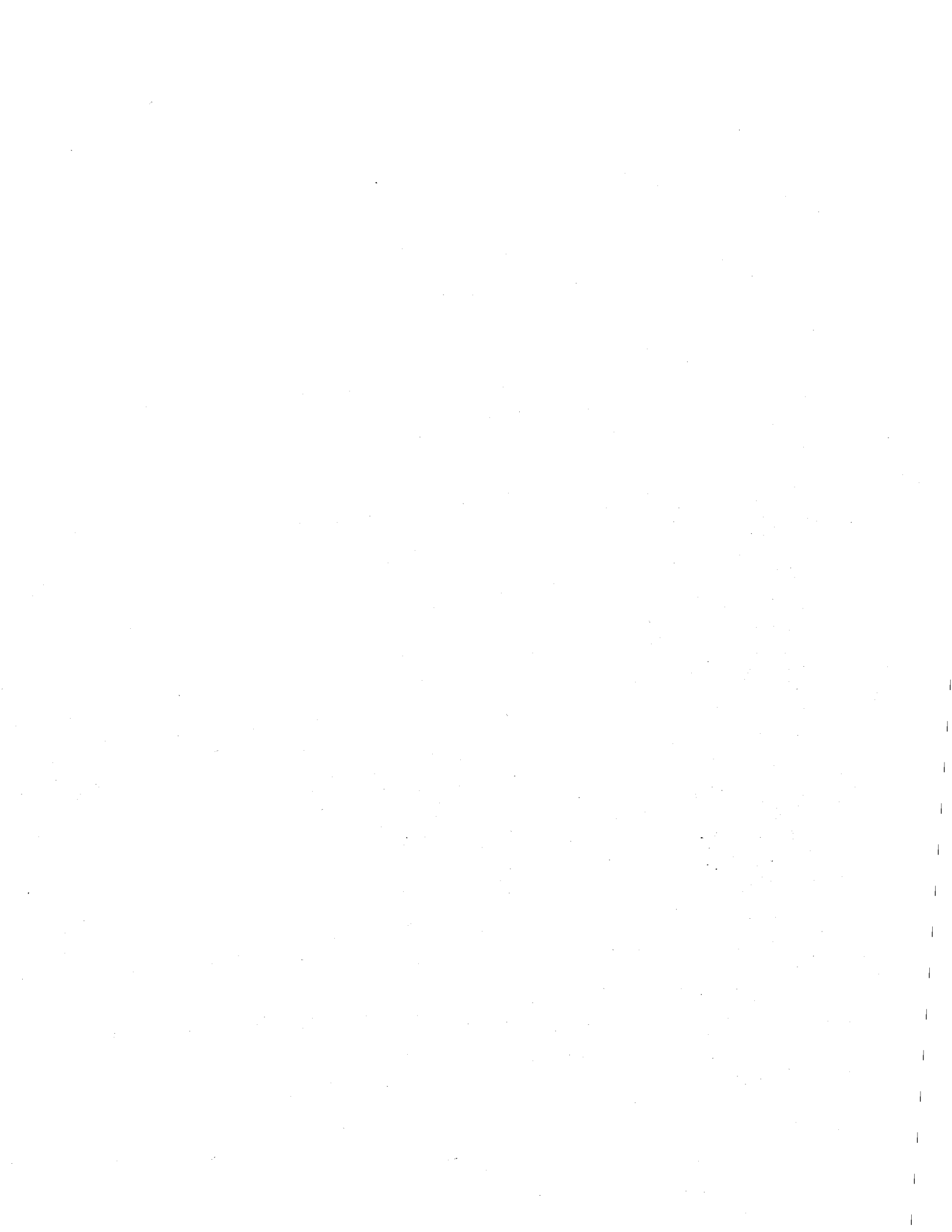
Very truly yours,

MERVYN'S LLC

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

Title: \_\_\_\_\_





SCHEDULE 1.104 TO LOAN AGREEMENT  
Minimum Rent Reductions

Store #	Name	City	State	Ownership Interest	GLA	Minimum Rent Reduction
<b>UNITARY</b>						
057	Desert Sky Mall	Glendale	AZ	O	78,802	0.7%
234	Superstition Springs	Mesa	AZ	O	86,858	0.8%
036	Capitola	Capitola	CA	SL	74,929	0.3%
288	Chula Vista Ctr.	Chula Vista	CA	O	83,256	0.6%
226	El Cajon	El Cajon	CA	GL	85,744	0.4%
206	Eureka	Eureka	CA	O	60,855	0.3%
105	Grand Junction	Grand Junction	CO	O	74,231	0.3%
076	Vancouver	Vancouver	WA	O	83,183	0.5%
059	Gateway S.C.	Portland	OR	O	75,089	0.6%
060	Clackamas	Clackamas	OR	O	78,480	0.6%
293	Hillsboro	Beaverton	OR	O	76,214	0.7%
215	Bellingham	Bellingham	WA	O	75,941	0.3%
164	Lynnwood	Lynnwood	WA	O	76,946	0.5%
297	Redmond	Redmond	WA	O	79,040	0.4%
218	Puyallup	Puyallup	WA	O	76,837	0.5%
260	Olympia	Olympia	WA	O	103,504	0.4%
208	Silverdale	Silverdale	WA	O	75,584	0.3%
154	Chandler	Chandler	AZ	O	74,862	1.0%
055	Deer Valley	Phoenix	AZ	O	81,009	1.0%
290	Silver Creek Pl.	Phoenix	AZ	O	76,214	1.5%
069	Village Square	Phoenix	AZ	GL	75,120	0.4%
103	Tucson SA	Tucson	AZ	O	76,126	0.8%
092	Yuma	Yuma	AZ	O	76,256	0.6%
126	Alhambra	Alhambra	CA	O	80,986	1.5%
266	Anaheim Hills	Anaheim	CA	O	77,883	1.7%
037	Bakersfield	Bakersfield	CA	SL	100,811	0.0%
217	East Hills Mall	Bakersfield	CA	O	75,140	1.0%
184	Chino	Chino	CA	O	81,282	1.0%
216	Clovis	Clovis	CA	GL	77,561	0.9%
030	Cypress	Cypress	CA	SL	66,675	0.2%

Store #	Name	City	State	Ownership Interest	GLA	Minimum Rent Reduction
284	Elk Grove	Elk Grove	CA	O	77,874	1.7%
195	Escondido	Escondido	CA	O	75,712	1.3%
106	Fontana	Fontana	CA	O	78,961	0.8%
285	Arbor Faire	Fresno	CA	O	77,431	1.2%
277	Hanford	Hanford	CA	O	78,459	1.0%
289	Highland	Highland	CA	O	80,521	0.6%
053	Lodi	Lodi	CA	O	68,017	1.3%
264	Lompoc	Lompoc	CA	O	62,523	0.9%
232	Madera	Madera	CA	O	59,720	0.6%
262	Manteca	Manteca	CA	O	88,515	1.2%
049	Marysville	Marysville	CA	O	66,426	1.0%
081	Milpitas	Milpitas	CA	O	75,021	2.1%
214	Moreno Valley	Moreno Valley	CA	O	77,192	0.6%
224	Morgan Hill	Morgan Hill	CA	O	77,185	1.8%
008	Napa	Napa	CA	SL	68,365	0.1%
086	Oceanside	Oceanside	CA	O	75,360	1.1%
265	Palmdale	Palmdale	CA	O	76,550	1.3%
010	Petaluma	Petaluma	CA	SL	62,909	0.3%
251	Porterville	Porterville	CA	O	76,378	1.2%
078	Rancho Cordova	Rancho Cordova	CA	O	75,112	1.7%
230	Rancho Cucamonga	Rancho Cucamonga	CA	O	74,991	1.1%
124	Redding	Redding	CA	O	61,363	1.0%
075	Redlands	Redlands	CA	O	75,890	1.1%
233	Ridgecrest	Ridgecrest	CA	O	59,042	0.7%
108	Riverside	Riverside	CA	SL	85,608	0.5%
101	Roseville	Roseville	CA	O	75,928	1.7%
015	Point West	Sacramento	CA	O	72,304	1.7%
278	Carmel Mountain	San Diego	CA	O	78,657	1.5%
089	S. San Diego	San Diego	CA	O	75,207	1.2%
004	Princeton	San Jose	CA	SL	88,862	0.3%
219	Santa Maria	Santa Maria	CA	O	84,886	1.2%
061	Sun Valley	Sun Valley	CA	O	85,783	1.3%
235	Temecula	Temecula	CA	O	76,248	0.9%

Store #	Name	City	State	Ownership Interest	GLA	Minimum Rent Reduction
250	Tulare	Tulare	CA	O	62,947	0.6%
183	Turlock	Turlock	CA	O	61,026	0.6%
040	Tustin	Tustin	CA	SL	78,670	0.3%
231	Ukiah	Ukiah	CA	O	58,841	0.9%
268	Vacaville	Vacaville	CA	O	77,936	1.8%
087	Ventura	Ventura	CA	O	75,247	1.4%
166	Victorville	Victorville	CA	O	74,918	1.1%
172	Aurora	Aurora	CO	O	74,953	0.6%
174	Bowles Cr	Littleton	CO	GL	78,182	0.4%
173	Northglenn	Northglenn	CO	O	84,674	1.0%
207	Pueblo	Pueblo	CO	O	54,653	0.5%
171	Westminster	Westminster	CO	O	77,624	0.9%
159	Monroe	Monroe	LA	O	62,811	0.5%
152	North Shore Mall	Slidell	LA	O	76,287	0.8%
100	Carson City	Carson City	NV	O	60,494	1.3%
189	Nellis Crossing	Las Vegas	NV	O	76,016	1.5%
051	W. Las Vegas	Las Vegas	NV	O	75,687	1.8%
318	Reno	Reno	NV	O	79,239	1.7%
080	Yarborough	El Paso	TX	O	75,522	0.8%
270	McAllen	McAllen	TX	O	78,027	0.5%
186	Waco	Waco	TX	O	76,316	0.6%
157	Midland	Midland	TX	O	77,126	0.6%
091	Amarillo	Amarillo	TX	O	75,064	0.6%
067	Layton	Layton	UT	GL	91,842	0.3%
900	Mervyns' Corporate HQ	Hayward	CA	O	341,287	1.8%
996	Ontario Distribution Ctr	Ontario	CA	O	665,800	4.3%
997	N. California Distribution Ctr	Fremont	CA	O	457,470	3.5%



**SCHEDULE 1.105  
MONTHLY RESTRICTED LEASE DIVIDEND**

Store #	Name	City	State	Leasehold Interest	Minimum Rent Reduction (in \$1,000's)
044	Mesa	Mesa	AZ	SL	0
045	Tempe	Tempe	AZ	SL	0
056	Collonade	Phoenix	AZ	SL	0
084	Tucson Mall	Tucson	AZ	GL	0
109	Broadway	Tucson	AZ	SL	43
261	Scottsdale	Scottsdale	AZ	GL	0
317	Lakewood	Lakewood	CA	GL	0
001	Southland Mall	Hayward	CA	GL	137
003	E. San Jose	San Jose	CA	SL	0
005	Cupertino	Cupertino	CA	SL	0
007	Dublin	Dublin	CA	SL	88
009	Modesto	Modesto	CA	SL	0
012	Alameda	Alameda	CA	SL	46
013	Campbell	Campbell	CA	SL	253
014	Serramonte	Daly City	CA	SL	275
016	Vallejo	Vallejo	CA	SL	5
017	Greenback	Citrus Heights	CA	SL	0
020	Visalia	Visalia	CA	SL	2
021	Merced	Merced	CA	SL	0
022	Millbrae	Millbrae	CA	SL	0
023	Mountain View	Mountain View	CA	SL	0
024	Salinas	Salinas	CA	SL	92
025	Huntington Beach	Huntington Beach	CA	SL	0
026	Fullerton	Fullerton	CA	SL	176
027	San Diego	San Diego	CA	SL	138
028	Oxnard	Oxnard	CA	SL	0
031	Pleasant Hill	Pleasant Hill	CA	SL	242

SL = Store Lease  
GL = Ground Lease

Store #	Name	City	State	Leasehold Interest	Minimum Rent Reduction (in \$1,000's)
032	Santa Clara	Santa Clara	CA	SL	0
035	Chico	Chico	CA	SL	88
038	Fresno	Fresno	CA	SL	124
039	Anaheim	Anaheim	CA	SL	240
041	Stockton	Stockton	CA	SL	93
042	Simi Valley	Simi Valley	CA	SL	97
043	Corona	Corona	CA	SL	51
046	College G	San Diego	CA	SL	157
047	Upland	Upland	CA	SL	135
050	Redwood City	Redwood City	CA	SL	0
054	West Covina	West Covina	CA	GL	0
068	Northridge	Northridge	CA	SL	0
070	Downey	Downey	CA	SL	0
071	Whittier	Whittier	CA	SL	0
072	El Centro	El Centro	CA	SL	0
090	Hillsdale	San Mateo	CA	SL	0
102	San Luis Obispo	San Luis Obispo	CA	SL	209
107	Sports Arena	San Diego	CA	SL	0
123	Torrance	Torrance	CA	SL	118
125	Monterey	Monterey	CA	GL	0
131	Puente Hills	City of Industry	CA	GL	206
146	San Rafael	San Rafael	CA	GL	0
165	Woodland	Woodland	CA	GL	107
167	Mira Mesa	San Diego	CA	SL	0
168	Huntington Center	Huntington Beach	CA	GL	0
185	Valencia	Valencia	CA	GL	244
194	Irvine	Irvine	CA	GL	370
236	Burbank	Burbank	CA	GL	332
267	Mission Viejo	Mission Viejo	CA	GL	63

SL = Store Lease  
GL = Ground Lease

Store #	Name	City	State	Leasehold Interest	Minimum Rent Reduction (in \$,000s)
269	San Francisco	San Francisco	CA	SL	0
298	Thousand Oaks	Thousand Oaks	CA	GL	240
198	Livonia	Livonia	MI	GL	0
203	Lansing	Lansing	MI	GL	0
204	Okemos	Okemos	MI	GL	0
211	Ann Arbor	Ann Arbor	MI	GL	0
212	Taylor	Taylor	MI	GL	0
213	Warren	Warren	MI	GL	0
280	Courtland Ctr.	Burton	MI	SL	0
052	Albuquerque	Albuquerque	NM	SL	0
029	Sparks	Sparks	NV	SL	0
058	Washington	Portland	OR	SL	0
079	Bassett	El Paso	TX	GL	128
120	Memorial City	Houston	TX	SL	0
137	Hulen Plaza	Ft. Worth	TX	GL	0
141	Windsor	San Antonio	TX	GL	0
142	South Park Mall	San Antonio	TX	SL	0
149	Odessa	Odessa	TX	GL	0
150	Lubbock	Lubbock	TX	GL	23
196	Sunrise Mall	Corpus Christi	TX	GL	0
296	Laredo	Laredo	TX	SL	0
064	Brickyard	Salt Lake City	UT	GL	134
065	Family Center	Midvale	UT	GL	0
066	Valley Fa	W. Valley City	UT	GL	55
074	Orem	Orem	UT	GL	80
082	Odgen	Odgen	UT	SL	48
287	Crossroads Plaza	Salt Lake City	UT	SL	0
129	Lacey	Lacey	WA	SL	0
182	Bellevue	Bellevue	WA	GL	0

SL = Store Lease  
GL = Ground Lease



Store #	Name	City	State	Leasehold Interest	Minimum Rent Reduction (in \$1,000's)
187	Everett Mall	Everett	WA	SL	0
259	Tacoma	Tacoma	WA	GL	0
275	Southcenter	Seattle	WA	GL	137
				<b>Total</b>	<b>\$4,976</b>



SCHEDULE 1.113  
TO  
LOAN AGREEMENT

Permitted Holders

“Permitted Holders” means Sun Capital, Cerberus and Lubert-Adler and their respective Affiliates (other than any Sponsor Portfolio Company).

Stores Excellence Incentive Plan (SEIP)  
World Class Incentive Plan (WCIP)  
DC Excellence Incentive Plan (DCEIP)  
HQ Incentive Plan (HQIP)

**Other Benefits & Perquisites:**

Tuition Reimbursement  
ConSern Loans for Education (Wells Fargo)  
Scholarship Program  
Funeral Leave  
Adoption Benefit Plan  
Employee Assistance Program  
Group Legal Plan (Hyatt)  
Leave of Absence Policy  
Sprint Discount  
Dell Computer Discount  
Home Loans  
Credit Union  
Air Class Travel  
Country Club  
Financial Counseling  
Physicals  
Airline Club  
Workers Compensation  
Relocation  
Target Corporation Merchandise Discounts (Retiree)  
H&R Block Tax Preparation

AMENDMENT NO. 1  
TO  
LOAN AND SECURITY AGREEMENT

This Amendment No. 1 to Loan and Security Agreement ("Amendment No. 1") dated October 25, 2004 is entered into by and among Mervyn's LLC, a California limited liability company ("Borrower"), Mervyn's Brands, LLC, a Minnesota limited liability company ("Guarantor"), and Congress Financial Corporation (Western), a California corporation ("Congress"), in its capacity as administrative agent and collateral agent for the parties to the Loan Agreement (as hereinafter defined) from time to time as lenders (in such capacity "Agent").

WITNESSETH

WHEREAS, Agent, the financial institutions parties to the Loan Agreement as lenders (individually, each a "Lender" and collectively, "Lenders"), Borrower and Guarantor have entered into financing arrangements pursuant to which Lenders (or Agent on behalf of Lenders) have made and may make loans and advances and provide other financial accommodations to Borrower as set forth in the Loan and Security Agreement, dated September 2, 2004, by and among Agent, Lenders, Borrower and Guarantor (as amended hereby and as the same may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements"); and

WHEREAS, Borrower and Guarantor have requested that Agent and Lenders make certain amendments to the Loan Agreement and the other Financing Agreements, and Agent and Lenders agree to such amendments, subject to the terms and conditions contained herein;

NOW THEREFORE, in consideration of the foregoing, and the respective agreements and covenants contained herein, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

(a) Additional Definition. As used herein, the following term shall have the meaning given to it below and the Loan Agreement shall be deemed and is hereby amended to include, in addition and not in limitation, the following definition:

"Amendment No. 1" shall mean this Amendment No. 1 to the Loan and Security Agreement by and among Borrower, Guarantor and Agent, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(b) Amendments to Definitions.

(i) The definition of "ACH Transactions" set forth in Section 1.2 of the Loan Agreement is deleted in its entirety and replaced as follows:

"1.2 "ACH Transactions" shall mean any overdrafts, cash management or related services, including the automatic clearing house transfer of funds by any Bank Product Provider or any of its Affiliates for the account of Borrower or its Subsidiaries, in each case pursuant to agreements entered into with Borrower or any of its Subsidiaries."

(ii) The definition of "Bank Product Providers" set forth in Section 1.12 of the Loan Agreement is deleted in its entirety and replaced as follows:

"1.12 "Bank Product Provider" shall mean each Lender (other than any Sponsor Affiliated Lender) and any of its Affiliates that may, from time to time, provide any Bank Products to Borrower, Guarantor or any of their respective Subsidiaries; sometimes being referred herein collectively as "Bank Product Providers"."

(c) Interpretation. For purposes of this Amendment No. 1, all terms used herein, including but not limited to, those terms used and/or defined herein or in the recitals hereto shall have the respective meanings assigned thereto in the Loan Agreement.

SECTION 2. WAIVER.

(a) Subject to the terms and conditions hereof, in connection with the assignment by Borrower of its right, title and interest as a lessee with respect to the Restricted Leases identified on Exhibit A hereto ("Selected Restricted Leases"), upon the effectiveness of this Amendment No. 1, Agent and Lenders hereby waive the ten (10) Business Day prior written requirement provided for in Section 9.7(b)(vii)(A) of the Loan Agreement with respect to the assignment of the Selected Restricted Leases; provided, that, all of the terms and conditions set forth in Sections 9.7(b)(vii)(B) through (E) of the Loan Agreement have been satisfied in a manner acceptable to Agent with respect to the Selected Restricted Leases by no later than November 1, 2004.

(b) Except to the extent set forth in Section 2(a) hereof, Agent and Lenders have not waived and are not by this agreement waiving, and have no present intention of waiving, any other provision of the Loan Agreement or the other Financing Agreements, whether with respect to any Restricted Leases or otherwise.

SECTION 3. APPOINTMENT OF CO-DOCUMENTATION AGENT. Upon the effectiveness of this Amendment No. 1, Wells Fargo Foothill, LLC shall be appointed as a documentation agent. The identification of Wells Fargo Foothill, LLC, together with General Electric Capital Corporation and The CIT Group/Business Credit, Inc., as co-documentation agents as set forth in

the Loan Agreement, shall not create any rights in favor of such parties in such capacities nor subject such parties to any duties or obligations in such capacities.

**SECTION 4. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Borrower and Guarantor each represents, warrants and covenants with and to Agent and Lenders as follows, which representations, warranties and covenants, together with the representations, warranties and covenants in the other Financing Agreements, are continuing and shall survive the execution and delivery hereof, and the truth and accuracy of, or compliance with each, being a continuing condition of the making of Loans by Lenders (or Agent on behalf of Lenders) to Borrower and Guarantor:

(a) This Amendment No. 1 and each agreement, document or instrument executed and delivered in connection therewith have each been duly executed and delivered by Borrower and Guarantor is in full force and effect as of the date hereof and the agreements and obligations of Borrower and Guarantor contained herein and thereunder constitute legal, valid and binding obligation of Borrower and Guarantor, enforceable against it in accordance with their respective terms.

(b) No action of, or filing with, or consent or any governmental or public body or authority, and no approval or consent of any other party, is or will be required to authorize, or is or will be otherwise required in connection with, the execution, delivery and performance of this Amendment No. 1, other than such consents and approvals which have been obtained and are in full force and effect and fully executed copies of which have been delivered to Agent.

(c) This Amendment No. 1 and each other agreement, document or instrument to be executed and delivered by Borrower and Guarantor in connection therewith or herewith has been duly authorized, executed and delivered by all necessary action on the part of Borrower and Guarantor, and Amendment No. 1 and each other agreement, document or instrument to be executed and delivered by Borrower and Guarantor in connection therewith or herewith is in full force and effect as of the date of Amendment No. 1 and the agreements and obligations of Borrower and Guarantor contained herein and therein constitute legal, valid and binding obligations of Borrower and Guarantor enforceable against Borrower and Guarantor in accordance with their respective terms.

(d) Neither the execution and delivery of this Amendment No. 1 or the documents, agreements or instruments executed or delivered in connection therewith or related thereto, nor the consummation of the transactions herein or therein contemplated, nor compliance with the provisions hereof or thereof are in contravention of any law or regulation or any order or decree of any court or Governmental Authority applicable to Borrower or Guarantor in any respect, or conflict with or result in the breach of, or constitutes a default in any respect under any mortgage, deed of trust, security agreement, agreement or instrument to which Borrower or Guarantor is a party or may be bound, or violates any provision of the formation or other organizational documents of Borrower or Guarantor.

(e) No Event of Default or act, condition or event which with notice or passage of time or both would constitute an Event of Default exists or has occurred and is continuing on the date of Amendment No. 1.

SECTION 5. CONDITIONS PRECEDENT. The effectiveness of the amendments contained herein shall be subject to the receipt by Agent of each of the following, in form and substance satisfactory to Agent:

(a) an original of this Amendment No. 1, duly authorized, executed and delivered by Borrower and Guarantor; and

(b) no Event of Default or act, condition or event which with notice or passage of time or both would constitute an Event of Default exists or has occurred and is continuing on the date of Amendment No. 1.

SECTION 6. EFFECT OF THIS AMENDMENT. Except as expressly set forth herein, no other amendments, waiver, changes or modifications to the Financing Agreements are intended or implied, and in all other respects the Financing Agreements are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and Borrower and Guarantor shall not be entitled to any other or further amendment or waiver by virtue of the provisions of this Amendment No. 1 or with respect to the subject matter of this Amendment No. 1. To the extent of conflict between the terms of this Amendment No. 1 and the other Financing Agreements, the terms of this Amendment No. 1 shall control. The Loan Agreement and this Amendment No. 1 shall be read and construed as one agreement.

SECTION 7. FURTHER ASSURANCES. The parties hereto shall execute and deliver such additional documents and take such additional action as may be necessary or desirable to effectuate the provisions and purposes of this Amendment No. 1.

SECTION 8. GOVERNING LAW. The validity, interpretation and enforcement of this Amendment No. 1 and the other Financing Agreements and any dispute arising out of the relationship between the parties hereto whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

SECTION 9. BINDING EFFECT. This Amendment No. 1 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 10. HEADINGS. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 1.

SECTION 11. COUNTERPARTS. This Amendment No. 1 may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement. In making proof of this Amendment No. 1, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto. Delivery of an executed counterpart of this Amendment No. 1 by telefacsimile shall have the same force and effect as delivery of an original executed counterpart of this Amendment No. 1. Any party



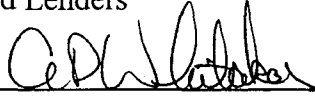
delivering an executed counterpart of this Amendment No. 1 by telefacsimile also shall deliver an original executed counterpart of this Amendment No. 1, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment No. 1 as to such party or any other party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Agent, Borrower and Guarantor have caused these presents to be duly executed as of the day and year first above written.

AGENT

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent on behalf of  
Required Lenders

By: 

Title: VP

BORROWER

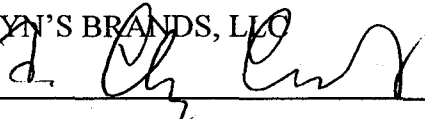
MERVYN'S LLC

By: 

Title: SVP, Finance & CFO

GUARANTOR

MERVYN'S BRANDS, LLC

By: 

Title: Chief Treasurer

EXHIBIT A  
TO  
AMENDMENT NO. 1

Selected Restricted Leases

<b>Store</b>	<b>Address</b>	<b>Landlord Party Name</b>	<b>Lease</b>	<b>MDS Entity (Assignee)</b>	<b>Unitary Lease to Which Lease to be Assigned</b>
M-0042	2801 E. Cochran Street Simi Valley, CA	Francis Brunnel LaGatta Irrevocable Trust	Lease Agreement by and between Frances Brunnell LaGatta Irrevocable Trust (assignee of Valley Limited) and Mervyn's dated 3-1-77 (as amended)	MDS Realty IV, LLC	10 Years
M-0047	233 Mountain Avenue Upland, CA	James P. McCann Irrevocable Trust II	Lease Agreement by and between Landlord (assignee of San Diego Upland Limited) and Mervyn's dated 1-1-78 (as amended)	MDS Realty IV, LLC	10 Years
M-0050	205 Walnut Street Redwood City, CA	Redmer II Limited	Lease Agreement by and between Redmer II Limited (assignee of Redmer Limited) and Mervyn's dated 8-15-78 (as amended)	MDS Realty III, LLC	15 Months
M-0064	1154 Brickyard Salt Lake City, UT	The Boyer Company	Lease by and between Brickyard Associates and Mervyn's dated 7-15-79 (as amended)		10 Years

Store	Address	Landlord Party Name	Lease	MDS Entity (Assignee)	Unitary Lease to Which Lease to be Assigned
M-0065	1146 East Ft. Union Blvd., Midvale, UT	DDR Family Centers, LP	Lease by and between Hermes Associates and Mervyn's dated 7-15-79 (as amended)		15 Months
M-0071	15602 Whittwood Lane Whittier, CA	Lennar Partners	Lease by and between Whittwood Center, Inc. and Mervyn's dated 12-18-80 (as amended)		10 Years
M-0168	Huntington Center, 7777 Edinger Avenue #100, Huntington Beach, CA	Huntington Center Associates, LLC	Lease by and between McDonald Group Limited Partnership and Mervyn's dated 1-22-86		15 Months

## EXECUTION

### AMENDMENT NO. 2 TO LOAN AND SECURITY AGREEMENT

This Amendment No. 2 to Loan and Security Agreement (“Amendment No. 2”) dated December 22, 2005 is entered into by and among Mervyn’s LLC, a California limited liability company (“Borrower”), Mervyn’s Brands, LLC, a Minnesota limited liability company (“Guarantor”), and Wachovia Capital Finance Corporation (Western), as successor to Congress Financial Corporation (Western), a California corporation, in its capacity as administrative agent and collateral agent for the parties to the Loan Agreement (as hereinafter defined) from time to time as lenders (in such capacity “Agent”).

#### WITNESSETH:

WHEREAS, Agent, the financial institutions parties to the Loan Agreement as lenders (individually, each a “Lender” and collectively, “Lenders”), Borrower and Guarantor have entered into financing arrangements pursuant to which Lenders (or Agent on behalf of Lenders) have made and may make loans and advances and provide other financial accommodations to Borrower as set forth in the Loan and Security Agreement, dated September 2, 2004, by and among Agent, Lenders, Borrower and Guarantor, as amended by Amendment No. 1 to Loan and Security Agreement, dated October 25, 2004 by and among Agent, Lenders, Borrower and Guarantor (as further amended hereby and as the same may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the “Loan Agreement”), and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the “Financing Agreements”); and

WHEREAS, Borrower and Guarantor have requested that Agent and Lenders make certain amendments to the Loan Agreement and the other Financing Agreements, and Agent and Lenders agree to such amendments, subject to the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the foregoing, and the respective agreements and covenants contained herein, the parties hereto agree as follows:

#### SECTION 1. AMENDMENTS.

(a) Additional Definition. As used herein, the following term shall have the meaning given to it below and the Loan Agreement shall be deemed and is hereby amended to include, in addition and not in limitation, the following definitions:

(i) “Amendment No. 2” shall mean this Amendment No. 2 to the Loan and Security Agreement by and among Borrower, Guarantor and Agent, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(ii) “Total Rent Cap” shall mean \$105,000,000, which amount may be adjusted (upward or downward) based upon required adjustments to the amount of Basic Rent to be paid by Borrower under the Unitary Leases as provided for in Section 3.01 of the Unitary Leases (as in effect on the date of Amendment No.2); except, that, the Total Rent Cap shall be permanently reduced when a leased site is removed from the Unitary Leases by an amount equal to the aggregate first year’s fixed rent payable by Borrower to the new third-party landlord with respect to such site.

(b) Deleted Definitions. The defined terms “Minimum Rent Reduction”, “Ten Year Unitary Lease”, “Three Year Unitary Lease” and “Fifteen Month Unitary Lease” are hereby deleted in their entirety from the Financing Agreements.

(c) Amendments to Loan Agreement.

(i) Schedule 1.105 to the Loan Agreement is hereby deleted and replaced by Schedule 1.105 annexed to Amendment No.2.

(ii) The defined term “Unitary Leases” at Section 1.164 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“Unitary Lease” or “Unitary Leases” shall mean one or all (as applicable) of those three (3) Amended and Restated Shopping Center Unitary Leases dated December 22, 2005, referred to as follows: i) the “Closed Store Unitary Lease,” by and among MDS Realty I, LLC, MDS Texas Realty I, LP, MDS Realty II, LLC, MDS Texas Realty II, LP, and MDS Realty III, LLC as lessor and Borrower as lessee; ii) the “Illiquid (Operating) Unitary Lease,” by and among MDS Realty I, LLC, MDS Realty II, LLC, MDS Realty III, LLC, MDS Realty IV, LLC, MDS Texas Realty I, LP, and MDS Realty Texas II, LP as lessor and Borrower as lessee; and iii) the “Liquid (Operating) Unitary Lease,” by and among MDS Realty I, LLC, MDS Realty II, LLC, and MDS Texas Realty I, LP, as lessor and Borrower as lessee; as each of the same may now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.”

(iii) The defined term “Monthly Restricted Lease Dividend” at Section 1.105 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“Monthly Restricted Lease Dividend” shall mean the aggregate annual cash dividend payable by Borrower to Parent in respect of all Restricted Leases divided by 12 (provided, that, the aggregate amount of all Monthly Restricted Lease Dividends payable in any fiscal year by Borrower to Parent when added to the annual amount of Basic Rent to be paid by Borrower under the Unitary Leases, as provided for in Section 3.01 of the Unitary

Leases (as in effect on the date of Amendment No.2) shall not exceed the Total Rent Cap, then in effect.

(iv) The defined term “Real Estate Intercreditor Agreement” at Section 1.128 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“Real Estate Intercreditor Agreement” shall mean the Intercreditor Agreement, dated as of the date of Amendment No. 2, by and among Senior RE Loan Lenders, Mezzanine RE Loan Lenders, and Agent, which intercreditor agreement replaces that certain Intercreditor Agreement dated September 2, 2004, as the same may now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced; a true, correct and complete copy of which is appended to this Amendment No. 2 as Exhibit A hereto.

(v) The defined term “Mezzanine RE Loan Agreement” at Section 1.99 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“Mezzanine RE Loan Agreement” shall mean the Mezzanine Loan Agreement, dated as of December 22, 2005, by and among Mezzanine RE Loan Lenders, Realco Holdings I, Realco Holdings II, MDS Texas Prop I and MDS Texas Prop II, as the same may now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced

(vi) The defined term “Mezzanine RE Loan Lenders” at Section 1.102 is hereby deleted in its entirety and replaced with the following:

“Mezzanine RE Loan Lenders’ shall mean, collectively, Greenwich Capital Financial Products, Inc., a Delaware corporation, Goldman Sachs Mortgage Company and Citigroup Global Markets Realty Corporation, a New York corporation, together with their respective successors and assigns.”

(vii) The defined term “Restricted Lease Proceeds” at Section 1.139 of the Loan Agreement is hereby amended by deleting clause (b)(ii) thereof in its entirety and replacing such clause with the following:

“(ii) any sale or other disposition by Borrower of its interest in any Restricted Lease (including any termination or surrender of any Restricted Lease) or Restricted Lease Fixtures, or the creation by Borrower of any encumbrance on its interest in any Restricted Lease or Restricted Lease Fixtures which encumbrance is permitted under Section 9.8(r) of the Loan Agreement or is otherwise permitted by Agent..”

(viii) “The defined term “Restricted Lease Proceeds Account(s)” at Section 1.140 of the Loan Agreement is hereby amended by adding the following phrase at the end thereof: “as such Schedule 8.10 to the Information Certificate may be revised by Borrower from time to time upon notice to Agent.”

(ix) The defined term “Senior RE Loan Agreement” at Section 1.145 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“Senior RE Loan Agreement” shall mean the Loan Agreement, dated as of December 22, 2005, by and among Senior RE Loan Lenders, MDS Realty I, MDS Realty II, MDS Texas Realty I, and MDS Texas Realty II (and as the same may now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced).

(x) The defined term “Senior RE Loan Lenders” at Section 1.147 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

“Senior RE Loan Lenders” shall mean, collectively, Greenwich Capital Financial Products, Inc., a Delaware corporation, Goldman Sachs Commercial Mortgage Capital, L.P., a New York limited partnership, and Citigroup Global Markets Realty Corporation, a New York corporation, together with their respective successors and assigns.

(xi) Section 7.1(a)(ii) of the Loan Agreement is hereby amended by adding the following provision to the end of Section 7.1(a)(ii):

“and (O) to the extent that any leased site has been removed from the Unitary Leases, a notice of such removal indicating in each case the annual fixed rent payable to the new third party landlord with respect to such site, and the new rent payable under the Unitary Leases after giving affect to such removal.”

(xii) Section 9.7(b)(v)(B)(3) is hereby deleted in its entirety and replaced with the following:

“(3) upon the effective date of such sale or other disposition of a Restricted Lease, the Monthly Restricted Lease Dividend shall be permanently reduced by an amount to be agreed to by Parent and Borrower.”

(xiii) Section 9.7(b)(v)(C)(3) is hereby deleted in its entirety and replaced with the following:

“(3) upon the effective date of such sale or other disposition of such Unrestricted Lease, the amount of Basic Rent



to be paid by Borrower under the Unitary Leases as provided for in Section 3.01 of the Unitary Leases (as in effect on the date of Amendment No.2) due from Borrower to lessor under the Unitary Lease shall be reduced by an amount equal to the aggregate first year's fixed rent payable by Borrower to the new third-party landlord with respect to such site.,”

(xiv) Section 9.7(b)(vi) of the Loan Agreement is deleted in its entirety and replaced as follows:

“(vi) any removal or severance of any Unrestricted Lease pursuant to Section 9.22(b) hereof,”

(xv) Section 9.7(b)(vii) of the Loan Agreement is deleted in its entirety and replaced as follows:

“(vii) the assignment by Borrower, from time to time, of all of its right, title and interest as a lessee in respect of a Restricted Lease to MDS Realty I, MDS Realty II, MDS Realty III, MDS Realty IV, MDS Texas Realty I and MDS Realty Texas Realty II; provided that, (A) Agent shall have received not less than ten (10) calendar days prior written notice of such assignment, which notice shall set forth in reasonable detail satisfactory to Agent, the Restricted Lease to be assigned, and to which Unitary Lease it shall be subject and such other information with respect thereto as Agent may request, (B) such assignment does not violate applicable law, the Restricted Lease or any other agreement to which Borrower or Guarantor is or may become a party to, and (C) after giving effect to such assignment, the sum of (1) the annual amount of Basic Rent to be paid by Borrower under the Unitary Leases as provided for in Section 3.01 of the Unitary Leases (as in effect on the date of Amendment No.2) plus (2) the annual amount of the Monthly Restricted Lease Dividend does not exceed the Total Rent Cap.”

(xvi) Section 9.8 of the Loan Agreement is hereby amended by adding the following section to the end thereof:

“and (r) the security interests in leases granted by Borrower to the holders of the Indebtedness of Borrower incurred in accordance with Section 9.9(l) hereof.”

(xvii) Section 9.9 of the Loan Agreement will be amended by adding the following section to the end thereof:

“and (l) the Indebtedness of Borrower or Guarantor to a non-Affiliate incurred after the date of Amendment No. 2, provided, that, (i) such Indebtedness is incurred in favor of a non-

Affiliate of Borrower in connection with the sale, transfer or assignment of a lease to a non-Affiliate of Borrower, (ii) Agent is given ten (10) calendar days prior notice of such transaction, (iii) the transaction is substantially cash-flow neutral to Borrower, as determined in the reasonable discretion of Agent, and (iv) the Indebtedness is not secured by any property of the Borrower or Guarantor other than its interest in such lease or its appurtenances.”

(xviii) The following language is hereby added to the end of Section 9.11(f)(i) of the Loan Agreement:

“; provided, that, the aggregate amount of all Monthly Restricted Lease Dividends payable in any fiscal year by Borrower to Parent when added to the annual amount of Basic Rent (as defined in Section 3.01 of the Unitary Leases as in effect on the date of Amendment No.2) payable by Borrower under all of the Unitary Leases shall not exceed the Total Rent Cap, then in effect; and”

(xix) Section 9.22 of the Loan Agreement is deleted in its entirety and replaced as follows:

“9.22 Unitary Leases. Borrower and Guarantor shall:

(a) provide Agent with ten (10) calendar days prior written notice of any amendment, modification or change in terms of the Unitary Leases;

(b) not, without Agent’s prior consent, increase the aggregate annual amount of Basic Rent (as such term is defined in Section 3.01 of the Unitary Leases as in effect on the date of Amendment No.2) payable under the Unitary Leases to an amount that would cause the sum of (i) aggregate annual amount of Basic Rent payable under the Unitary Leases, after giving effect to such increase and (ii) the Monthly Restricted Lease Dividend in respect of all Restricted Leases multiplied by 12, to an amount in excess of the Total Rent Cap, then in effect.

(c) not remove or sever one of the Unrestricted Leases from a Unitary Lease in connection with the sale or other disposition of the lessor’s interest therein to a third party subject to the occupancy rights of Borrower under the Unrestricted Lease without providing Agent not less than ten (10) calendar days prior written notice of such proposed removal or severance, which notice shall set forth in reasonable detail satisfactory to Agent, the

Unrestricted Lease to be removed or severed, and such other information with respect thereto as Agent may request; and

(d) furnish to Agent all material notices or demands in connection with the Unitary Leases either received by Borrower or Guarantor or on its behalf, promptly after the receipt thereof, or sent by Borrower or Guarantor or on its behalf, concurrently with the sending thereof, as the case may be.”

(d) Interpretation. For purposes of this Amendment No. 2, all terms used herein, including but not limited to, those terms used and/or defined herein or in the recitals hereto shall have the respective meanings assigned thereto in the Loan Agreement.

**SECTION 2. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Borrower and Guarantor each represents, warrants and covenants with and to Agent and Lenders as follows, which representations, warranties and covenants, together with the representations, warranties and covenants in the other Financing Agreements, are continuing and shall survive the execution and delivery hereof, and the truth and accuracy of, or compliance with each, being a continuing condition of the making of Loans by Lenders (or Agent on behalf of Lenders) to Borrower and Guarantor:

(a) This Amendment No. 2 and each agreement, document or instrument executed and delivered in connection therewith have each been duly executed and delivered by Borrower and Guarantor is in full force and effect as of the date hereof and the agreements and obligations of Borrower and Guarantor contained herein and thereunder constitute legal, valid and binding obligation of Borrower and Guarantor, enforceable against it in accordance with their respective terms.

(b) No action of, or filing with, or consent or any governmental or public body or authority, and no approval or consent of any other party, is or will be required to authorize, or is or will be otherwise required in connection with, the execution, delivery and performance of this Amendment No. 2, other than such consents and approvals which have been obtained and are in full force and effect and fully executed copies of which have been delivered to Agent.

(c) This Amendment No. 2 and each other agreement, document or instrument to be executed and delivered by Borrower and Guarantor in connection therewith or herewith has been duly authorized, executed and delivered by all necessary action on the part of Borrower and Guarantor, and Amendment No. 2 and each other agreement, document or instrument to be executed and delivered by Borrower and Guarantor in connection therewith or herewith is in full force and effect as of the date of Amendment No. 2 and the agreements and obligations of Borrower and Guarantor contained herein and therein constitute legal, valid and binding obligations of Borrower and Guarantor enforceable against Borrower and Guarantor in accordance with their respective terms.

(d) Neither the execution and delivery of this Amendment No. 2 or the documents, agreements or instruments executed or delivered in connection therewith or related

thereto, nor the consummation of the transactions herein or therein contemplated, nor compliance with the provisions hereof or thereof are in contravention of any law or regulation or any order or decree of any court or Governmental Authority applicable to Borrower or Guarantor in any respect, or conflict with or result in the breach of, or constitutes a default in any respect under any mortgage, deed of trust, security agreement, agreement or instrument to which Borrower or Guarantor is a party or may be bound, or violates any provision of the formation or other organizational documents of Borrower or Guarantor.

(e) No Event of Default or act, condition or event which with notice or passage of time or both would constitute an Event of Default exists or has occurred and is continuing on the date of Amendment No. 2.

(f) After giving effect to the Unitary Lease, the current aggregate Monthly Restricted Lease Dividend in respect of all Restricted Leases is \$24,954,000, and the current annual aggregate amount of Basic Rent payable in respect of all Unitary Leases is \$61,984,000.

SECTION 3. CONDITIONS PRECEDENT. The effectiveness of the amendments contained herein shall be subject to the receipt by Agent of each of the following, in form and substance satisfactory to Agent:

(a) an original of this Amendment No. 2, duly authorized, executed and delivered by Borrower and Guarantor;

(b) payment of the amendment fee referred to in Section 5 hereof;

(c) the Real Estate Intercreditor Agreement dated as of the date of Amendment No. 2, in form and substance satisfactory to Agent, executed by all of the parties thereto;

(d) a true and complete copy of the Unitary Leases referred to in this Amendment No. 2, in form and substance satisfactory to Agent; and

(e) no Event of Default or act, condition or event which with notice or passage of time or both would constitute an Event of Default exists or has occurred and is continuing on the date of Amendment No. 2.

SECTION 4. EFFECT OF THIS AMENDMENT. Except as expressly set forth herein, no other amendments, waiver, changes or modifications to the Financing Agreements are intended or implied, and in all other respects the Financing Agreements are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and Borrower and Guarantor shall not be entitled to any other or further amendment or waiver by virtue of the provisions of this Amendment No. 2 or with respect to the subject matter of this Amendment No. 2. To the extent of conflict between the terms of this Amendment No. 2 and the other Financing Agreements, the terms of this Amendment No. 2 shall control. The Loan Agreement and this Amendment No. 2 shall be read and construed as one agreement.

SECTION 5. AMENDMENT FEE. In consideration of the amendments set forth herein, Borrower shall, on the date hereof, pay to Agent for the ratable benefit of the Lenders an

Amendment Fee in the amount of One Hundred Thousand Dollars (\$100,000.00), which fee shall be deemed fully earned and payable on the date of this Amendment No.2 becomes effective, and shall constitute part of the obligations of Borrowers or Agent, at its option, may charge the amount of such amendment fee to any loan account(s) of Borrower, maintained by Agent.

SECTION 6. FURTHER ASSURANCES. The parties hereto shall execute and deliver such additional documents and take such additional action as may be necessary or desirable to effectuate the provisions and purposes of this Amendment No. 2.

SECTION 7. GOVERNING LAW. The validity, interpretation and enforcement of this Amendment No. 2 and the other Financing Agreements and any dispute arising out of the relationship between the parties hereto whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

SECTION 8. BINDING EFFECT. This Amendment No. 2 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 9. HEADINGS. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 2.

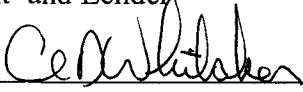
SECTION 10. COUNTERPARTS. This Amendment No. 2 may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement. In making proof of this Amendment No. 2, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto. Delivery of an executed counterpart of this Amendment No. 2 by telefacsimile shall have the same force and effect as delivery of an original executed counterpart of this Amendment No. 2. Any party delivering an executed counterpart of this Amendment No. 2 by telefacsimile also shall deliver an original executed counterpart of this Amendment No. 2, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment No. 2 as to such party or any other party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Agent, Required Lenders, Borrower and Guarantor have caused these presents to be duly executed as of the day and year first above written.

AGENT

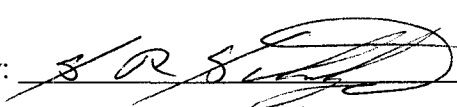
WACHOVIA CAPITAL FINANCE  
CORPORATION (WESTERN),  
as Agent and Lender

By: 

Title: DIRECTOR

BORROWER

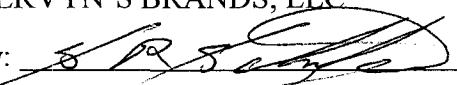
MERVYN'S LLC

By: 

Title: EVP & CFO

GUARANTOR

MERVYN'S BRANDS, LLC

By: 

Title: EVP & CFO

SIGNATURES OF LENDERS CONTINUE ON FOLLOWING PAGES

LENDER

GENERAL ELECTRIC CAPITAL  
CORPORATION

By: Brian P. Schwinn

Name: Brian P. Schwinn

Title: Duly Authorized Signatory

LENDER

THE CIT GROUP/BUSINESS CREDIT, INC.

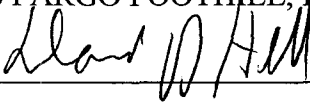
By:   
**Manuel Borges**

Title: **Vice President**



LENDER

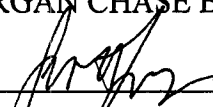
WELLS FARGO FOOTHILL, LLC

By: 

Title: Vice President

LENDER

JPMORGAN CHASE BANK

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

Title:  \_\_\_\_\_

LENDER

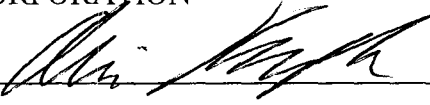
BANK OF AMERICA, N.A.

By Andrea Sparace

Title: Vice President

LENDER

NORTH FORK BUSINESS CAPITAL  
CORPORATION

By: 

Title: Vice President

Restricted Lease Schedule

<u>STORE NUMBER</u>	<u>LOCATION</u>
1	545 Southland Mall, Hayward CA
3	2855 Story Road, San Jose CA
7	7117 Regional Street, Dublin CA
9	2801 McHenry Avenue, Modesto CA
12	2201 S. Shore Center, Alameda CA
13	950 W. Hamilton Avenue, Campbell CA
17	6135 San Juan Avenue, Citrus Heights CA
20	3231 S. Mooney Blvd., Visalia CA
21	400 Merced Mall, Merced CA
22	855 Broadway, Millbrae CA
23	350 Showers Drive, Mountain View CA
24	300 Northridge Shopping, Salinas CA
25	9811 Adams Avenue, Huntington Beach CA
26	3204 Yorba Linda Blvd., Fullerton CA
29	520 N. McCaran Blvd., Sparks NV
31	707 Contra Costa Blvd., Pleasant Hill CA
35	801 East Avenue, Chico CA
39	500 N. Euclid Street, Anaheim CA
43	720 North Main Street, Corona CA
44	1240 E. Main, Mesa AZ
45	800 E. Southern Ave., Tempe AZ
52	6600 Menaul Blvd. NE, Albuquerque NM

<u>STORE NUMBER</u>	<u>LOCATION</u>
56	1869 E. Camelback Road, Phoenix AZ
58	9400 SW Washington Square Rd, Portland OR
66	3601 Constitution Blvd., W. Valley City, UT
70	300 Stonewood Court, Los Angeles CA
72	1050 N. Imperial Avenue, El Centro CA
74	601 E. University Parkway, Orem UT
79	6001 Gateway Blvd., Store 2, El Paso TX
82	3000 Newgate Mall, Ogden UT
84	4510 N. Oracle Road, Tucson AZ
90	398 Hillsdale Mall, San Mateo CA
107	3345 Sports Arena Blvd., San Diego CA
109	5555 E. Broadway Blvd., Tucson AZ
120	600 Memorial City Way, Houston TX
123	22015 Hawthorne Blvd., Torrance CA
125	1500 Del Monte Center, Monterey CA
129	651 Slater Kinney Road, SE, Lacey WA
131	17651 Colima Road, City of Industry CA
142	2310 SW Military Drive, San Antonio TX
146	5010 Northgate Mall, San Rafael CA
149	4101 E. 42 <sup>nd</sup> Street, Odessa TX
150	6002 Slide Road, Lubbock TX
165	1242 E. Gibson Road, Woodland CA
167	8140 Mira Mesa Blvd., San Diego CA

<u>STORE NUMBER</u>	<u>LOCATION</u>
168	7777 Edinger Avenue, Huntington Beach CA
185	24236 Magic Mountain Parkway, Valencia CA
187	1402 SE Everett Mall Way, Everett WA
194	3960 Barranca Parkway, Irvine CA
198	29650 7 Mile Road, Livonia MI
203	5780 W. Saginaw Road, Lansing MI
204	1982 W. Grand River Avenue, Okemos MI
211	990 W. Eisenhower Parkway, Ann Arbor MI
212	2300 Eureka Road, Taylor MI
261	9109 E. Indian Bend Road, Scottsdale AZ
267	24491 Alicia Parkway, Mission Viejo CA
269	2675 Geary Blvd., San Francisco CA
275	1100 Southcenter Mall, Seattle WA
280	4090 E. Court Street, Burton MI
287	50 S. Main Street, St.180, Salt Lake City UT
296	5300 San Dario, Store 240C, Laredo TX
317	172 Lakewood Center Mall, Lakewood CA

INTERCREDITOR AGREEMENT

by and among

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

GOLDMAN SACHS COMMERCIAL MORTGAGE CAPITAL, L.P.

and

CITIGROUP GLOBAL MARKETS REALTY CORP.

collectively, as Mortgage Lender

and

WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN)

as Agent for Mervyn's Loan Lenders

Dated as of December 22, 2005



## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this "Agreement"), dated as of December 22, 2005 by and among GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation, GOLDMAN SACHS COMMERCIAL MORTGAGE CAPITAL, L.P., a Delaware limited partnership and CITIGROUP GLOBAL MARKETS REALTY CORP., a New York corporation (collectively, "Mortgage Lender"), and WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN), a California corporation previously known as Congress Financial Corporation (Western), as Agent for the holders of the Mervyn's Loan (defined below), ("Mervyn's Loan Agent") and with respect to Section 28 hereof only, MERVYN'S LLC, a California limited liability company.

### RECITALS

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Loan Agreement, dated as of December 22, 2005, by and among MDS Realty I, LLC, a Delaware limited liability company, MDS Realty II, LLC, a Delaware limited liability company, MDS Texas Realty I, L.P., a Texas limited partnership, and MDS Texas Realty II, L.P., a Texas limited partnership (collectively, "Property Borrower") and Mortgage Lender (the "Mortgage Loan Agreement"), Mortgage Lender has agreed to make a loan to Property Borrower in the original principal amount of \$575,000,000 (as the same may be increased or otherwise modified from time to time, the "Mortgage Loan"), which Mortgage Loan is evidenced by multiple Promissory Notes, each dated as of December 22, 2005, made by Property Borrower to the entities constituting Mortgage Lender in the aggregate amount of the Mortgage Loan (collectively, the "Mortgage Note"), and secured by, among other things, various fee or leasehold mortgages/deeds of trust, made by Property Borrower for the benefit of Mortgage Lender (collectively, the "Mortgages"), which Mortgages encumber Property Borrower's fee and leasehold interests in the real property described on Exhibit A attached hereto and made a part hereof, and all improvements thereon and appurtenances thereto, together with any additional premises that may hereafter become subject to the Unitary Lease (collectively, the "Premises"); and

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Loan and Security Agreement, dated as of September 2, 2004, by and among Mervyn's LLC, a California limited liability company ("Mervyn's"), Mervyn's Brands LLC ("Brands"), certain lenders now or hereafter a party thereto (collectively, the "Mervyn's Loan Lenders"), Mervyn's Loan Agent (as administrative agent and collateral agent for the Mervyn's Loan Lenders), Goldman Sachs Credit Partners, L.P., General Electric Capital Corporation and The CIT Group/Business Credit, Inc. (as amended by that certain Amendment No. 1 to Loan and Security Agreement dated December 22, 2005 and that certain Amendment No. 2 to Loan and Security Agreement dated December 22, 2005, the "Mervyn's Loan Agreement"), the Mervyn's Loan Agent and the Mervyn's Loan Lenders have agreed to enter into certain financing arrangements with Mervyn's and to provide loans and letter of credit accommodations to Mervyn's in the maximum amount of up to \$550,000,000 (collectively, and as the same may be increased or otherwise modified from time to time, the "Mervyn's Loan"), which Mervyn's Loan is secured by, among other things, a security interest in, and a lien upon the Mervyn's Loan

Collateral (hereinafter defined), as more particularly described in Section 5.1 of the Mervyn's Loan Agreement; and

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Mezzanine Loan Agreement (the "Mezzanine Loan Agreement"), dated as of December 22, 2005, between MDS Realty Holdings II, LLC, a Delaware limited liability company, and MDS Realty Holdings I, LLC, a Delaware limited liability company, MDS Texas Properties I, LLC, a Delaware limited liability company, and MDS Texas Properties II, LLC, a Delaware limited liability company (collectively, "Mezzanine Borrower") and Greenwich Capital Financial Products, Inc., Goldman Sachs Mortgage Company and Citigroup Global Markets Realty Corp. (collectively, together with their respective successor and assigns, ("Mezzanine Lender"), Mezzanine Lender is the owner and holder of a loan to Mezzanine Borrower in the original principal amount of \$375,000,000 (as the same may be increased or otherwise modified from time to time, the "Mezzanine Loan"), which Mezzanine Loan is evidenced by multiple Promissory Notes, each dated as of December 22, 2005, made by Mezzanine Borrower in favor of the entities constituting Mezzanine Lender in the aggregate amount of the Mezzanine Loan (collectively, the "Mezzanine Note"), and secured by, among other things, certain Pledge and Security Agreements, dated as of December 22, 2005, from Mezzanine Borrower pursuant to which Mezzanine Lender is granted a first priority security interest in all of Mezzanine Borrower's direct and indirect ownership interests in each Property Borrower;

WHEREAS, pursuant to the Unitary Lease (hereinafter defined), Property Borrower and its subsidiaries has leased (or subleased, as applicable) certain properties to Mervyn's (as tenant under the Unitary Lease);

WHEREAS, Mervyn's holds leasehold title to the Restricted Leases (hereinafter defined); and

WHEREAS, Mortgage Lender and Mervyn's Loan Agent desire to enter into this Agreement to evidence their agreement to the matters set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgage Lender and Mervyn's Loan Agent hereby agree as follows:

Section 1. Certain Definitions; Rules of Construction.

(a) As used in this Agreement, the following capitalized terms shall have the following meanings:

"Agreement" means this Agreement, as the same may be amended, modified and in effect from time to time, pursuant to the terms hereof.

"Bankruptcy Code" means Title 11 of the United States Code and, as applicable, any foreign laws relating to insolvency or bankruptcy.

"Brands" has the meaning provided in the Recitals hereto.

“Business Day” has the meaning given such term in the Mortgage Loan Agreement.

“Enforcement Action” means any judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action taken by Mortgage Lender against the Premises or Property Borrower, including, without limitation, the taking of possession or control of the Premises.

“Equity Holder” means Mervyn’s Holdings, LLC, a Delaware limited liability company, the sole member of Mervyn’s.

“Equity Purchase Agreement” means that certain Equity Purchase Agreement, dated as of July 29, 2004 by and between Equity Holder and Target Corporation (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced), together with the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith, or related thereto.

“Event of Default” as used herein means (i) with respect to the Mortgage Loan and the Mortgage Loan Documents, any Event of Default thereunder which has occurred and is continuing (i.e., has not been cured by Property Borrower) and (ii) with respect to the Mervyn’s Loan and the Mervyn’s Loan Documents, any Event of Default thereunder which has occurred and is continuing (i.e., has not been cured by Mervyn’s).

“Lien” means any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, security interest or any other encumbrance or charge.

“Mervyn’s” has the meaning provided in the Recitals hereto.

“Mervyn’s Loan” has the meaning provided in the Recitals hereto.

“Mervyn’s Loan Agent” has the meaning provided in the first paragraph of this Agreement.

“Mervyn’s Loan Agreement” has the meaning provided in the Recitals hereto.

“Mervyn’s Loan Collateral” means all now owned or hereafter acquired property (both real and personal) of Mervyn’s and Brands, including, without limitation, all accounts, contract rights, inventory, equipment, trade fixtures, general intangibles, documents and instruments of Mervyn’s and the proceeds and products thereof, exclusive of the Restricted Lease Proceeds, the Restricted Lease Proceeds Account (and the funds therein) and the Restricted Lease Proceeds Fixtures, and the proceeds and products of each of the foregoing.

“Mervyn’s Loan Documents” means the Mervyn’s Loan Agreement, and any and all other documents and instruments set forth on Exhibit D hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time.

“Mervyn’s Loan Lenders” has the meaning provided in the Recitals hereto.

“Mervyn’s Loan Parties” means Mervyn’s Loan Agent, Mervyn’s Loan Lenders, the “Bank Product Providers” (as such term is defined in the Mervyn’s Loan Agreement), and each other party to the Mervyn’s Loan Agreement (other than Mervyn’s).

“Mezzanine Lender” has the meaning provided in the Recitals hereto.

“Monthly Restricted Lease Dividend” has the meaning given in the Mervyn’s Loan Agreement.

“Mortgage Lender” has the meaning provided in the Recitals hereto.

“Mortgage Loan” has the meaning provided in the Recitals hereto.

“Mortgage Loan Agreement” has the meaning provided in the Recitals hereto.

“Mortgage Loan Documents” means the Mortgage Loan Agreement, the Mortgage Note and the Mortgages, together with the instruments and documents set forth on Exhibit C hereto, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time.

“Person” means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture, association, joint stock company, bank, trust, estate unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof) endowment fund or any other form of entity.

“Premises” has the meaning provided in the Recitals hereto.

“Proceeding” means, as to any Person, any of the following: (a) any case or proceeding with respect to such person under the Bankruptcy Code or any other Federal or State bankruptcy, insolvency, reorganization or other law of any jurisdiction affecting creditors’ rights or any other or similar proceedings seeking any stay, reorganization, arrangement, composition or readjustment of the obligations and indebtedness of such Person or (b) any proceeding seeking the appointment of any trustee, receiver, liquidator, custodian or other insolvency official with similar powers with respect to such Person or any of its assets or (c) any proceeding for liquidation, dissolution or other winding up of the business of such Person or (d) any assignment for the benefit of creditors or any marshaling of assets of such Person.

“Property Agreement” means, as to any portion of the Premises, any reciprocal easement and/or operating agreement or similar agreement or any ground lease or other underlying lease encumbering such Premises or any portion thereof.

“Property Borrower” has the meaning provided in the Recitals hereto.

“Restricted Leases” means the leases by and between Mervyn’s, as lessee and a third party, as lessor, with respect to retail store locations as more particularly identified on Exhibit B hereto.

**“Restricted Lease Fixtures”** shall mean heating, ventilating, air conditioning equipment, boilers, generators, plumbing, elevator and electrical equipment, wall and floor coverings, walls and ceilings and other similar equipment installed in and affixed to the real property subject to the Restricted Leases the primary use of which relates to the “Ownership of the Premises” subject to the Restricted Lease or the construction of any improvements thereon or located on or affixed to such premises related to the Ownership of the Premises. For purposes hereof, the term "Ownership of the Premises" shall mean the title, rights and privileges relating primarily to the state of being an owner or lessee of the premises which is subject to the Restricted Lease, including, without limitation, rights to occupy, develop, lease and exercise dominion and control over the Premises, provided, that, such term shall not include any title, rights or privileges relating primarily to the operation of the business by Borrower being conducted at the Real Property subject to the Restricted Leases. The term "Restricted Lease Fixtures" shall in any event not include any trade fixtures of Mervyn's or Brands. Notwithstanding anything to the contrary contained in this definition, any fixtures (other than trade fixtures) that are affixed or annexed to the real property that is the subject of a Restricted Lease, and which under the laws of the jurisdiction in which such real property is located, are regarded as part of such real property shall be deemed to be Restricted Lease Fixtures.

**“Restricted Lease Proceeds”** means any income or proceeds generated by any Restricted Lease which are payable to Mervyn's, including:

(i) any sublease rental income, to the extent such sublease rental income exceeds the stated rent payable by Mervyn's under such Restricted Lease (or in the case of a sublease of a portion of the premises demised under a Restricted Lease, the fairly allocable portion of the rent attributable to such portion of the applicable demised premises); provided that the foregoing limitation shall not apply to a triple net sublease (where the subtenant is responsible for payment of all rental payments under the prime lease), in which case (for the purposes of this clause (i)) Restricted Lease Proceeds shall mean all sublease rental income payable to Mervyn's under such sublease, or

(ii) any amounts received by or on behalf of Mervyn's in respect of its rights as a lessee in respect of a Restricted Lease (or with respect to the leasehold or Restricted Lease Fixtures demised under such Restricted Lease or owned by Mervyn's) as a result of:

(x) any casualty or condemnation affecting such Restricted Lease or Restricted Lease Fixtures or the real property and improvements demised under such Restricted Lease, to the extent that Mervyn's has not utilized such proceeds towards payment (or reimbursement, including reimbursement of its own funds utilized for such restoration costs or funds provided as a borrowing under the Mervyn's Loan Documents for the same) of restoration costs for the affected premises (but exclusive of any casualty insurance proceeds or condemnation awards paid in respect of Mervyn's Loan Collateral), or

(y) any sale or other disposition or encumbrance by Mervyn's of its interest in any Restricted Lease (including any termination or surrender of any Restricted Lease) or Restricted Lease Fixtures, or the creation by Mervyn's of any encumbrance on its interest in any Restricted Lease or Restricted Lease Fixtures which encumbrance is

permitted under Section 9.8(r) of the Mervyn's Loan Agreement (as in effect on the date hereof) or is otherwise permitted by Mervyn's Loan Agent.

“Restricted Lease Proceeds Account” has the meaning provided in the Mervyn’s Loan Agreement (as in effect on the date hereof).

“Restricted Lease Property” has the meaning provided in Section 4(a) hereof.

“Total Rent Cap Limitation” means the “Total Rent Cap” limitation set forth in the second proviso in Section 9.11(f)(i) of the Mervyn's Loan Agreement as in effect on the date hereof.

“Unitary Lease(s)” shall have the meaning provided in the Mervyn’s Loan Agreement (as in effect on the date hereof).

(b) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) all capitalized terms defined in the recitals to this Agreement shall have the meanings ascribed thereto whenever used in this Agreement and the terms defined in this Agreement have the meanings assigned to them in this Agreement, and the use of any gender herein shall be deemed to include the other genders;

(ii) all references in this Agreement to designated Sections, Subsections, Paragraphs, Articles, Exhibits, Schedules and other subdivisions or addenda without reference to a document are to the designated sections, subsections, paragraphs and articles and all other subdivisions of and exhibits, schedules and all other addenda to this Agreement, unless otherwise specified;

(iii) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall apply to Paragraphs and other subdivisions;

(iv) the terms “includes” or “including” shall mean without limitation by reason of enumeration;

(v) the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular provision.

Section 2. Intentionally Omitted.

Section 3. Representations and Warranties.

(a) Mervyn’s Loan Agent hereby represents and warrants as follows:

(i) Mervyn’s Loan Agent is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to

execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby on behalf of itself and on behalf of the Mervyn's Loan Parties.

(ii) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Mervyn's Loan Agent (on behalf of itself and on behalf of the Mervyn's Loan Parties) have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(iii) Mervyn's Loan Agent has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Mervyn's Loan Agent enforceable against Mervyn's Loan Agent (on behalf of itself and on behalf of the Mervyn's Loan Parties) in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(b) Mortgage Lender hereby represents and warrants as follows:

(i) Each Person constituting Mortgage Lender is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(ii) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Mortgage Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(iii) Each Person constituting Mortgage Lender has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Mortgage Lender enforceable against Mortgage Lender in accordance with its terms subject to (x) applicable bankruptcy, reorganization, insolvency and moratorium laws and (y) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

#### Section 4. Certain Agreements of Mervyn's Loan Agent.

(a) Mervyn's Loan Agent hereby confirms and agrees that it does not now have, nor will it hereafter obtain at any time, any Lien upon any of the following (collectively, the "Restricted Lease Property") (unless the same has been deposited into a "Blocked Account" or "Agent Payment Account" (as such terms are defined in the Mervyn's Loan Agreement) : (i) Mervyn's interest in any Restricted Lease, (ii) any Restricted Lease Proceeds, (iii) any Restricted Lease Proceeds Account (or any funds contained therein), (iv) any Restricted Lease Fixtures or (v) any rights of the purchaser under the Equity Purchase Agreement (including rights to receive moneys, rights of indemnification and claims for damages, and rights to exercise remedies and require performance thereunder) to the extent relating solely to the Restricted Lease Property described in clauses (i) and (ii) above (and none of the foregoing shall constitute Mervyn's Loan Collateral or be applied by Mervyn's Loan Agent to any portion of the obligations owing under the Mervyn's Loan Documents, whether or not an Event of Default exists thereunder). Without

limiting the foregoing, Mervyn's Loan Agent acknowledges and agrees that in the event that any of Mortgage Lender, Property Borrower or any parent, subsidiary or affiliate of Property Borrower or of Mervyn's, is deemed (by a bankruptcy court having jurisdiction over such Proceeding) to be a creditor of Mervyn's in any Proceeding, then the provisions contained in this Section 4 shall govern the rights of the parties hereto with respect to the Restricted Lease Property during the pendency of such Proceeding (unless otherwise determined by a bankruptcy court order issued in connection with such Proceeding).

(b) It is the intention of the parties hereto that, as between Mortgage Lender and Mervyn's Loan Agent, Mortgage Lender's and Mervyn's Loan Agent's respective rights in and to the Restricted Lease Property shall be the same as would have been the case had, on the date hereof: (i) Mervyn's conveyed its interest in the Restricted Leases to Property Borrower and Property Borrower subleased back to Mervyn's the premises demised thereunder for an annual rent equal to the Monthly Restricted Lease Dividend and otherwise on a "triple net" basis (the "Sublease"), (ii) Property Borrower had immediately granted to Mortgage Lender a perfected first priority leasehold mortgage or deed of trust (as applicable) on the Restricted Leases and Property Borrower's interest as lessor under the Sublease and the rent payable thereunder, (iii) Mervyn's Loan Lenders were not a creditor of, nor had any lien on or rights to, the Property Borrower or any of its assets, including the Restricted Leases, and (iv) Mervyn's granted to Mervyn's Loan Lenders a perfected first priority lien on the Mervyn's Loan Collateral located in the premises demised under the Sublease. The fact that one or more general unsecured creditors of Mervyn's may become entitled to assert rights against the Restricted Lease Property shall not alter or affect the agreements of Mervyn's Loan Agent hereunder (unless otherwise determined by a bankruptcy court order issued in connection with such Proceeding).

(c) Mervyn's Loan Agent hereby agrees that, subject to Section 9 below, notwithstanding anything to the contrary contained in the Mervyn's Loan Documents, and whether or not an Event of Default exists under the Mervyn's Loan Documents, and notwithstanding the pendency of any Proceeding (except to the extent Mervyn's Loan Agent must act otherwise pursuant to an order or decree of any court or other governmental authority) in which Mervyn's is a debtor:

(i) Subject to the Total Rent Cap Limitation, Mervyn's Loan Agent shall not prohibit or seek to prevent Restricted Lease Proceeds from being deposited into the Restricted Lease Proceeds Account or any other account established or designated by Mervyn's or Mortgage Lender (and Mervyn's Loan Agent agrees that no such account shall be subject to any Lien in favor of Mervyn's Loan Lenders) in accordance with Sections 5.2(d) and 6.3(a)(iii) of the Mervyn's Loan Agreement (as in effect on the date hereof);

(ii) Mervyn's Loan Agent shall not require any Restricted Lease Proceeds to be deposited into any "Blocked Account" or "Agent Payment Account" (as such terms are defined in the Mervyn's Loan Agreement) or any other account controlled by Mervyn's Loan Agent or in which Mervyn's Loan Agent has a security interest, and Mervyn's Loan Lenders shall have no rights whatsoever with respect to any Restricted Lease Proceeds (and Mervyn's Loan Agent shall not object to all such Restricted Lease Proceeds being distributed to Equity Holder); and



(iii) Mervyn's Loan Agent shall not prohibit or seek to prevent Mervyn's from declaring and distributing Monthly Restricted Lease Dividends from legally available funds therefor (except to the extent that the same is prohibited by applicable law), and Mervyn's Loan Agent shall not take any action to prohibit or prevent such distributions; *provided*, however, to the extent that Mervyn's is required to borrow funds under the Mervyn's Loan Agreement in order to enable it to declare and pay such Monthly Restricted Lease Dividends, then such borrowing(s) shall be subject to the conditions set forth in the Mervyn's Loan Agreement with respect to all other borrowings thereunder.

(d) Mervyn's Loan Agent hereby acknowledges that Mervyn's shall have the unrestricted right (whether or not an Event of Default has occurred under the Mervyn's Loan Documents) to assign its rights under the Restricted Leases to Property Borrower or its subsidiary, subject only to the following conditions: (i) Mervyn's Loan Agent shall have received not less than ten (10) Business Days prior written notice of such assignment, which notice shall set forth in reasonable detail satisfactory to Mervyn's Loan Agent, the Restricted Lease to be assigned, and to which Unitary Lease it shall be subject and such other information with respect thereto as Mervyn's Loan Agent may request, (ii) Mervyn's Loan Agent shall have received a true, correct and complete copy of the assignment agreement between Mervyn's and a Property Borrower (or its subsidiary) (as applicable) and a copy of the amendment to the applicable Unitary Lease to include such Restricted Lease, (iii) the annual Basic Rent to be paid by Borrower under the Unitary Leases as provided for in Section 3.01 of the Unitary Leases (as in effect on the date hereof) and the annual amount of the Monthly Restricted Lease Dividend does not exceed \$105,000,000.00, which amount may be adjusted (upward or downward) based upon required adjustments to the amount of Basic Rent to be paid by Borrower under the Unitary Leases as provided for in Section 3.01 of the Unitary Leases (as in effect on the date hereof); except that such cap on annual rental payment shall be permanently reduced when a leased site is removed from the Unitary Leases by an amount equal to the aggregate first year's fixed rent payable by Borrower to a new third-party landlord with respect to such site.

(e) Mervyn's Loan Agent hereby confirms and agrees that it does not now have, nor will it hereafter obtain at any time, any Lien upon any direct or indirect ownership interest in Mervyn's.

(f) Mortgage Lender hereby confirms and agrees that it does not now have nor will it hereafter obtain at any time (so long as the Mervyn's Loan is outstanding), any Lien upon any of the Mervyn's Loan Collateral.

#### Section 5. Access Agreement.

(a) In the event that Mortgage Lender shall acquire possession or control of any or all of the Premises, including as a result of an Enforcement Action following an Event of Default under the Mortgage Loan, and Mervyn's Loan Agent is or thereafter becomes entitled to possession of the Mervyn's Loan Collateral, Mortgage Lender agrees that (i) Mortgage Lender will not hinder, delay or otherwise prevent Mervyn's Loan Agent from taking any and all action to the extent permitted under applicable law and any Property Agreement to which the applicable Premises is subject (except to the extent that the applicable provisions in such Property

Agreement are modified by a court order issued by a bankruptcy court having jurisdiction in a Proceeding in which Mervyn's is a debtor), which Mervyn's Loan Agent deems necessary to enforce its security interests and liens on the Mervyn's Loan Collateral located at the Premises and to realize thereon, (ii) Mervyn's Loan Agent (or its agents, employees or representatives, including any liquidator retained by Mervyn's Loan Agent) may, at its option, upon not less than five (5) days prior written notice to Mortgage Lender (or such shorter period as may be required if in the good faith determination of Mervyn's Loan Agent it is necessary to act sooner to preserve the Mervyn's Loan Collateral located at the Premises, its value or the rights of Mervyn's Loan Agent therein), enter and use the subject Premises for the purpose of repossessing, removing, selling or otherwise dealing with the Mervyn's Loan Collateral located at the Premises, such right to include, subject to the limitations set forth in subsection (e) below, the right to conduct one or more going out of business sales, final liquidation sales or similar sales.

(b) The license granted to Mervyn's Loan Agent pursuant to Section 5(a)(ii) above shall be irrevocable and shall continue until the earliest to occur of (i) one hundred twenty (120) days from the date that Mervyn's Loan Agent enters the Premises, (ii) one hundred twenty (120) days from the date Mortgage Lender delivers notice to Mervyn's Loan Agent of its commencement of an Enforcement Action, as set forth below, or (iii) the date on which the subject Premises is transferred to a third party (unaffiliated with Mortgage Lender) subsequent to the commencement of the subject Enforcement Action taken by Mortgage Lender with respect to such Premises; provided, however, in the event Mortgage Lender or its affiliates first take title to the subject Premises in connection with such Enforcement Action, and subsequently enters into an agreement with a third party to convey such Premises to such third party, then Mortgage Lender agrees that the occupancy period afforded to Mervyn's Loan Agent hereunder shall continue for the greater of (x) forty five (45) days from the date that Mortgage Lender notifies Mervyn's Loan Agent that it has entered into such agreement or (y) the date which is five (5) days before the date of actual transfer of the applicable Premises to such third party. Notwithstanding anything to the contrary contained herein, the time periods set forth herein shall be tolled during the pendency of any Proceeding of Mervyn's or Property Borrower or other proceedings pursuant to which Mervyn's Loan Agent is effectively stayed from enforcing its rights against the Mervyn's Loan Collateral (and is thus precluded from entering onto the Premises to exercise its rights granted under this Section 5).

(c) For each day that Mervyn's Loan Agent occupies the Premises pursuant to the rights granted under this Section 5, Mervyn's Loan Agent shall pay to Mortgage Lender an occupancy fee equal to the "Lender Allocated Mervyn's Basic Rent" (as such term is defined in the Mortgage Loan Agreement), together with any additional rent payable thereunder, with respect to such occupied Premises, prorated on a per diem basis to be determined on a thirty (30) day month, without thereby assuming the Unitary Lease or incurring any other obligations of Property Borrower.

(d) All physical damage to the Premises caused by the removal of the Mervyn's Loan Collateral shall be promptly repaired by Mervyn's Loan Agent at its sole expense, failing which Mortgage Lender may repair such damage and Mervyn's Loan Agent shall promptly reimburse Mortgage Lender for the same.

(e) In the event Mervyn's Loan Agent enters the Premises pursuant to the rights granted under this Section 5, Mervyn's Loan Agent shall be subject to the terms of the Unitary Lease, and if applicable, any Property Agreement, governing the use of the subject Premises (except to the extent that the applicable provisions in such Property Agreement are modified by a court order issued by a bankruptcy court having jurisdiction in a Proceeding in which Mervyn's is a debtor).

(f) In the event Mervyn's Loan Agent enters the Premises pursuant to the rights granted under this Section 5, Mervyn's Loan Agent agrees to indemnify, hold harmless and defend Mortgage Lender from and against any and all claims, damages, losses, liabilities and expenses (including reasonable attorneys' fees) suffered or incurred by Mortgage Lender as a result of any third party claims arising from (i) any actions taken by or omissions of Mervyn's Loan Agent, or its agents, employees, contractors or representatives with respect to the subject Premises during its occupancy of the subject Premises, or (ii) any action or occurrence on or in respect of the subject Premises during such period of occupancy, in each case, to the extent not caused by or resulting from the acts or omissions of Mortgage Lender. In no event shall Mervyn's Loan Agent have any liability under this Section 5(f) or otherwise as a result of any condition on or with respect to the subject Premises existing prior to the date of Mervyn's Loan Agent's exercise of its rights of access under this Section 5 and Mervyn's Loan Agent shall have no duty or liability to maintain the subject Premises in a condition or manner better than which it was maintained prior to the access and/or use thereof by Mervyn's Loan Agent.

(g) The parties hereto expressly acknowledge that the provisions contained in Section 4 above and the provisions contained in this Section 5 are intended to be distinct and apart, and the provisions set forth in Section 4 above are not intended in any way to limit or restrict the rights granted to Mervyn's Loan Agent pursuant to this Section 5.

(h) The parties hereto expressly acknowledge and agree that, notwithstanding anything to the contrary contained in any other Landlord Agreement (defined below), in the event that Mortgage Lender acquires possession or control of any or all of the Premises, the provisions contained in Section 5 shall govern, and Mortgage Lender shall not be bound by the provisions of any such Landlord Agreement. As used herein, "Landlord Agreement" means any landlord agreement executed by Property Borrower or any other landlord for the benefit of Mervyn's Loan Agent, which grants a license to Mervyn's Loan Agent to enter onto the Premises for the purposes set forth in this Section 5.

Section 6. Collateral Assignment of Equity Purchase Agreement. Prior to the execution and delivery of this Agreement, (i) Equity Holder has assigned all of its right, title and interest in and to the Equity Purchase Agreement to Mervyn's, and (ii) Mervyn's has assigned such rights, in so far as they relate exclusively to the Premises, to Property Borrower. In connection with the Mervyn's Loan, Mervyn's has executed a Collateral Assignment of Acquisition Agreements (the "Mervyn's Collateral Assignment"), pursuant to which Mervyn's has collaterally assigned to Mervyn's Agent its rights under the Equity Purchase Agreement, in so far as they relate to the Mervyn's Loan Collateral, and has granted to Mervyn's Loan Agent a security interest therein. In connection with the Mortgage Loan, Property Borrower has executed an Assignment of Agreements, Licenses, Permits and Contracts (the "Mortgage Loan Collateral Assignment"), pursuant to which Property Borrower has collaterally assigned to Mortgage

Lender its rights under the Equity Purchase Agreement (as assigned from Mervyn's to Property Borrower with respect to the Premises) and has granted to Mortgage Lender a security interest therein. The parties hereto acknowledge and agree that (i) Mortgage Lender shall have no right to proceed under the Mortgage Loan Collateral Assignment with respect to any property or rights pertaining solely to the Mervyn's Loan Collateral and (ii) Mervyn's Loan Agent shall have no right to proceed under the Mervyn's Collateral Assignment with respect to any property or rights pertaining solely to either the Premises or the Restricted Lease Property so long as the Mortgage Loan or Mezzanine Loan is outstanding.

Section 7. Dividend/Distribution. Mortgage Lender acknowledges that it has reviewed and approved the provisions set forth in Section 9.11 and 9.12 of the Mervyn's Loan Agreement relating to restrictions on Mervyn's payment of dividends and distributions (the "Dividend/Distribution Provisions"). Mervyn's Loan Agent agrees that it will not amend or waive any of the Dividend/Distribution Provisions without first obtaining Mortgage Lender's prior written consent, which may be withheld in Mortgage Lender's sole and absolute discretion.

Section 8. Insurance Policies.

(a) Restricted Lease Properties. The parties hereto acknowledge that with respect to the Restricted Leases, Mervyn's has obtained separate property insurance policies covering (i) the improvements, Restricted Lease Fixtures and other real property demised under the Restricted Leases, under which Mervyn's is the named insured and the "loss payee" thereunder, and (ii) the Mervyn's Loan Collateral constituting tangible personal property located at the premises demised under the Restricted Leases, under which Mervyn's Loan Agent is named as the "loss payee" thereunder. In no event shall Mortgage Lender be named as a "loss payee" or "additional insured" under the insurance policies described in clause (ii) above, and in no event shall Mervyn's Loan Agent be named as a "loss payee" or "additional insured" under the insurance policies described in clause (i) above, except that to the extent that Mervyn's has utilized the proceeds of loans made under the Mervyn's Loan Agreement for the payment of or reimbursement of restoration or replacement costs in respect of such Restricted Lease(s), Mortgage Lender agrees that such insurance proceeds are not Restricted Lease Proceeds and any payment under such insurance policy received or to be received by Mervyn's in respect thereof may be directed by Mervyn's to be made to Mervyn's Loan Agent.

(b) Unitary Lease Properties/Business Interruption Insurance. The parties hereto acknowledge that (i) pursuant to Section 5.01(a) of the Unitary Lease, Mervyn's has obtained property insurance for the Premises demised under the Unitary Lease, covering among other things the improvements and real property demised under the Unitary Lease (the "Section 5.01(a) Insurance Policies") and (ii) pursuant to Section 5.01(b) of the Unitary Lease, Mervyn's has obtained property insurance for the premises demised under the Unitary Lease, covering among other things Mervyn's personal property and trade fixtures (the "Section 5.01(b) Insurance Policies"). In no event shall Mortgage Lender be named as a "loss payee" or "additional insured" under the insurance policies described in clause (ii) above (except with respect to the BI Rental Insurance, as set forth below), and in no event shall Mervyn's Loan Agent be named as a "loss payee" or "additional insured" under the insurance policies described in clause (i) above. Additionally, pursuant to Section 5.01(b) of the Unitary Lease, Mervyn's has obtained business interruption insurance, with a portion thereof specifically allocable to the rent

payable under the Unitary Lease (such portion, as defined in the Unitary Lease, the "BI Rental Insurance"). In no event shall Mervyn's Loan Agent be named as a "loss payee" with respect to the BI Rental Insurance, and in no event will Mortgage Lender be named as a "loss payee" with respect to the remainder of such business interruption insurance.

Section 9. No Liability.

(a) Mervyn's Loan Agent and Mervyn's Loan Lenders shall not have any liability whatsoever to the Mortgage Lender or any person claiming by, through or under Mortgage Lender, as a result of Mervyn's Loan Agent's failure to honor a request by Mervyn's for a loan, advance or other financial accommodation under the Mervyn's Loan Agreement whether or not Mervyn's Loan Agent has knowledge that the denial of such request would result in the inability of Mervyn's to (i) declare and pay any Restricted Lease Proceeds Dividend or Monthly Restricted Lease Dividend or (ii) make a required payment under the Unitary Lease, and without limiting the generality of the foregoing, Mortgage Lender agrees that Mervyn's Loan Agent shall not have any liability for tortious interference with contractual relations or for inducement to breach any contract of Mortgage Lender, Mezzanine Lender or Property Borrower as a result thereof.

(b) In no event will Mortgage Lender assert against Mervyn's Loan Agent or any Mervyn's Loan Lender, as the assignee of, or secured party in respect of the Mervyn's Loan Collateral or otherwise, any claim of breach, or other claim, counterclaim, recoupment, or credit of any kind that Mortgage Lender, may have or claim to have against or with respect to Mervyn's, or any Restricted Lease Property, Restricted Lease Proceeds Dividend or Monthly Restricted Dividend, or for any amounts that may now or hereafter be owed by Mervyn's for any reason to Mortgage Lender, Property Borrower, Equity Holder or any other person, except in so far as Mervyn's Loan Agent has, in contravention of Section 4(c)(ii) hereof, directed Mervyn's to deposit Restricted Lease Proceeds into the Blocked Account or the Agent Payment Account.

(c) Mortgage Lender acknowledges and agrees that this Agreement shall not impose on Mervyn's Loan Agent any obligations in respect of (i) the disbursement and/or payment directions of loan proceeds under the Mervyn's Loan Agreement or (ii) the disposition of proceeds of foreclosure on any Mervyn's Loan Collateral or any other proceeds of assets of Mervyn's, whether as a result of prior perfected claims therein in favor of any other person, any order or decree of any court or other governmental authority, any applicable law or otherwise.

Section 10. Notices. All notices, demands, requests, consents, approvals or other communications required, permitted, or desired to be given hereunder shall be in writing sent by facsimile (with answer back acknowledged) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 10. Any such notice, demand, request, consent, approval or other communication shall be deemed to have been received: (a) three (3) Business Days after the date mailed, (b) on the date of sending by

facsimile if sent during business hours on a Business Day (otherwise on the next Business Day), (c) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day) and (d) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

**To Mortgage Lender:**

Greenwich Capital Financial Products, Inc.  
600 Steamboat Road  
Greenwich, Connecticut 06830  
Attention: Mortgage Loan Department  
Telecopier (203) 618-2052

With a copy to:

Kaye Scholer LLP  
425 Park Avenue  
New York, New York 10022  
Attention: Stephen Gliatta, Esq.  
Telecopier: (212) 836-8689

and to

Goldman Sachs Commercial Mortgage Capital, L.P.  
600 East Las Colinas Boulevard, Suite 400  
Irving, Texas 75039  
Attention: Michael Forbes  
Telecopier: (972) 831-2268

With a copy to:

Cleary, Gottlieb, Steen & Hamilton  
One Liberty Plaza, New York, New York 10006  
Attention: Michael Weinberger, Esq.  
Telecopier: (212) 225-3999

and to

Citigroup Global Markets Realty Corp.  
388 Greenwich Street  
New York, New York 10013  
Attention: Paul Staples  
Telecopier: (212) 816-8307

With a copy to:

Sidley Austin Brown & Wood, LLP,  
787 7<sup>th</sup> Avenue,  
New York, New York 10019,  
Attention: Brian Krisberg, Esq.  
Telecopier: (212) 839-5599

**To Mervyn's Loan Agent:**

Wachovia Capital Finance Corporation  
(Western)  
251 South Lake Avenue, Suite 900  
Pasadena, California 91101  
Attention: Portfolio Manager  
Telecopier: (626)-304-4949

With a copy to:

Otterbourg, Steindler, Houston & Rosen, P.C.  
230 Park Avenue  
NY, NY 10169  
Attention: Valerie S. Mason, Esq.  
Telecopier: 212-682-6104

**To Mezzanine Lender:**

Greenwich Capital Financial Products, Inc.  
600 Steamboat Road  
Greenwich, Connecticut 06830  
Attention: Mortgage Loan Department  
Telecopier (203) 618-2052

With a copy to:

Kaye Scholer LLP  
425 Park Avenue  
New York, New York 10022  
Attention: Stephen Gliatta, Esq.  
Telecopier: (212) 836-8689

and to

Goldman Sachs Mortgage Company  
85 Broad Street  
New York, New York 10004

Attention: Jeffrey Fastov  
Telecopier: (212) 346-3594

With a copy to:

Cleary, Gottlieb, Steen & Hamilton  
One Liberty Plaza, New York, New York 10006  
Attention: Michael Weinberger, Esq.  
Telecopier: (212) 225-3999

and to

Citigroup Global Markets Realty Corp.  
388 Greenwich Street  
New York, New York 10013  
Attention: Paul Staples  
Telecopier: (212) 816-8307

With a copy to:

Sidley Austin Brown & Wood, LLP,  
787 7<sup>th</sup> Avenue,  
New York, New York 10019,  
Attention: Brian Krisberg, Esq.  
Telecopier: (212) 839-5599



Section 11. Estoppel.

(a) Mervyn's Loan Agent shall, within ten (10) days following a request from Mortgage Lender (which request shall not be made more than twice in any twelve month period), provide Mortgage Lender with a written statement stating whether Mervyn's Loan Agent has delivered any notice of default or Event of Default under the Mervyn's Loan, which remains uncured.

(b) Mortgage Lender shall, within ten (10) days following a request from Mervyn's Loan Agent (which request shall not be made more than twice in any twelve month period), provide Mervyn's Loan Agent with a written statement stating whether Mortgage Lender has delivered any notice of default or Event of Default under the Mortgage Loan, which remains uncured.

(c) The parties hereto expressly acknowledge and agree that the estoppels delivered pursuant to the foregoing subsections (a) and (b) will not run to the benefit of Property Borrower or Mervyn's, and neither Property Borrower nor Mervyn's shall have any right whatsoever to rely on, benefit from or use for any purpose, any statement or certification contained therein.

Section 12. Notices of Default. Each of Mortgage Lender and Mervyn's Loan Agent shall endeavor to give the other reasonably prompt notice of any Event of Default under the Mortgage Loan or the Mervyn's Loan (as applicable); provided that the failure to give such notice shall not constitute a default hereunder or a breach of such party's obligations hereunder.

Section 13. Further Assurances. So long as all or any portion of the Mortgage Loan and the Mervyn's Loan remains unpaid, Mervyn's Loan Agent and Mortgage Lender will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of Section 4 or Section 5 of this Agreement.

Section 14. No Third Party Beneficiaries; No Modification; Merger Clause.

(a) Subject to subsection (b) below, the parties hereto do not intend the benefits of this Agreement to inure to Property Borrower, Mervyn's or any other Person. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought.

(b) Notwithstanding the provisions of subsection (a) above, the parties hereto acknowledge and agree that the benefits, rights and remedies afforded to Mortgage Lender hereunder, shall run to the benefit of Mezzanine Lender, and Mezzanine Lender is expressly made a third party beneficiary of all such provisions, and hereby agrees to the provisions of Section 9 and Section 15 hereof.

(c) This Agreement represents the entire agreement of the parties hereto with respect to the subject matter hereof and supercedes all prior oral or written agreements, including the Intercreditor Agreement dated as of September 2, 2004.

Section 15. Bankruptcy Financing.

(a) If Mervyn's shall become subject to a Proceeding under the Bankruptcy Code and if Mervyn's Loan Agent desires to permit the use of cash collateral or to provide financing to Mervyn's under either Section 363 or Section 364 of the Bankruptcy Code, no objection will be raised by Mortgage Lender to any such financing or use of cash collateral on the ground of a failure to provide "adequate protection" or any other grounds; *provided*, however, that (i) the foregoing is expressly limited to Mervyn's Loan Collateral and proceeds thereof and (ii) it is expressly understood and agreed that the foregoing is not intended in any way to supercede, negate, waive or modify any other provisions of this Agreement, including the provisions contained in Section 4 above.

(b) In addition to the agreements of Mortgage Lender set forth in Section 15(a) above, if in connection with a Proceeding in which Mervyn's is or proposes to be a debtor, Mervyn's receives a written funding proposal made in good faith from a lender (or group of lenders) other than Mervyn's Loan Agent to provide DIP financing to Mervyn's under Section 364 of the Bankruptcy Code (as evidenced by a signed proposal from such lender or other similar document containing terms which are customarily set forth in a term sheet in respect of a financing of this type), a copy of which has been provided to Mortgage Lender and Mervyn's Loan Agent (a "Third Party DIP Financing Proposal"); which has as its object the use of cash collateral consisting of Mervyn's Loan Collateral and Restricted Lease Property or post-petition financing secured by a lien senior to or on parity with the liens of Mervyn's Loan Agent and Mervyn's Lenders on the Mervyn's Loan Collateral and/or secured by the Restricted Lease Property, then no objection will be raised by Mortgage Lender, and this Agreement shall not be deemed violated by Mervyn's Loan Agent, if Mervyn's Loan Agent proposes to provide DIP financing to Mervyn's, secured by a lien senior to or on parity with the liens of Mervyn's Loan Agent and Mervyn's Lenders on the Mervyn's Loan Collateral and secured by the Restricted Lease Property on terms substantially similar to or better than the Third Party DIP Proposal.

Section 16. Successors and Assigns. This Agreement shall bind all successors and assigns of Mervyn's Loan Agent (and Mervyn's Loan Parties) and Mortgage Lender, and shall inure to the benefit of all successors and assigns of Mortgage Lender and Mervyn's Loan Agent (and Mervyn's Loan Lenders).

Section 17. Agreements by or for the benefit of Mervyn's Loan Agent. All agreements, representations, warranties and covenants made by Mervyn's Loan Agent hereunder shall be deemed to be made on behalf of itself and on behalf of each Mervyn's Loan Parties. Similarly, all agreements, representations, warranties and covenants made by Mortgage Lender hereunder shall be deemed to be made for the benefit of Mervyn's Loan Agent and each Mervyn's Loan Party.

Section 18. Counterpart Originals. This Agreement may be executed in counterpart originals, each of which shall constitute an original, and all of which together shall constitute one and the same agreement. An executed facsimile of this Agreement may be relied upon as having, and shall be deemed to have, the same force and effect as an original.

Section 19. Legal Construction. In all respects, including, without limitation, matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements intended to be wholly performed within the State of New York.

Section 20. Captions. The captions in this Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

Section 21. Conflicts. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the Mortgage Loan Documents or the Mervyn's Loan Documents, the terms and conditions of this Agreement shall control.

Section 22. Continuing Agreement. This Agreement is a continuing agreement and shall remain in full force and effect until the later to occur of payment in full of the Mortgage Loan or payment in full of the Mezzanine Loan; provided, however, that any rights or remedies of either party hereto arising out of any breach of any provision hereof occurring prior to such date of termination shall survive such termination.

Section 23. Severability. In the event that any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Agreement.

Section 24. Expenses. In the event any action or proceeding is brought by either party hereto to enforce the provisions hereof, the non-prevailing party in such action or proceeding shall pay upon demand to the prevailing party the amount of any and all reasonable expenses (including the reasonable fees and expenses of such prevailing party's counsel), which the prevailing party has incurred in connection therewith.

Section 25. Injunction. Mortgage Lender and Mervyn's Loan Agent each acknowledge (and waive any defense based on a claim) that monetary damages are not an adequate remedy to redress a breach by the other hereunder and that a breach by either Mortgage Lender or Mervyn's Loan Agent hereunder would cause irreparable harm to the other. Accordingly, Mortgage Lender and Mervyn's Loan Agent agree that upon a breach of this Agreement by the other, the remedies of injunction, declaratory judgment and specific performance shall be available to such non-breaching party.

Section 26. Venue. Any legal suit, action or proceeding against Mortgage Lender or Mervyn's Loan Agent arising out of or relating to this Agreement shall be instituted in any federal or state court in New York, and Mortgage Lender and Mervyn's Loan Agent waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or

proceeding, and Senior Mortgage Lender and Senior Mervyn's Loan Agent hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding.

Section 27. NO TRIAL BY JURY. EACH OF THE PARTIES HERETO, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY HERETO WITH RESPECT TO THIS AGREEMENT OR THE MATTERS COVERED HEREBY.

Section 28. Mervyn's Refinancing. As between Mortgage Lender and Mervyn's, Mervyn's agrees that it will not refinance or otherwise replace the Mervyn's Loan unless prior to or simultaneously therewith Mervyn's causes the lender(s) under the new loan facility to execute and deliver to Mortgage Lender an intercreditor agreement reasonably acceptable to Mortgage Lender in form and substance, and providing to Mortgage Lender substantially the same rights and protections as those provided to Mortgage Lender in Sections 4, 7 and 8 of this Agreement; provided, however, that the provisions of this Section 28 shall not apply if at the time in question Mervyn's no longer holds title to any Restricted Leases. Mervyn's Loan Agent shall have no obligations or liabilities under or by reason of this Section 28, which is between Mervyn's and Mortgage Lender only.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Mortgage Lender and Mervyn's Loan Agent have executed this Agreement as of the date and year first set forth above.

MORTGAGE LENDER:

GREENWICH CAPITAL FINANCIAL  
PRODUCTS, INC.,  
a Delaware corporation

By: 

Name:

John M. Burke

Title:

Managing Director

GOLDMAN SACHS COMMERCIAL  
MORTGAGE CAPITAL, L.P., a Delaware limited  
partnership

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

Name:

Title:

CITIGROUP GLOBAL MARKETS REALTY  
CORP., a New York corporation

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

Name:

Title:

INVENTORY AND RECEIVABLES LOAN  
AGENT:

WACHOVIA CAPITAL FINANCE  
CORPORATION (WESTERN),  
a California corporation

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

Name:

Title:

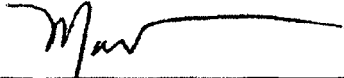
IN WITNESS WHEREOF, Mortgage Lender and Mervyn's Loan Agent have executed this Agreement as of the date and year first set forth above.

**MORTGAGE LENDER:**

**GREENWICH CAPITAL FINANCIAL  
PRODUCTS, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

**GOLDMAN SACHS COMMERCIAL  
MORTGAGE CAPITAL, L.P.,** a Delaware limited  
partnership

By:   
Name: Mark Buono  
Title: Managing Director

**CITIGROUP GLOBAL MARKETS REALTY  
CORP.,** a New York corporation

By: \_\_\_\_\_  
Name:  
Title:

**INVENTORY AND RECEIVABLES LOAN  
AGENT:**

**WACHOVIA CAPITAL FINANCE  
CORPORATION (WESTERN),**  
a California corporation

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, Mortgage Lender and Mervyn's Loan Agent have executed this Agreement as of the date and year first set forth above.

**MORTGAGE LENDER:**


**GREENWICH CAPITAL FINANCIAL  
PRODUCTS, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

**GOLDMAN SACHS COMMERCIAL  
MORTGAGE CAPITAL, L.P.,** a Delaware limited  
partnership

By: \_\_\_\_\_  
Name:  
Title:

**CITIGROUP GLOBAL MARKETS REALTY  
CORP.,** a New York corporation

By:   
Name: PAUL STAPLES  
Title: AUTHORIZED AGENT

**INVENTORY AND RECEIVABLES LOAN  
AGENT:**

**WACHOVIA CAPITAL FINANCE  
CORPORATION (WESTERN),**  
a California corporation

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, Mortgage Lender and Mervyn's Loan Agent have executed this Agreement as of the date and year first set forth above.

MORTGAGE LENDER:

GREENWICH CAPITAL FINANCIAL  
PRODUCTS, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

GOLDMAN SACHS COMMERCIAL  
MORTGAGE CAPITAL, L.P., a Delaware limited  
partnership

By: \_\_\_\_\_  
Name:  
Title:

CITIGROUP GLOBAL MARKETS REALTY  
CORP., a New York corporation

By: \_\_\_\_\_  
Name:  
Title:

INVENTORY AND RECEIVABLES LOAN  
AGENT:

WACHOVIA CAPITAL FINANCE  
CORPORATION (WESTERN),  
a California corporation

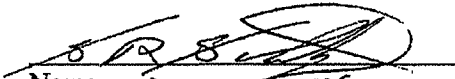
By:   
Name: Gary Whitaker  
Title: Director



AS TO SECTION 28:

MERVYN'S LLC, a California limited liability  
company

By:

  
Name: SCOTT SCHULTE  
Title: EVP + CFO

Mezzanine Lender hereby acknowledges its consent to the terms of this Agreement and, without limiting the foregoing, agrees to the provisions of Sections 9, 14 and 15 of this Agreement:

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation

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

Name:  
Title:

**John M. Burke**  
**Managing Director**

GOLDMAN SACHS MORTGAGE COMPANY, a New York limited partnership

By: Goldman Sachs Real Estate Funding Corp., its general partner

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

Name:  
Title:

CITIGROUP GLOBAL MARKETS REALTY CORP., A New York corporation

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

Name:  
Title:

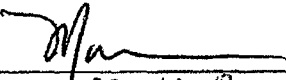
Mezzanine Lender hereby acknowledges its consent to the terms of this Agreement and, without limiting the foregoing, agrees to the provisions of Sections 9, 14 and 15 of this Agreement:

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

GOLDMAN SACHS MORTGAGE COMPANY, a New York limited partnership

By: Goldman Sachs Real Estate Funding Corp., its general partner

By:   
Name: Mark Buono  
Title: Managing Director

CITIGROUP GLOBAL MARKETS REALTY CORP., A New York corporation

By: \_\_\_\_\_  
Name:  
Title:

Mezzanine Lender hereby acknowledges its consent to the terms of this Agreement and, without limiting the foregoing, agrees to the provisions of Sections 9, 14 and 15 of this Agreement:

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation

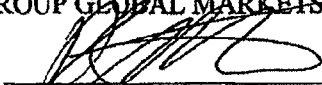
By: \_\_\_\_\_  
Name:  
Title:

GOLDMAN SACHS MORTGAGE COMPANY, a New York limited partnership

By: Goldman Sachs Real Estate Funding Corp., its general partner

By: \_\_\_\_\_  
Name:  
Title:

CITIGROUP GLOBAL MARKETS REALTY CORP., A New York corporation

By:   
Name: PAUL STAPLES  
Title: AUTHORIZED AGENT

# Exhibit A

Store #	Street Address	City	State	Zip
313	10000 Coors Byp Nw	Albuquerque	NM	87114
71	15602 E Whitwd Ln	Whittier	CA	90601
28	2701 Saviers Rd	Oxnard	CA	93033
298	285 N Moorpark Rd	Thousand Oaks	CA	91360
225	750 Sunland Park Dr Ste MO	El Paso	TX	79912
41	1155 W March Ln	Stockton	CA	95207
32	2010 El Camino Real	Santa Clara	CA	95050
67	1024 Layton Hills Mall	Layton	UT	84041
64	1154 Brickyard Rd	Salt Lake City	UT	84106
57	7537 W Thomas Rd	Glendale	AZ	85075
16	701 Sereno Dr	Vallejo	CA	94589
78	11051 Olson Dr	Rancho Cordova	CA	95670
166	14370 Bear Valley Rd	Victorville	CA	92392
157	3001 W Loop 250 N	Midland	TX	79705
69	4643 E Cactus Rd	Phoenix	AZ	85032

Store #	Street Address	City	State	Zip
996	1015 Vintage Avenue	Ontario	CA	91761
143	4250 Cerrillos Rd	Santa Fe	NM	87507
282	7650 W Arrowhead Towne Ctr	Glendale	AZ	85308
83	504 W Huntington Dr	Monrovia	CA	91016
105	2424 Highway 6 & 50	Grand Junction	CO	81505
42	2801 Cochran St	Simi Valley	CA	93065
10	389 S McDowell Blvd	Petaluma	CA	94954
49	202 D St	Marysville	CA	95901
271	2020 South Expressway 83	Harlingen	TX	78552
92	475 W 32ND St	Yuma	AZ	85365
50	250 Walnut St	Redwood City	CA	94063
288	555 I St	Chula Vista	CA	91910
276	4500 Las Positas Rd	Livermore	CA	94550
294	10450 S State St	Sandy	UT	84070
81	749 E Calaveras Blvd	Milpitas	CA	95035
147	1800 Montebello Town Ctr	Montebello	CA	90640

Store #	Street Address	City	State	Zip
47	233 S Mountain Ave	Upland	CA	91786
900	22301 Foothill Blvd	Hayward	CA	94541
997	48200 Fremont Blvd	Fremont	CA	94538
5	20730 Stevens Creek Blvd	Cupertino	CA	95014
30	10201 Valley View St	Cypress	CA	90630
40	18182 Irvine Blvd	Tustin	CA	92780
153	Fallbrook Mall	West Hills	CA	91303
37	4450 California Ave	Bakersfield	CA	93309
108	3520 Tyler St	Riverside	CA	92503
135	1799 Hawthorne Blvd	Redondo Beach	CA	90278
310	1316 W Sunset Rd	Henderson	NV	89014
206	3300 Broadway St	Eureka	CA	95501
8	1116 1st Ave	Napa	CA	94558
36	1855 41st Ave	Capitola	CA	95010
14	63 Serramonte Ctr	Daly City	CA	94015
4	1375 Blossom Hill Rd	San Jose	CA	95118

Store #	Street Address	City	State	Zip
297	17601 NE Union Hill Rd	Redmond	WA	98052
126	150 E Main St	Alhambra	CA	91801
188	450 Marion St NE	Salem	OR	97301
170	1730 Briargate Blvd	Colorado Springs	CO	80920
200	250 N Telegraph Rd	Pontiac	MI	48341
197	16301 Ford Rd	Dearborn	MI	48126
134	8000 San Jacinto Mall	Bay Town	TX	77521
295	1201 Lake Woodlands Dr STE 100	Woodlands	TX	77380
163	14002 E 21ST St	Tulsa	OK	74134
46	3450 College Ave	San Diego	CA	92115
172	1301 S Kenton Way	Aurora	CO	80012
104	101 S Brand Blvd	Glendale	CA	91210
286	4300 E Alameda Ave	Glendale	CO	80246
171	5483 W 88th Ave	Westminster	CO	80031
202	35555 Warren Rd	Westland	MI	48185
91	7701 W Interstate 40	Amarillo	TX	79121



Store #	Street Address	City	State	Zip
122	1408 Baybrook Mall	Friendswood	TX	77546
117	20130 Highway 59 N	Humble	TX	77338
111	3663 W Camp Wisdom Rd	Dallas	TX	75237
227	235 East Foothills Pkwy	Ft. Collins	CO	80525
113	300 S Plano Rd	Richardson	TX	75081
132	831 N Central Expressway	Plano	TX	75075
156	4800 Texoma Pkwy	Sherman	TX	75090
186	5050 W Waco Dr	Waco	TX	76710
300	11200 Lakeline Mall Dr	Austin	TX	78613
223	6720 Ring Rd	Portage	MI	49024
182	4126 124TH Ave SE	Bellevue	WA	98006
112	1201 W Centerville Rd	Garland	TX	75041
221	1980 E Coounty Line RD	Highlands Ranch	CO	80126
151	1401 W Esplande Ave	Kenner	LA	70065
207	3323 Dillion Dr	Pueblo	CO	81008
209	3881 S Cooper St	Arlington	TX	76015

Store #	Street Address	City	State	Zip
192	9389 Cortana PL	Baton Rouge	LA	70815
161	6612 S Memorial Dr	Tulsa	OK	74133
213	28498 Dequindre Rd	Warren	MI	48092
215	40 Bellis Fair Pkwy	Bellingham	WA	98226
114	2625 Old Denton Rd	Carrollton	TX	75007
116	8000 Research Blvd	Austin	TX	78758
259	4502 S Steele St, Ste 1200	Tacoma	WA	98409
229	32399 John R Rd	Madison Heights	MI	48071
60	8500 SE Sunnyside Rd	Clackamas	OR	97015
293	18085 NW Evergreen Pkwy	Beaverton	OR	97006
220	400 N Milwaukee St	Boise	ID	83704
311	16523 SW Freeway	Sugarland	TX	77478
164	3301 184TH Street SW	Lynnwood	WA	98037
110	3751 Irving Mall	Irving	TX	75062
272	500 North Star Dr	San Antonio	TX	78216
169	1900 N Riverside Ave	Medford	OR	97501

Store #	Street Address	City	State	Zip
190	1649 N Town East Blvd	Mesquite	TX	75150
139	1200 Green Oaks Rd	Ft. Worth	TX	76116
199	26100 Ingersol Dr	Novi	MI	48375
993	2455 South 3600 West	Salt Lake City	UT	84119
193	200 Los Cerritos Mall	Cerritos	CA	90703
174	8055 W Bowles Ave	Littleton	CO	80123
160	3437 Masonic Dr	Alexandria	LA	71301
162	4103 S Yale Ave	Tulsa	OK	74135
148	2322 San Jacinto Blvd	Denton	TX	76205
121	1004 E Southmore Ave	Pasadena	TX	77502
180	197 Westbank Expressway	Gretna	LA	70053
986	1600 East Plano Parkway	Plano	TX	75074
159	4700 Millhaven Rd	Monroe	LA	71203

# Exhibit B

Store #	Street Address	City	State	Zip
84	4510 N Oracle Rd	Tucson	AZ	85705
82	3000 Newgate Mall	Odgen	UT	84405
1	545 Southland Mall	Hayward	CA	94545
74	601 E Uuniversity Pkwy	Orem	UT	84097
20	3231 S Mooney Blvd	Visalia	CA	93277
66	3601 Constitution Blvd	W. Valley City	UT	84119
70	300 Stonewood St	Downey	CA	90241
317	172 Lakewood Center Mall	Lakewood	CA	90712
125	1500 Del Monte Ctr	Monterey	CA	93940
17	6135 San Juan Ave	Citrus Heights	CA	95610
38	4150 N Blackstone Ave	Fresno	CA	93726
109	5555 E Broadway Blvd	Tucson	AZ	85711
79	6001 Gateway Blvd, Ste 2	El Paso	TX	79925
142	2310 SW Military Dr	San Antonio	TX	78224
45	800 E Southern Ave	Tempe	AZ	85282

Store #	Street Address	City	State	Zip
44	1240 E Main St	Mesa	AZ	85203
12	2201 S Shore Ctr	Alameda	CA	94501
269	2675 Geary Blvd	San Francisco	CA	94118
13	950 W Hamilton Ave	Campbell	CA	95008
23	350 Showers Dr	Mountain View	CA	94040
296	5300 San Dario, Ste 240C	Laredo	TX	78041
26	3204 Yorba Linda Blvd	Fullerton	CA	92831
43	720 N Main St	Corona	CA	92880
267	24491 Alicia Pkwy	Mission Viejo	CA	92691
25	9811 Adams Ave	Huntington Beach	CA	92646
168	7777 Edinger Ave	Huntington Beach	CA	92647
39	500 N Euclid St	Anaheim	CA	92801
165	1242 E Gibson Rd	Woodland	CA	95776
3	2855 Story Rd	San Jose	CA	95127
131	17651 Colima Rd	City of Industry	CA	91748
107	3345 Sports Arena Blvd	San Diego	CA	92110

Store #	Street Address	City	State	Zip
149	4101 E 42ND ST	Odessa	TX	79762
261	9109 E Indian Bend Rd	Scottsdale	AZ	85250
194	3960 Barranca Pkwy	Irvine	CA	92606
29	520 N McCaran Blvd	Sparks	NV	89431
150	6002 Slide Rd	Lubbock	TX	79414
123	22015 Hawthorne Blvd	Torrance	CA	90503
35	801 East Ave	Chico	CA	95926
72	1050 N Imperial Ave	El Centro	CA	92243
9	2801 McHenry Ave	Modesto	CA	95350
90	398 Hillsdale Mall	San Mateo	CA	94403
31	707 Contra Costa Blvd	Pleasant Hill	CA	94523
22	855 Broadway	Millbrae	CA	94030
167	8140 Mira Mesa Blvd	San Diego	CA	92126
24	300 Northridge Shopping	Salinas	CA	93906
7	7117 Regional St	Dublin	CA	94568
21	400 Merced Mall	Merced	CA	95348

Store #	Street Address	City	State	Zip
201	13361 Hall Rd	Utica	MI	48315
173	10602 Melody Dr	Northglenn	CO	80234
127	12990 Willowchase Dr	Houston	TX	77070
144	410 Airport Rd SE	Albany	OR	97321
218	3700 S Meridian	Puyallup	WA	98373
205	820 Citadel Drive E	Colorado Springs	CO	80909
208	10315 Silverdale Way NW	Silverdale	WA	98383
279	3285 S Linden Rd	Flint	MI	48507
247	4740 N Division St	Spokane	WA	99207
137	5201 S Hulen St	Ft. Worth	TX	76132
196	5858 S Padre Island Dr	Corpus Christi	TX	78412
152	150 Airport Rd	Slidell	LA	70460
2	303 Newpark Mall	Newark	CA	94560
59	10010 NE Halsey St	Portland	OR	97220
115	4040 S Lamar Blvd	Austin	TX	78704
158	103 W Loop 281, Ste 1000	Longview	TX	75605

Store #	Street Address	City	State	Zip
248	8739 S Sepulveda Blvd	Westchester	CA	90045
102	205 Madonna Rd	San Luis Obispo	CA	93405
56	1869 E Camelback Rd	Phoenix	AZ	85016
52	6600 Menaul Blvd NE	Albuquerque	NM	87110
212	23000 Eureka Rd	Taylor	MI	48180
203	5780 W Saginaw Highway	Lansing	MI	48917
185	24235 Magic Mountain Pkwy	Valencia	CA	91355
141	7900 N IH 35	San Antonio	TX	78218
146	5010 Northgate Mall	San Rafael	CA	94903
27	5505 Balboa Ave	San Diego	CA	92111
275	1100 Southcenter Mall	Seattle	WA	98188
129	651 Sleater Kinney Rd SE	Lacey	WA	98503
187	1402 SE Everett Mall Way	Everett	WA	98208
120	600 Memorial City Way	Houston	TX	77024
58	9400 SW Washington Sq Rd	Portland	OR	97223
198	29650 7 Mile Rd	Livonia	MI	48152



Store #	Street Address	City	State	Zip
287	50 S Main St, Ste 180	Salt Lake City	UT	84144
204	1982 W Grand River Ave	Okemos	MI	48864
211	990 W Eisenhower Pkwy	Ann Arbor	MI	48103
280	4090 E Court St	Burton	MI	48509

EXHIBIT C

Mortgage Loan Documents

1. Loan Agreement between Greenwich Capital Financial Products, Inc. ("**Greenwich**"), Goldman Sachs Commercial Mortgage Capital, L.P. ("**Goldman LP**") and Citigroup Global Markets Realty Corp., ("**Citigroup**") (collectively, "**Senior Lender**") and MDS Realty I, LLC ("**MDS I**"), MDS Realty II, LLC ("**MDS II**"), MDS Texas Realty I, LP ("**Texas I**") and MDS Texas Realty II, LP ("**Texas II**") (collectively, "**Senior Borrower**");
2. \$201,250,000 Promissory Note made by Senior Borrower in favor of Greenwich;
3. \$201,250,000 Promissory Note made by Senior Borrower in favor of Goldman LP ("**Goldman Note**");
4. \$172,500,000 Promissory Note made by Senior Borrower in favor of Citigroup ("**Citigroup Note**");
5. Deeds of Trusts/Mortgages ([\_\_\_\_\_] Properties);
6. Assignments of Leases and Rents ([\_\_\_\_\_] Properties);
7. UCC Financing Statements ([\_\_\_\_\_] County filings);
8. UCC Financing Statements ([\_\_\_\_\_] Secretary of State filing);
9. Assignment of Agreements from Senior Borrower, MDS Realty III, LLC ("**MDS III**") and MDS Realty IV, LLC ("**MDS IV**") and Senior Lender;
10. Consent and Subordination of Manager executed by KLA/Mervyn's, L.L.C. ("**Manager**") Senior Borrower, MDS III and MDS IV;
11. Consent and Subordination of Manager executed by Trammel Crow ("**Trammel Manager**") Senior Borrower, MDS III and MDS IV;
12. Clearing Account Agreement among Bank One, Senior Borrower, MDS III, MDS IV and Senior Lender and agreed to by Manager;
13. Deposit Account Agreement among Wachovia Bank, National Association, Senior Borrower, MDS III, MDS IV and Senior Lender and agreed to by Manager;
14. Guaranty of Recourse Obligations made by Lubert-Adler Real Estate Fund IV, L.P., Lubert-Adler Real Estate Parallel Fund IV, L.P. Lubert-Adler Capital Real Estate Fund IV, L.P., Sun

Capital Securities Fund, LP (“Sun LP”), Sun Capital Securities Offshore Fund, Ltd. (“Sun Ltd”) and Cerberus Partners, L.P., (collectively, as “*Guarantors*”) in favor of Senior Lender;

15. Mervyn’s Letter regarding Properties from Mervyn’s to Realcos;
16. Pledge and Security Agreement by MDS I;
17. Equity Interest Power in blank made by MDS I with its interest in MDS III;
18. Membership Certificate certifying MDS I as owner of MDS III;
19. UCC Financing Statements to be filed with the Secretary of State of Delaware, naming MDS I, as Debtor;
20. Acknowledgment of Pledge by MDS III;
21. Pledge and Security Agreement by MDS II;
22. Equity Interest Power in blank made by MDS II with its interest in MDS IV;
23. Membership Certificate certifying MDS II as owner of MDS IV;
24. UCC Financing Statements to be filed with the Secretary of State of Delaware, naming MDS II, as Debtor;
25. Acknowledgment of Pledge by MDS IV;
26. Guaranty of Payment made by MDS III and MDS IV in favor of Senior Lender;
27. Contribution Agreement made by and among Senior Borrowers for the benefit of Senior Lender;
28. Side Letter made by Senior Lender and accepted by and agreed to by Senior Borrower regarding Notional Rent;

EXHI

## EXHIBIT D

### Mervyn's Loan Documents

1. Loan and Security Agreement, dated September 2, 2004, by and among Mervyn's, Brands, Mervyn's Loan Agent and Mervyn's Loan Lenders, as amended by \_\_\_\_\_;
2. Pledge and Security Agreement, dated September 2, 2004, by and between Mervyn's and Mervyn's Loan Agent with respect to the pledge of the membership interests of Mervyn's in Brands;
3. Collateral Assignment of Acquisition Agreements, dated September 2, 2004, by Mervyn's in favor of Mervyn's Loan Agent and Mervyn's Loan Lenders with respect to the assignment by Mervyn's to Mervyn's Loan Agent of its rights under the Assignment of Certain Rights Under Equity Purchase Agreement;
4. Guarantee, dated September 2, 2004, by Brands in favor of Mervyn's Loan Agent;
5. Trademark Collateral Assignment and Security Agreement, dated September 2, 2004, by and between Brands and Mervyn's Loan Agent;
6. Patent Collateral Assignment and Security Agreement, dated September 2, 2004, by and between Brands and Mervyn's Loan Agent;
7. Copyright Collateral Assignment and Security Agreement, dated September 2, 2004, by and between Brands and Mervyn's Loan Agent; and
8. Deposit Account Control Agreement, dated September 2, 2004, by and among Mervyn's, Mervyn's Loan Agent and Wachovia Bank, National Association.

AMENDMENT NO. 3  
TO  
LOAN AND SECURITY AGREEMENT

This Amendment No. 3 to Loan and Security Agreement (“Amendment No. 3”) dated June 8, 2006 is entered into by and among Mervyn’s LLC, a California limited liability company (“Borrower”), Mervyn’s Brands, LLC, a Minnesota limited liability company (“Guarantor”), each Lender as defined below) signatory hereto and Wachovia Capital Finance Corporation (Western), as successor to Congress Financial Corporation (Western), a California corporation, in its capacity as administrative agent and collateral agent for the parties to the Loan Agreement (as hereinafter defined) from time to time as lenders (in such capacity “Agent”) and as Sole Lead Arranger and Bookrunner. For purposes of this Amendment No. 3, all capitalized terms used herein, but not otherwise defined herein, including, but not limited to, those terms used in the recitals hereto shall have the respective meanings assigned thereto in the Loan Agreement.

WITNESSETH:

WHEREAS, Agent, the financial institutions parties to the Loan Agreement as lenders (individually, each a “Lender” and collectively, “Lenders”), Borrower and Guarantor have entered into financing arrangements pursuant to which Lenders (or Agent on behalf of Lenders) have made and may make loans and advances and provide other financial accommodations to Borrower as set forth in the Loan and Security Agreement, dated September 2, 2004, by and among Agent, Lenders, Borrower and Guarantor, as amended by Amendment No. 1 to Loan and Security Agreement, dated October 25, 2004 by and among Agent, Lenders, Borrower and Guarantor and Amendment No. 2 to Loan and Security Agreement, dated December 22, 2005, by and among Agent, Lenders, Borrower and Guarantor (as further amended hereby and as the same may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the “Loan Agreement”), and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the “Financing Agreements”); and

WHEREAS, Borrower and Guarantor have requested that Agent and Lenders make certain amendments to the Loan Agreement and the other Financing Agreements, and Agent and Lenders agree to such amendments, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing, and the respective agreements and covenants contained herein, the parties hereto agree as follows:

SECTION 1. AMENDMENTS.

(a) Additional Definition. As used herein, the following term shall have the meaning given to it below and the Loan Agreement shall be deemed and is hereby amended to include, in addition and not in limitation, the following definition:

“Amendment No. 3” shall mean Amendment No. 3 to the Loan and Security Agreement, dated June 8, 2006, by and among Borrower, Guarantor, the Lenders and Agent, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(b) Amendments to Definitions.

(i) Section 1.8 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“1.8 “Applicable Margin” shall mean, at any time, as to the Interest Rate for the applicable percentage (on a per annum basis) set forth below if the Quarterly Average Excess Availability for the immediately preceding fiscal quarter is at or within the amounts indicated for such percentage:

Level	Quarterly Average Excess Availability	Applicable Margin			
		Prime Rate Loans	Eurodollar Rate Loans	Standby Letters of Credit and Bankers Acceptances	Documentary Letters of Credit
Level I	Greater than \$100,000,000	.25%	1.25%	1.00%	.75%
Level II	Greater than \$75,000,000 but less than or equal to \$100,000,000	.5%	1.50%	1.25%	.875%
Level III	Greater than \$50,000,000 but less than or equal to \$75,000,000	.75%	1.75%	1.50%	1.00%
Level IV	Less than or equal to \$50,000,000	1.00%	2.00%	1.75%	1.125%

provided, that, the Applicable Margin shall be calculated and established once each fiscal quarter (commencing with the fiscal quarter ending on or about January 29, 2005 in accordance with the terms of Section 1.75 hereof) and shall remain in effect until adjusted thereafter during the next fiscal quarter.”

(ii) Section 1.15(a)(i) of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“(i) the amount equal to (A) eighty-five (85%) percent of the amount of Eligible Credit Card Receivables, plus (B) the lesser of (1) ninety (90%) percent multiplied by the Value of the Eligible Inventory or (2) ninety (90%) percent of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory, or”

(iii) Section 1.103 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“1.103 “Minimum Amount” shall mean the greater of (a) ten (10%) percent of the net book value of Eligible Inventory as of any date as determined by Agent or (b) \$25,000,000.”

(c) Amendments to Loan Agreement

(i) Section 2.2(b) of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“(b) In addition to any charges, fees or expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations, Borrower shall pay to Agent, (i) for its own account, a letter of credit fronting fee at a rate equal to one-eighth ( $\frac{1}{8}\%$ ) percent per annum on the daily outstanding balance of the Letter of Credit Accommodations for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month; and (ii) for the benefit of Lenders, a letter of credit fee for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month, at a per annum rate equal to: (A) in respect of Letter of Credit Accommodations (other than Letter of Credit Accommodations the purpose for which is purchasing Eligible Inventory), the Applicable Margin with respect to “Standby Letters of Credit” as specified in the definition of Applicable Margin (then in effect pursuant to the terms of this Agreement) per annum on the daily outstanding balance of such Letter of Credit Accommodations at all times thereafter, and (B) in respect of Letter of Credit Accommodations issued for the purpose of purchasing Eligible Inventory, the Applicable Margin with respect to “Documentary Letters of Credit” as specified in the definition of Applicable Margin (then in effect pursuant to the terms of this Agreement) per annum on the daily outstanding balance of such Letter of Credit Accommodations; provided, that, upon presentation by beneficiary to issuer of a Letter of Credit Accommodation (issued under clause (B) hereof) for conversion to a banker’s acceptance, the letter of credit fee applicable to such Letter of Credit Accommodation shall be calculated in accordance with clause (A) above (“Post-Presentation Letters of Credit”) except, that, at Agent’s option or upon the written direction of Required Lenders, Borrower shall pay to Agent for the ratable benefit of Lenders, such letter of credit fee, at a per annum rate equal to two (2%) percent per annum in excess of then applicable per annum rate to such type of Letter of Credit Accommodations pursuant to Section 2.2(b)(ii) on such daily outstanding balance for the period from and after the date of



termination hereof until Agent and Lenders have received full and final payment of all Obligations (notwithstanding entry of a judgment against Borrower) and the period from and after the date of the occurrence of an Event of Default for so long as such Event of Default is continuing as determined by Agent in good faith. Such letter of credit fee shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed and the obligation of Borrower to pay such fee shall survive the termination of this Agreement.”

(ii) Section 7.3(d)(i) of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“(d)(i) upon Agent's request, Borrower shall at its expense, no more than (A) once in any period of twelve (12) consecutive calendar months (“Twelve Month Period”) at such times as Quarterly Average Excess Availability is at Level I as set forth in the definition of Applicable Margin, (B) twice in any Twelve Month Period at such times as Quarterly Average Excess Availability is at Level II as set forth in the definition of Applicable Margin and (C) four times in any Twelve Month Period at such times as Quarterly Average Excess Availability is at Level III or IV as set forth in the definition of Applicable Margin and, in addition, one (1) time in each fiscal quarter if Borrower closes twenty (20) or more stores,”

(iii) Section 9.8(e) of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“(e) purchase money security interests in Equipment (including Capital Leases) and purchase money mortgages or Capital Leases to secure Indebtedness permitted under the Section 9.9(b) hereof;”

(iv) Section 9.9(b) of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“(b) (i) purchase money Indebtedness (including Capital Leases) arising after the date hereof to the extent secured by purchase money security interests in Equipment (including Capital Leases) not to exceed \$50,000,000 in the aggregate at any time outstanding for such Indebtedness arising from the purchase by Borrower of computer systems to replace information services provided to Borrower by Seller under the Transition Services Agreement and, which amount may include, at Borrower's option, up to \$10,000,000 that may be used to acquire other Equipment, so long as, in each case, such security interests do not apply to any

property of Borrower, Guarantor or any Subsidiary other than the Equipment so acquired, and the Indebtedness secured thereby does not exceed the cost of the Equipment so acquired, as the case may be; and

(ii) Indebtedness (including Capital Leases) arising after the date hereof, to the extent secured by Real Property acquired by a Borrower or Guarantor consisting of one or more new retail store locations; provided, that, (A) the aggregate amount of such Indebtedness shall not exceed the amount of \$30,000,000 incurred in the fiscal year of Borrowers ending January, 2007, \$45,000,000 incurred in the fiscal year of Borrowers ending January, 2008 or \$75,000,000 incurred in each subsequent fiscal year of Borrowers, (B) such Indebtedness shall only be secured by the Real Property acquired with the proceeds of the loans or advances giving rise to such Indebtedness, (C) such Indebtedness shall not exceed the cost of the Real Property so acquired, (D) immediately prior and immediately after giving effect to the incurrence of such Indebtedness, no Default or Event of Default shall exist or have occurred and be continuing and no Compliance Period shall then be in effect, (E) Agent shall have received not less than five (5) Business Days prior written notice of the intention of any Borrower or Guarantor to incur any such Indebtedness, which notice shall specify the proposed amount of the Indebtedness to be incurred, the Person(s) to whom such Indebtedness shall be owed, the interest rate, payment schedule and other material terms applicable to such proposed Indebtedness as well as such other information with respect thereto as Agent may reasonably request, (F) upon the acquisition thereof, Borrowers shall use commercially reasonable efforts to promptly deliver to Agent a Collateral Access Agreement with respect to the Real Property, and (G) Borrowers shall deliver to Agent upon the incurrence of such Indebtedness, a true, complete and correct copy of all agreements, documents and instruments executed and/or delivered in connection with such Indebtedness;"

(v) The first two sentences of Section 13.1(a) of the Loan Agreement are hereby deleted in their entirety and the following substituted therefor:

"(a) This Agreement and the other Financing Agreements shall become effective as of the date set forth on the first page hereof and shall continue in full force and effect for a term ending on September 1, 2009 ("Final Maturity Date"), unless sooner terminated pursuant to the terms hereof."

(vi) Notwithstanding anything to the contrary set forth in the Loan Agreement, at such time as GMAC Commercial Finance LLC becomes an Affiliate of Cerberus

it shall (a) continue to be deemed an "Eligible Transferee" for all purposes under the Loan Agreement, and (b) not be deemed a "Sponsor Affiliated Lender" (as each quoted term has its meaning in the Loan Agreement).

**SECTION 2. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Borrower and Guarantor each represents, warrants and covenants with and to Agent and Lenders as follows, which representations, warranties and covenants, together with the representations, warranties and covenants in the other Financing Agreements, are continuing and shall survive the execution and delivery hereof, and the truth and accuracy of, or compliance with each, being a continuing condition of the making of Loans by Lenders (or Agent on behalf of Lenders) to Borrower and Guarantor:

(a) This Amendment No. 3 and each agreement, document or instrument executed and delivered in connection therewith have each been duly executed and delivered by Borrower and Guarantor is in full force and effect as of the date hereof and the agreements and obligations of Borrower and Guarantor contained herein and thereunder constitute legal, valid and binding obligation of Borrower and Guarantor, enforceable against it in accordance with their respective terms.

(b) No action of, or filing with, or consent or any governmental or public body or authority, and no approval or consent of any other party, is or will be required to authorize, or is or will be otherwise required in connection with, the execution, delivery and performance of this Amendment No. 3, other than such consents and approvals which have been obtained and are in full force and effect and fully executed copies of which have been delivered to Agent.

(c) This Amendment No. 3 and each other agreement, document or instrument to be executed and delivered by Borrower and Guarantor in connection therewith or herewith has been duly authorized, executed and delivered by all necessary action on the part of Borrower and Guarantor, and Amendment No. 3 and each other agreement, document or instrument to be executed and delivered by Borrower and Guarantor in connection therewith or herewith is in full force and effect as of the date of Amendment No. 3 and the agreements and obligations of Borrower and Guarantor contained herein and therein constitute legal, valid and binding obligations of Borrower and Guarantor enforceable against Borrower and Guarantor in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally at law or by equitable principles relating to enforceability.

(d) Neither the execution and delivery of this Amendment No. 3 or the documents, agreements or instruments executed or delivered in connection therewith or related thereto, nor the consummation of the transactions herein or therein contemplated, nor compliance with the provisions hereof or thereof are in contravention of any law or regulation or any order or decree of any court or Governmental Authority applicable to Borrower or Guarantor in any respect, or conflict with or result in the breach of, or constitutes a default in any respect under any mortgage, deed of trust, security agreement, agreement or instrument to which Borrower or Guarantor is a party or may be bound, or violates any provision of the formation or other organizational documents of Borrower or Guarantor.

(e) No Default or Event of Default exists or has occurred and is continuing on the date of Amendment No. 3.

SECTION 3. CONDITIONS PRECEDENT. The effectiveness of the amendments contained herein shall be subject to the receipt by Agent of each of the following, in form and substance satisfactory to Agent:

(a) an original of this Amendment No. 3, duly authorized, executed and delivered by Borrower, Guarantor and Lenders;

(b) payment of the amendment fee referred to in Section 5 hereof and any other fees or amounts payable to Agent as of the date hereof; and

(c) no Default or Event of Default exists or has occurred and is continuing on the date of Amendment No. 3.

SECTION 4. EFFECT OF THIS AMENDMENT. Except as expressly set forth herein, no other amendments, waiver, changes or modifications to the Financing Agreements are intended or implied, and in all other respects the Financing Agreements are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and Borrower and Guarantor shall not be entitled to any other or further amendment or waiver by virtue of the provisions of this Amendment No. 3 or with respect to the subject matter of this Amendment No. 3. To the extent of conflict between the terms of this Amendment No. 3 and the other Financing Agreements, the terms of this Amendment No. 3 shall control. The Loan Agreement and this Amendment No. 3 shall be read and construed as one agreement.

SECTION 5. AMENDMENT FEE. In consideration of the amendments set forth herein, Borrower shall, on the date hereof, pay to Agent for the ratable benefit of the Lenders an amendment fee in the amount of One Hundred Fifty Thousand (\$150,000.00) Dollars, which fee shall be deemed fully earned and payable on the date this Amendment No. 3 becomes effective, and shall constitute part of the obligations of Borrowers or Agent, at its option, may charge the amount of such amendment fee to any loan account(s) of Borrower maintained by Agent.

SECTION 6. FURTHER ASSURANCES. The parties hereto shall execute and deliver such additional documents and take such additional action as may be necessary or desirable to effectuate the provisions and purposes of this Amendment No. 3.

SECTION 7. GOVERNING LAW. The validity, interpretation and enforcement of this Amendment No. 3 and the other Financing Agreements and any dispute arising out of the relationship between the parties hereto whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

SECTION 8. BINDING EFFECT. This Amendment No. 3 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 9. HEADINGS. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 3.

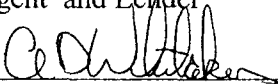
SECTION 10. COUNTERPARTS. This Amendment No. 3 may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement. In making proof of this Amendment No. 3, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto. Delivery of an executed counterpart of this Amendment No. 3 by telefacsimile or electronic mail shall have the same force and effect as delivery of an original executed counterpart of this Amendment No. 3. Any party delivering an executed counterpart of this Amendment No. 3 by telefacsimile or electronic mail also shall deliver an original executed counterpart of this Amendment No. 3, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment No. 3 as to such party or any other party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Agent, Lenders, Borrower and Guarantor have caused these presents to be duly executed as of the day and year first above written.

AGENT

WACHOVIA CAPITAL FINANCE  
CORPORATION (WESTERN),  
as Agent and Lender

By: 

Title: Director

BORROWER

MERVYN'S LLC

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

Title: \_\_\_\_\_

GUARANTOR

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

SIGNATURES OF LENDERS CONTINUE ON FOLLOWING PAGES

IN WITNESS WHEREOF, Agent, Lenders, Borrower and Guarantor have caused these presents to be duly executed as of the day and year first above written.

AGENT

WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN),  
as Agent and Lender

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

Title: \_\_\_\_\_

BORROWER

MERVYN'S LLC

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

Title: EVP, CFO + TREASURER

GUARANTOR

MERVYN'S BRANDS, LLC

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

Title: EVP, CFO + TREASURER

SIGNATURES OF LENDERS CONTINUE ON FOLLOWING PAGES

LENDER

GENERAL ELECTRIC CAPITAL  
CORPORATION


By: *Kevin Ford*

Title: *Duly Authorized Signatory*



LENDER

THE CIT GROUP/BUSINESS CREDIT, INC.

By:   
**Manuel Borges**

Title: **Vice President**

LENDER

BANK OF AMERICA, N.A.

By: Andrea Ciporace

Title: VICE PRESIDENT

LENDER

WELLS FARGO FOOTHILL, LLC

By: David P Hill

Title: Vice President

LENDER

JPMORGAN CHASE BANK

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

Title: Vice President

LENDER

LASALLE RETAIL FINANCE, a division of  
LaSalle Business Credit, LLC as agent for Standard  
Federal Bank National Association

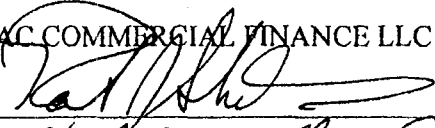
By: Daniel O'Rourke

Title: First Vice President

LENDER

GMAC COMMERCIAL FINANCE LLC

By:



Title:

*Chief Credit Officer - Retail Finance Group*

LENDER

SIEMENS FINANCIAL SERVICES, INC.

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

Title: \_\_\_\_\_

*J. Accardi*  
Joseph A. Accardi  
Managing Director

AMENDMENT NO. 4  
TO  
LOAN AND SECURITY AGREEMENT

This Amendment No. 4 to Loan and Security Agreement (“Amendment No. 4”) dated March 14, 2007 is entered into by and among Mervyn’s LLC, a California limited liability company (“Borrower”), Mervyn’s Brands, LLC, a Minnesota limited liability company (“Guarantor”), the financial institutions from time to time parties to the Loan Agreement (as hereinafter defined) as lenders (individually, each a “Lender” and collectively, “Lenders”), and Wachovia Capital Finance Corporation (Western), as successor to Congress Financial Corporation (Western), a California corporation, in its capacity as administrative agent and collateral agent for the parties to the Loan Agreement (as hereinafter defined) from time to time as lenders (in such capacity “Agent”) and as Sole Lead Arranger and Bookrunner. For purposes of this Amendment No. 4, all capitalized terms used herein, but not otherwise defined herein, including, but not limited to, those terms used in the recitals hereto shall have the respective meanings assigned thereto in the Loan Agreement.

W I T N E S S E T H:

WHEREAS, Agent, the financial institutions parties to the Loan Agreement as lenders (individually, each a “Lender” and collectively, “Lenders”), Borrower and Guarantor have entered into financing arrangements pursuant to which Lenders (or Agent on behalf of Lenders) have made and may make loans and advances and provide other financial accommodations to Borrower as set forth in the Loan and Security Agreement, dated September 2, 2004, by and among Agent, Lenders, Borrower and Guarantor, as amended by Amendment No. 1 to Loan and Security Agreement, dated October 25, 2004 by and among Agent, Lenders, Borrower and Guarantor, Amendment No. 2 to Loan and Security Agreement, dated December 22, 2005, by and among Agent, Lenders, Borrower and Guarantor, Amendment No. 3 to Loan and Security Agreement, dated June 8, 2006, by and among Agent, Lenders, Borrower and Guarantor (as further amended hereby and as the same may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the “Loan Agreement”), and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the “Financing Agreements”); and

WHEREAS, Borrower and Guarantor have requested that Agent and Lenders, increase the Maximum Credit and make certain other amendments to the Loan Agreement and the other Financing Agreements, and Agent and Lenders agree to such amendments, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing, and the respective agreements and covenants contained herein, the parties hereto agree as follows:



SECTION 1. AMENDMENTS.

(a) Additional Definitions. As used herein, the following term shall have the meaning given to it below and the Loan Agreement shall be deemed and is hereby amended to include, in addition and not in limitation, the following definitions:

(i) "Amendment No. 4" shall mean Amendment No. 4 to the Loan and Security Agreement, dated March 14, 2007, by and among Borrower, Guarantor, the Lenders and Agent, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(ii) "Borrowing Base A" shall mean, at any time, the amount equal to:

(a) the lesser of:

(i) the amount equal to (A) eighty-five (85%) percent of the amount of Eligible Credit Card Receivables, plus (B) the lesser of (1) ninety (90%) percent multiplied by the Value of the Eligible Inventory or (2) ninety (90%) percent of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory, or

(ii) the Revolving Loan A Limit,

minus

(b) Reserves (it being agreed that Agent may in good faith establish Reserves in accordance with the terms of the Loan Agreement, without duplication, against Borrowing Base A or Borrowing Base B).

(iii) "Borrowing Base B" shall mean, at any time, the amount equal to:

(a) the lesser of:

(i) the amount equal to (A) ten (10%) percent of the amount of Eligible Credit Card Receivables, plus (B) the lesser of (1) ten (10%) percent multiplied by the Value of the Eligible Inventory or (2) ten (10%) percent of the Net Recovery Percentage multiplied by the Value of such Eligible Inventory, or

(ii) the Revolving Loan B Limit,

minus

(b) Reserves (it being agreed that Agent may in good faith establish Reserves in accordance with the terms of the Loan Agreement, without duplication, against Borrowing Base A or Borrowing Base B).

(iv) “Enforcement Action” shall mean the exercise by Agent in good faith of any of its material enforcement rights and remedies as a secured creditor hereunder or under the other Financing Agreements, applicable law or otherwise at any time upon the occurrence and during the continuance of an Event of Default (including, without limitation, the solicitation of bids from third parties to conduct the liquidation of the Collateral, the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers or other third parties for the purposes of valuing, marketing, promoting and selling the Collateral, the commencement of any action to foreclose on the security interests or Liens of Agent in all or any material portion of the Collateral, notification of account debtors to make payments to Agent, any action to take possession of all or any material portion of the Collateral or commencement of any legal proceedings or actions against or with respect to all or any portion of the Collateral).

(v) “Excess Availability A” shall mean the amount, as determined by Agent, calculated at any date, equal to: (a) Borrowing Base A (after giving effect to any Reserves with respect to Borrowing Base A other than any Reserves in respect of Letter of Credit Accommodations), plus (b) Qualified Cash, minus (c) the sum of: (i) the amount of all then outstanding and unpaid Loans (but not including for this purpose or any outstanding Letter of Credit Accommodations and any Obligations arising from or in connection with the Revolving Loans B), plus (ii) the amount of all Reserves then established in respect of Letter of Credit Accommodations.

(vi) “Revolving Loan B Fee Letter” shall mean that certain letter agreement, dated the date of Amendment No. 4, by and between Borrower and Agent, setting forth certain fees payable by Borrower to Agent for the benefit of itself and Revolving Loan B Lenders, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(vii) “Required Revolving Lenders A” shall mean, at any time, those Revolving Loan A Lenders whose Pro Rata Shares aggregate more than fifty (50%) percent of the aggregate Revolving Loan A Commitments of all Revolving Loan A Lenders, or if the Revolving Loan A Commitments have been terminated, Revolving Loan A Lenders to whom more than fifty (50%) percent of the then outstanding Obligations arising from or in connection with the Revolving Loans A are owing.

(viii) “Required Revolving Lenders B” shall mean, at any time, those Revolving B Lenders whose Pro Rata Shares aggregate more than fifty (50%) percent of the aggregate Revolving Loan B Commitments of all Revolving Loan B Lenders, or if the Revolving Loan B Commitments have been terminated, Revolving Loan B Lenders to whom more than fifty (50%) percent of the then outstanding Obligations arising from or in connection with the Revolving Loans B are owing.

(ix) “Required Super-Majority Revolving Lenders A” shall mean, at any time, those Revolving Loan A Lenders whose Pro Rata Shares aggregate eighty (80%) percent or more of the aggregate Revolving Loan A Commitments of all Revolving Loan A Lenders, or if the Revolving Loan A Commitments have been terminated, Revolving Loan A Lenders to whom

eighty (80%) percent or more of the then outstanding Obligations arising from or in connection with the Revolving Loans A are owing.

(x) “Required Super-Majority Revolving Lenders B” shall mean, at any time, those Revolving Loan B Lenders whose Pro Rata Shares aggregate eighty (80%) percent or more of the aggregate Revolving Loan B Commitments of all Revolving Loan B Lenders, or if the Revolving Loan B Commitments have been terminated, Revolving Loan B Lenders to whom eighty (80%) percent or more of the then outstanding Obligations arising from or in connection with the Revolving Loans B are owing.

(xi) “Revolving Loan A Commitment” shall mean, at any time, as to any Lender, the principal amount set forth opposite such Lender’s name on Schedule 1 to Amendment No. 4 designated as such Lender’s Revolving Loan A Commitment or on Schedule 1 to an Assignment and Acceptance Agreement pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 13.7 hereof, as the same may be adjusted from time to time in accordance with the terms hereof; sometimes being collectively (as to all Revolving Loan A Lenders) referred to herein as the “Revolving Loan A Commitments”.

(xii) “Revolving Loan A Lenders” shall mean, at any time, Lenders having a Revolving Loan A Commitment or Revolving Loans A owing to it at such time; each sometimes referred to herein individually as a “Revolving Loan A Lender”.

(xiii) “Revolving Loan A Limit” shall mean \$550,000,000.

(xiv) “Revolving Loan B Commitment” shall mean, at any time, as to any Lender, the principal amount set forth opposite such Lender’s name on Schedule 1 to Amendment No. 4 designated as such Lender’s Revolving Loan B Commitment or on Schedule 1 to an Assignment and Acceptance Agreement pursuant to which such Lender became a Lender hereunder in accordance with the provisions of Section 13.7 hereof, as the same may be adjusted from time to time in accordance with the terms hereof; sometimes being collectively (as to all Revolving Loan B Lenders) referred to herein as the “Revolving Loan B Commitments”.

(xv) “Revolving Loan B Lenders” shall mean, at any time, Lenders having a Revolving Loan B Commitment or a Revolving Loan B owing to it at such time; each sometimes referred to herein individually as a “Revolving Loan B Lender”.

(xvi) “Revolving Loan B Limit” shall mean \$50,000,000.

(xvii) “Revolving Loan Limit” shall mean, at any time, the amount equal to the sum of the Revolving Loan A Limit and the Revolving Loan B Limit.

(xviii) “Revolving Loans” shall mean, individually and collectively, each of the Revolving Loans A and the Revolving Loans B.

(xix) “Revolving Loans A” shall mean, individually and collectively, each loan made to or for the benefit of a Borrower by or on behalf of any Revolving Loan A Lender or by Agent for the ratable account of any Revolving Loan A Lender, pursuant to the Credit Facility as set forth in Section 2.1(a)(i) hereof.

(xx) “Revolving Loans B” shall mean, individually and collectively, each loan made to or for the benefit of a Borrower by or on behalf of any Revolving Loan B Lender or by Revolving Loan B Agent for the ratable account of any Revolving Loan B Lender, pursuant to the Credit Facility as set forth in Section 2.1(a)(ii) hereof.

(xxi) “Revolving Loans B Action Default” shall mean any one or more of the following: (A) an Event of Default described in Section 10.1(a)(i), 10.1(f), 10.1(g), 10.1(h), 10.1(o) or 10.1(p) hereof; (B) an Event of Default described in Section 10.1(a)(iii) (to the extent arising as a result of the failure to comply with Section 9.7, 9.8, 9.9, 9.10, 9.11, 9.12 or 9.18 hereof), in each case after giving effect to all applicable cure periods, if any; or (C) an Event of Default described in Section 10.1(e) with respect to Borrower (but not Guarantor).

(xxii) “Revolving Loans B Action Notice” shall have the meaning set forth in Section 10.2(i) hereof.

(xxiii) “Triggering Event” shall mean the occurrence of any one or more of the following: (a) the occurrence and continuance of an Event of Default under Section 10.1(a)(i) hereof; (b) the occurrence and continuance of an Event of Default under Section 10.1(f), 10.1(g) or 10.1(h) hereof; (c) the occurrence of any other Event of Default and the acceleration by Agent of the payment of all or a material portion of the Obligations; or (d) the receipt by Agent of a Revolving Loans B Action Notice as provided in Section 10.2(i) hereof.

(b) Amendments to Loan Agreement Definitions.

(i) Section 1.8 of the Loan Agreement is hereby amended to add the following language at the end of such definition:

“In the event that at any time after the end of a calendar quarter the Quarterly Average Excess Availability for such calendar quarter used for the determination of the Applicable Margin was greater than the actual amount of the Quarterly Average Excess Availability for such calendar quarter, the Applicable Margin for such prior calendar quarter shall be adjusted to the applicable percentage based on such actual Quarterly Average Excess Availability and any additional interest for the applicable period as a result of such recalculation shall be promptly paid to Agent. In the event that at any time after the end of a calendar quarter the Quarterly Average Excess Availability for such calendar quarter used for the determination of the Applicable Margin was less than the actual amount of the Quarterly Average Excess Availability, the Applicable Margin for such prior calendar quarter shall be adjusted to the applicable percentage based on such actual Quarterly Average Excess Availability and any reduction in interest for the applicable period as a result of such recalculation shall be promptly credited to the loan account of Borrower. The foregoing shall not be construed to limit the rights of Agent with respect to the amount of interest payable after a Default or Event of Default whether based on such recalculated percentage or otherwise.”

(ii) Section 1.15 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

““Borrowing Base” shall mean, collectively, the Borrowing Base A and the Borrowing Base B; provided, that, without limitation upon Sections 12.8 or 12.11 hereof, in no event shall an amount in excess of 100% of the Cost of Eligible Inventory be included in calculating the Borrowing Base.”

(iii) Section 1.27 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“Commitment” shall mean, at any time, as to each Lender, the aggregate of such Lender’s Revolving Loan A Commitment and Revolving Loan B Commitment; sometimes being collectively referred to herein as “Commitments”.

(iv) Section 1.55 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“Excess Availability” shall mean the amount, as determined by Agent, calculated at any date of determination, equal to: (a) the sum of the Borrowing Base A and the Borrowing Base B (after giving effect to any Reserves other than any Reserves in respect of Letter of Credit Accommodations), plus (b) Qualified Cash, minus (c) the sum of: (i) the amount of all then outstanding and unpaid Loans, plus (ii) the amount of all Reserves then established in respect of Letter of Credit Accommodations.”

(v) Section 1.64 (b) of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“(b) all Capital Expenditures during such period (other than any Capital Expenditures financed with purchase money Indebtedness to the extent permitted by Section 9.9(b) hereof or sale-leaseback transactions permitted and entered into by Borrower pursuant to Section 9.7(b)(ix) and (x) hereof), plus”

(vi) Section 1.75 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“Interest Rate” shall mean,

(a) Subject to clauses (b) and (c) of this definition below:

(i) as to Revolving Loans A that are Prime Rate Loans, a rate equal to three-quarters (3/4%) percent in excess of the Prime Rate,

(ii) as to Revolving Loans A that are Eurodollar Rate Loans, a rate equal to one and three-quarters (1.75%) percent per annum in excess of the Adjusted Eurodollar Rate (in each case, based on the London Interbank Offered Rate applicable for the Interest Period selected by Borrower, as in effect three (3) Business Days prior to the commencement of the Interest Period, whether such rate is higher or lower than any rate previously quoted to Borrower or Guarantor),

(iii) as to Revolving Loans B that are Prime Rate Loans, a rate equal to one (1.00%) percent per annum in excess of the Prime Rate, and

(iv) as to Revolving Loans B that are Eurodollar Rate Loans, a rate equal to two and three-quarters (2.75%) percent per annum in excess of the Adjusted Eurodollar Rate (in each case, based on the London Interbank Offered Rate applicable for the Interest Period selected by a Borrower, or by Administrative Borrower on behalf of such Borrower, as in effect three (3) Business Days prior to the commencement of the Interest Period, whether such rate is higher or lower than any rate previously quoted to Borrower or Guarantor).

(b) Subject to clause (c) of this definition below, effective as of the first (1st) day of each month (commencing January 29, 2005), the Interest Rate payable by Borrower in respect of Revolving Loans A shall be increased or decreased, as the case may be, in accordance with the definition of Applicable Margin, (i) as to Revolving Loans A which are Prime Rate Loans, to the rate equal to the Applicable Margin on a per annum basis plus the Prime Rate, and (ii) as to Revolving Loans A which are Eurodollar Rate Loans, to the rate equal to the Applicable Margin on a per annum basis plus the Adjusted Eurodollar Rate.

(c) Notwithstanding anything to the contrary contained in clauses (a) or (b) of this definition, the Interest Rate shall mean the per annum rates set forth above plus (in each case) two (2%) percent per annum, at Agent's option or upon the written request of Required Revolving Lenders A (in the case of Revolving Loans A) or Required Revolving Lenders B (in the case of Revolving Loans B), without notice, (i) either (A) for the period on and after the date of termination or non-renewal hereof until such time as all of the Obligations are paid and satisfied in full in immediately available funds, or (B) from and after the date of the occurrence of any Event of Default, and for so long as such Event of Default is continuing as determined by Agent in good faith, (ii) on the Revolving Loans A at any time outstanding in excess of the Borrowing Base A (whether or not such excess(es) arise or are made with or without Agent's or any Lender's knowledge or consent and whether made before or after an Event of Default) and (iii) on the Revolving Loans B at any time outstanding in excess of the Borrowing Base B (whether or not such excess(es) are made with or without Agent's or any Lender's knowledge or consent and whether made before or after an Event of Default). Agent shall promptly notify Borrower in writing if the Interest Rate specified in this clause (c) is in effect.

(vii) Section 1.83 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“1.83 “Loans” shall mean the Revolving Loans.”

(viii) Section 1.87 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“1.87 “Maximum Credit” shall mean the amount of \$600,000,000.”

(ix) Section 1.122 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“1.122 “Pro Rata Share” shall mean as to any Lender, (a) with respect to matters related to the Revolving Loan A Commitment of a Lender (including, without limitation, Letters of Credit and the making or repayment of Revolving Loans A), the fraction (expressed as a percentage) obtained by dividing (i) such Lender’s Revolving Loan A Commitment by (ii) the aggregate Revolving Loan A Commitments of all Lenders; provided, that, if the Revolving Loan A Commitments have been terminated, the numerator of such fraction shall be the outstanding amount of such Lender’s Revolving Loans A and interest in the Letter of Credit Accommodations and the denominator of such fraction shall be the aggregate amount of all outstanding Revolving Loans A and Letter of Credit Accommodations; (b) with respect to matters relating to the Revolving Loan B Commitments of a Lender (including, without limitation, the making or repayment of Revolving Loans B), the fraction (expressed as a percentage) obtained by dividing (i) such Lender’s Revolving Loan B Commitment by (ii) the aggregate Revolving Loan B Commitments of all Lenders; provided, that, if the Revolving Loan B Commitments have been terminated, the numerator of such fraction shall be the outstanding amount of such Lender’s Revolving Loans B and the denominator of such fraction shall be the aggregate amount of all outstanding Revolving Loans B; and (c) with respect to all other matters, the fraction (expressed as a percentage) obtained by dividing (i) such Lender’s Commitment by (ii) the aggregate Commitments of all Lenders; provided, that, if the Commitments have been terminated, the numerator of such fraction shall be the outstanding amount of such Lender’s Loans and interest in the Letter of Credit Accommodations and the denominator of such fraction shall be the aggregate amount of all outstanding Loans and Letter of Credit Accommodations, in each case as the Commitments may be adjusted from time to time in accordance with the provisions of 13.7 hereof.”

(c) Amendments to Loan Agreement

(i) Section 2.1 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“(a)(i) Subject to and upon the terms and conditions contained herein, each Revolving Loan A Lender severally (and not jointly) agrees to make its Pro Rata Share of Revolving Loans A to Borrower from time to time in amounts requested by Borrower up to the aggregate amount outstanding

for all Revolving Loan A Lenders at any time equal to the lesser of (i) the Borrowing Base A at such time or (ii) the Revolving Loan A Limit at such time.

(ii) Subject to and upon the terms and conditions contained herein, each Revolving Loan B Lender severally (and not jointly) agrees to fund its Pro Rata Share of Revolving Loans B to Borrower from time to time in amounts requested by Borrower up to the aggregate amount outstanding for all Revolving Loan B Lenders at any time equal to the lesser of (i) the Borrowing Base B at such time and (ii) the Revolving Loan B Limit at such time.

(b) Agent may, in its discretion, from time to time, upon not less than five (5) days prior notice to Borrower, reduce the lending formula(s) with respect to Eligible Inventory to the extent that Agent determines in good faith that: (i) the number of days of the turnover of the Eligible Inventory for any period has adversely changed or (ii) the liquidation value of the Eligible Inventory, or any class thereof, has decreased, including any decrease attributable to a change in the nature, quality or mix of the Inventory. The amount of any decrease in the lending formulas shall have a reasonable relationship to the event, condition or circumstance which is the basis for such decrease as determined by Agent in good faith. In determining whether to reduce the lending formula(s), Agent may consider events, conditions, contingencies or risks which are also considered in determining Eligible Inventory or in establishing Reserves. Any such reductions to lending formulas by Agent shall apply ratably to the lending formulas set forth in Borrowing Base A and Borrowing Base B.

(c) Except in Agent's discretion, with the consent of all Lenders (other than Sponsor Affiliated Lenders), (i) the aggregate amount of the Loans and the Letter of Credit Accommodations outstanding at any time shall not exceed the Maximum Credit, (ii) the aggregate principal amount of the Revolving Loans A and Letter of Credit Accommodations outstanding at any time shall not exceed Borrowing Base A except as otherwise provided in Sections 12.8 and 12.11(a) hereof, and (iii) the aggregate principal amount of the Revolving Loans B outstanding at any time shall not exceed Borrowing Base B.

(d) In the event that (i) the aggregate amount of the Loans and the Letter of Credit Accommodations outstanding at any time exceeds the Maximum Credit, or (ii) except as otherwise provided in Section 12.8 or 12.11(a) hereof, the aggregate principal amount of the Revolving Loans A and Letter of Credit Accommodations outstanding at any time exceeds Borrowing Base A, or (iii) the aggregate principal amount of Revolving Loans B outstanding at any time exceeds the Borrowing Base B, such event shall not limit, waive or otherwise affect any rights of Agent or Lenders in such circumstances or on any future occasions and Borrower



shall, upon demand by Agent, which may be made at any time or from time to time, immediately repay to Agent the entire amount of any such excess(es) for which payment is demanded.

(e) Notwithstanding anything to the contrary contained herein or in any other Financing Agreement, (i) promptly after the receipt by Agent of the month-end calculation of the Borrowing Base B pursuant to Section 7.1(a)(ii)(G) or more frequently as Agent may request, Borrower shall request a borrowing of Revolving Loans B in an amount necessary to cause the outstanding principal amount of the Revolving Loans B to equal the Borrowing Base B; provided, that, Borrower shall not be so required to request a borrowing of Revolving Loans B at any time that (A) the outstanding principal amount of the Revolving Loans B are equal to or greater than the Borrowing Base B at such time, (B) Borrower does not require additional Loans or (C) a Default has occurred and is continuing (ii) Borrower shall have no right to borrow, and Revolving Loan A Lenders shall not be obligated to make, any Revolving Loans A if the Borrowing Base B exceeds the outstanding principal amount of the Revolving Loans B and (iii) Borrower and Guarantors shall not, at any time that any Revolving Loans A are outstanding, prepay all or any of the principal amount of any Revolving Loans B, except to the extent that the outstanding principal amount of the Revolving Loans B exceeds the lesser of the Borrowing Base B and the Revolving Loan B Limit.

(f) Notwithstanding anything to the contrary in this Section 2.1, to the extent the outstanding amount of Revolving B Loans is less than the Borrowing Base B, Borrower's request for Loans shall be deemed a request for Revolving B Loans up to the amount of Borrowing Base B and then a request for Revolving A Loans (or Special Agent Advances, as the case may be)."

(ii) Section 2.2 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

"(a) Subject to and upon the terms and conditions contained herein, at the request of Borrower, Agent agrees, for the ratable risk of each Revolving Loan A Lender according to its Pro Rata Share, to provide or arrange for Letter of Credit Accommodations for the account of Borrower containing terms and conditions acceptable to Agent and the issuer thereof.

(b) In addition to any charges, fees or expenses charged by any bank or issuer in connection with the Letter of Credit Accommodations, Borrower shall pay to Agent, (i) for its own account, a letter of credit fronting fee at a rate equal to one-eighth (1/8%) percent per annum on the daily outstanding balance of the Letter of Credit Accommodations for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month; and (ii) for the benefit of Revolving

Loan A Lenders, a letter of credit fee for the immediately preceding month (or part thereof), payable in arrears as of the first day of each succeeding month, at a per annum rate equal to: (A) in respect of Letter of Credit Accommodations (other than Letter of Credit Accommodations the purpose for which is purchasing Eligible Inventory), the Applicable Margin with respect to "Standby Letters of Credit" as specified in the definition of Applicable Margin (then in effect pursuant to the terms of this Agreement) per annum on the daily outstanding balance of such Letter of Credit Accommodations at all times thereafter, and (B) in respect of Letter of Credit Accommodations issued for the purpose of purchasing Eligible Inventory, the Applicable Margin with respect to "Documentary Letters of Credit" as specified in the definition of Applicable Margin (then in effect pursuant to the terms of this Agreement) per annum on the daily outstanding balance of such Letter of Credit Accommodations; provided, that, upon presentation by beneficiary to issuer of a Letter of Credit Accommodation (issued under clause (B) hereof) for conversion to a banker's acceptance, the letter of credit fee applicable to such Letter of Credit Accommodation shall be calculated in accordance with clause (A) above ("Post-Presentation Letters of Credit") except, that, at Agent's option or upon the written direction of Required Revolving Loan A Lenders, Borrower shall pay to Agent for the ratable benefit of Revolving Loan A Lenders, such letter of credit fee, at a per annum rate equal to two (2%) percent per annum in excess of then applicable per annum rate to such type of Letter of Credit Accommodations pursuant to Section 2.2(b)(ii) on such daily outstanding balance for the period from and after the date of termination hereof until Agent and Lenders have received full and final payment of all Obligations (notwithstanding entry of a judgment against Borrower) and the period from and after the date of the occurrence of an Event of Default for so long as such Event of Default is continuing as determined by Agent in good faith. Such letter of credit fee shall be calculated on the basis of a three hundred sixty (360) day year and actual days elapsed and the obligation of Borrower to pay such fee shall survive the termination of this Agreement.

(c) Borrower shall give Agent two (2) Business Days' prior written notice of Borrower's request for the issuance of a Letter of Credit Accommodation. Such notice shall be irrevocable and shall specify the original face amount of the Letter of Credit Accommodation requested, the effective date (which date shall be a Business Day) of issuance of such requested Letter of Credit Accommodation, whether such Letter of Credit Accommodations may be drawn in a single or in partial draws, the date on which such requested Letter of Credit Accommodation is to expire (which date shall be a Business Day), the purpose for which such Letter of Credit Accommodation is to be issued, and the beneficiary of the requested Letter of Credit Accommodation. Borrower shall attach to such notice the proposed form of the Letter of Credit Accommodation.

(d) In addition to being subject to the satisfaction of the applicable conditions precedent contained in Section 4 hereof and the other terms and conditions contained herein, no Letter of Credit Accommodations shall be available unless each of the following conditions precedent have been satisfied in a manner satisfactory to Agent: (i) Borrower shall have delivered to the proposed issuer of such Letter of Credit Accommodation at such times and in such manner as such proposed issuer may require, an application, in form and substance satisfactory to such proposed issuer and Agent, for the issuance of the Letter of Credit Accommodation and such other documents as may be required pursuant to the terms thereof, and the form and terms of the proposed Letter of Credit Accommodation shall be satisfactory to Agent and such proposed issuer, (ii) as of the date of issuance, no order of any court, arbitrator or other Governmental Authority shall purport by its terms to enjoin or restrain money center banks generally from issuing letters of credit of the type and in the amount of the proposed Letter of Credit Accommodation, and no law, rule or regulation applicable to money center banks generally and no request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over money center banks generally shall prohibit, or request that the proposed issuer of such Letter of Credit Accommodation refrain from, the issuance of letters of credit generally or the issuance of such Letter of Credit Accommodation; and (iii) the Excess Availability A, prior to giving effect to any Reserves with respect to such Letter of Credit Accommodations, on the date of the proposed issuance of any Letter of Credit Accommodations, shall be equal to or greater than: (A) if the proposed Letter of Credit Accommodation is for the purpose of purchasing Eligible Inventory, provided, that, if such Inventory is or will be in transit from outside the United States then it is or will be in transit to a customs broker or freight forwarder who has executed a bailee agreement in favor of Agent and in form and substance satisfactory to Agent, and the documents of title with respect thereto are consigned or will be consigned to the Agent or issuer or the requirement set forth in Section 1.44(n)(ii)(B) hereof has been satisfied as to such Inventory, at Agent's option, the sum of (1) the percentage equal to one hundred (100%) percent minus the then applicable percentage with respect to Eligible Inventory set forth in the definition of the term Borrowing Base A multiplied by the Value of such Eligible Inventory, plus (2) freight, taxes, duty and other amounts which Agent estimates must be paid in connection with such Inventory upon arrival and for delivery to one of Borrower's locations for Eligible Inventory within the United States of America; and (B) if the proposed Letter of Credit Accommodation is for any other purpose or the documents of title are not consigned to the Agent or issuer in connection with a Letter of Credit Accommodation for the purpose of purchasing Inventory or the conditions in Section 2.2(d)(iii)(A) with regard to a Letter of Credit Accommodation for the purpose of purchasing Eligible Inventory have not been satisfied, an amount equal to one

hundred (100%) percent of the face amount thereof and all other commitments and obligations made or incurred by Agent with respect thereto; provided, that, (1) the Reserve in effect for any Letter of Credit Accommodation shall be increased to one hundred (100%) percent of the face amount thereof plus all other commitments and obligations made or incurred by Agent with respect thereto plus the amounts set forth in Section 2.2(d)(iii)(A)(2) above at any time seventy-five (75) days after the date of the issuance of the Letter of Credit Accommodation until presented, (2) the Reserve in effect for any Post-Presentation Letter of Credit upon receipt of the related Inventory at a location of Borrower and inclusion of such Inventory in the perpetual inventory report of Borrower provided to Agent in accordance with the terms hereof, shall be an amount equal to one hundred (100%) percent of the face amount thereof and all other commitments and obligations made or incurred by Agent with respect thereto, and (3) the amount of all outstanding Letter of Credit Accommodations issued under Section 2.2(d)(iii)(B) prior to shipment of the finished goods and all other commitments and obligations made or incurred by Agent or any Revolving Loan A Lender in connection therewith shall not at any time exceed the lesser of: \$50,000,000 or fifteen (15%) percent of the net book value of the Inventory as determined by Agent at any time during January through May in any year and the lesser of: \$85,000,000 or twenty (20%) percent of the net book value of the Inventory as determined by Agent from June through December in any year. Effective on the issuance of each Letter of Credit Accommodation, a Reserve against Borrowing Base A shall be established in the applicable amount set forth in Section 2.2(d)(iii)(A) or Section 2.2(d)(iii)(B).

Except as set forth in Section 2.2(d)(iii)(B)(2) above, for the period commencing the date hereof and ending on March 1, 2005, Agent shall establish a Reserve against Borrowing Base A in an amount equal to the Reserve set forth in Section 2.2(d)(iii)(A)(1) hereof with respect to Post-Presentation Letters of Credit and at all times thereafter, the applicable Reserve with respect to such Letter of Credit Accommodations shall not be less than the Reserve set forth in Section 2.2(d)(iii)(B) unless the reporting of Borrower provided to Agent hereunder with respect to Post-Presentation Letters of Credit is satisfactory to Agent.

(e) Except in Agent's discretion, with the consent of Required Super-Majority Revolving Loan A Lenders, the amount of all outstanding Letter of Credit Accommodations and all other commitments and obligations made or incurred by Agent or any Revolving Loan A Lender in connection therewith shall not at any time exceed \$275,000,000 (inclusive of the sublimit set forth in Section 2.2(d)(iii)(B)(3) hereof).

(f) Borrower and Guarantor shall indemnify and hold Agent and Lenders harmless from and against any and all losses, claims, damages, liabilities, costs and expenses which Agent or any Lender may suffer or incur in

connection with any Letter of Credit Accommodations and any documents, drafts or acceptances relating thereto, including any losses, claims, damages, liabilities, costs and expenses due to any action taken by any issuer or correspondent with respect to any Letter of Credit Accommodation, except for such losses, claims, damages, liabilities, costs or expenses that are a direct result of the gross negligence or willful misconduct of any Indemnitee as determined pursuant to a final non-appealable order of a court of competent jurisdiction. Each of Borrower and Guarantor assumes all risks with respect to the acts or omissions of the drawer under or beneficiary of any Letter of Credit Accommodation and for such purposes the drawer or beneficiary shall be deemed Borrower's agent. Each of Borrower and Guarantor assumes all risks for, and agrees to pay, all foreign, Federal, State and local taxes, duties and levies relating to any goods subject to any Letter of Credit Accommodations or any documents, drafts or acceptances thereunder. Each of Borrower and Guarantor hereby releases and holds Agent and Lenders harmless from and against any acts, waivers, errors, delays or omissions, whether caused by Borrower, Guarantor, by any issuer or correspondent or otherwise with respect to or relating to any Letter of Credit Accommodation, except for the gross negligence or willful misconduct of Agent and any Lender as determined pursuant to a final, non-appealable order of a court of competent jurisdiction (but without limiting the obligations of Borrower or Guarantor as to any other Indemnitee (other than any officers, directors, agents or employees of the Indemnitee whose gross negligence or willful misconduct resulted in such losses, claims, damages, liabilities, costs or expenses)). The provisions of this Section 2.2(f) shall survive the payment of Obligations and the termination of this Agreement.

(g) In connection with Inventory purchased pursuant to Letter of Credit Accommodations, Borrower and Guarantor shall, at Agent's request, instruct all suppliers, carriers, forwarders, customs brokers, warehouses or others receiving or holding cash, checks, Inventory, documents or instruments in which Agent holds a security interest to deliver them to Agent and/or subject to Agent's order, and if they shall come into Borrower's or Guarantor's possession, to deliver them, upon Agent's request, to Agent in their original form. Borrower and Guarantor shall also, at Agent's request, designate Agent as the consignee on all bills of lading and other negotiable and non-negotiable documents.

(h) Each of Borrower and Guarantor hereby irrevocably authorizes and directs any issuer of a Letter of Credit Accommodation to name Borrower as the account party therein and to deliver to Agent all instruments, documents and other writings and property received by issuer pursuant to the Letter of Credit Accommodations and to accept and rely upon Agent's instructions and agreements with respect to all matters arising in connection with the Letter of Credit Accommodations or the applications

therefor. Nothing contained herein shall be deemed or construed to grant Borrower or Guarantor any right or authority to pledge the credit of Agent or any Lender in any manner. Agent and Revolving Loan A Lenders shall have no liability of any kind with respect to any Letter of Credit Accommodation provided by an issuer other than Agent or any Lender unless Agent has duly executed and delivered to such issuer the application or a guarantee or indemnification in writing with respect to such Letter of Credit Accommodation. Borrower and Guarantor shall be bound by any reasonable interpretation made in good faith by Agent, or any other issuer or correspondent under or in connection with any Letter of Credit Accommodation or any documents, drafts or acceptances thereunder, notwithstanding that such interpretation may be inconsistent with any instructions of Borrower or Guarantor.

(i) So long as no Event of Default exists or has occurred and is continuing, Borrower may (i) approve or resolve any questions of non-compliance of documents, (ii) give any instructions as to acceptance or rejection of any documents or goods, (iii) execute any and all applications for steamship or airway guaranties, indemnities or delivery orders, and (iv) with Agent's consent, grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents, and agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letter of Credit Accommodations, or documents, drafts or acceptances thereunder or any letters of credit included in the Collateral.

(j) At any time an Event of Default exists or has occurred and is continuing, Agent shall have the right and authority to, and Borrower shall not, without the prior written consent of Agent, (i) approve or resolve any questions of non-compliance of documents, (ii) give any instructions as to acceptance or rejection of any documents or goods, (iii) execute any and all applications for steamship or airway guaranties, indemnities or delivery orders, (iv) grant any extensions of the maturity of, time of payments for, or time of presentation of, any drafts, acceptances, or documents, and (v) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letter of Credit Accommodations, or documents, drafts or acceptances thereunder or any letters of credit included in the Collateral. Agent may take such actions either in its own name or in Borrower's name.

(k) Any rights, remedies, duties or obligations granted or undertaken by Borrower or Guarantor to any issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement in favor of any issuer or correspondent relating to any Letter of Credit Accommodation, shall be deemed to have been granted or undertaken by Borrower or Guarantor to Agent for the ratable benefit of Lenders. Any

duties or obligations undertaken by Agent to any issuer or correspondent in any application for any Letter of Credit Accommodation, or any other agreement by Agent in favor of any issuer or correspondent to the extent relating to any Letter of Credit Accommodation, shall be deemed to have been undertaken by Borrower and Guarantor to Agent for the ratable benefit of Lenders and to apply in all respects to Borrower and Guarantor.

(l) Immediately upon the issuance or amendment of any Letter of Credit Accommodation, each Revolving Loan A Lender shall be deemed to have irrevocably and unconditionally purchased and received, without recourse or warranty, an undivided interest and participation to the extent of such Revolving Loan A Lender's Pro Rata Share of the liability with respect to such Letter of Credit Accommodation and the obligations of Borrower with respect thereto (including without limitation, all Obligations with respect thereto). Each Revolving Loan A Lender shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and be obligated to pay to the issuer therefor and discharge when due, its Pro Rata Share of all of such obligations arising under such Letter of Credit Accommodation. Without limiting the scope and nature of each Revolving Loan A Lender's participation in any Letter Accommodation of Credit Accommodation, to the extent that issuer thereof has not been reimbursed or otherwise paid as required hereunder or under any such Letter of Credit, each such Revolving Loan A Lender shall pay to issuer thereto its Pro Rata Share of such unreimbursed drawing or other amounts then due to such issuer in connection therewith.

(m) Borrower shall promptly reimburse any issuer of any Letter of Credit Accommodation following notice of any draw under any Letter of Credit Accommodation issued for the account of Borrower and pay such issuer the amount of all other charges and fees payable to such issuer in connection with any Letter of Credit Accommodation issued for the account of such Borrower promptly when due, and, to the extent permitted by applicable law, irrespective of any claim, setoff, defense or other right which such Borrower may have at any time against such issuer or any other Person. Each drawing under any Letter of Credit Accommodation or other amount payable in connection therewith when due shall constitute a request by Borrower to Agent for a Revolving Loan A consisting of a Prime Rate Loan in the amount of such drawing or other amount then due, and shall be made by Agent on behalf of Revolving Loan A Lenders as a Revolving Loan A (or Special Agent Advance, as the case may be). The date of such Revolving Loan A shall be the date of the drawing or as to other amounts, the due date therefor. Any payments made by or on behalf of Agent or any Revolving Loan A Lender to the issuer of such Letter of Credit Accommodation and/or related parties in connection with any Letter of Credit Accommodation shall constitute additional Revolving Loans A to Borrower pursuant to this Section 2 (or Special Agent Advances as the case may be)."

(n) Borrower is irrevocably and unconditionally obligated, without presentment, demand or protest, to pay to Agent any amounts paid by an issuer of a Letter of Credit Accommodation with respect to such Letter of Credit Accommodation (whether through the borrowing of Loans in accordance with Section 2.2(a) or otherwise). In the event that Borrower fails to pay Agent on the date of any payment under a Letter of Credit Accommodation in an amount equal to the amount of such payment, Agent (to the extent it has actual notice thereof) shall promptly notify each Revolving Loan A Lender of the unreimbursed amount of such payment and each Revolving Loan A Lender agrees, upon one (1) Business Day's notice, to fund to Agent the purchase of its participation in such Letter of Credit Accommodation in an amount equal to its Pro Rata Share of the unpaid amount. The obligation of each Revolving Loan A Lender to deliver to Agent an amount equal to its respective participation pursuant to the foregoing two sentences is absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuance of any Event of Default, the failure to satisfy any other condition set forth in Section 4 or any other event or circumstance. If such amount is not made available by a Revolving Loan A Lender when due, Agent shall be entitled to recover such amount on demand from such Revolving Loan A Lender with interest thereon, for each day from the date such amount was due until the date such amount is paid to Agent at the interest rate then payable by Borrower in respect of Loans that are Prime Rate Loans as set forth in Section 3.1(a) hereof. Notwithstanding anything to the contrary in Sections 2.2(n) and (o) hereof, to the extent the outstanding amount of Revolving B Loans at the time of such draw are less than the Borrowing Base B, Borrower's request for Loans shall be deemed a request for Revolving B Loans up to the Revolving B Loan Limit and then a request for Revolving A Loans (or Special Agent Advances, as the case may be)."

(iii) Section 6.4 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

"(a) All Obligations shall be payable to the Agent Payment Account as provided in Section 6.3 or such other place as Agent may designate in writing to Borrower from time to time. Prior to the occurrence and continuance of a Triggering Event, all collections and proceeds of Collateral (subject to Section 6.4(d)(iii) hereof) shall be applied in the following order:

(i) first, ratably, to the payment of all (A) out-of-pocket costs, fees, expenses and other charges of Agent payable by Borrower under the Financing Agreements and (B) indemnities payable by Borrower under the Financing Agreements then due to Agent, until paid in full;

(ii) second, ratably, to the payment of all (A) out-of-pocket costs, fees, expenses and other charges of Lenders payable by Borrowers under the



Financing Agreements and (B) indemnities payable by Borrowers under the Financing Agreements then due to any Lender, in each case, until paid in full;

(iii) third, ratably, to the payment of all interest due in respect of the Loans and Special Agent Advances, until paid in full;

(iv) fourth, ratably, to pay or prepay Special Agent Advances, until paid in full;

(v) fifth, ratably, to pay or prepay in full principal in respect of the Revolving Loans A and to pay or prepay in full Obligations arising under or pursuant to any Hedging Transactions of Borrower or Guarantor with any Bank Product Provider (up to the amount of any then effective Reserve established in respect of such Obligations);

(vi) sixth, ratably, to pay or prepay principal in respect of the Revolving Loans B, until paid in full;

(vii) seventh, to pay or prepay any other Obligations whether or not then due (but not including for this purpose any Obligations arising under or pursuant to any Bank Products), in such order and manner as Agent determines and, at any time an Event of Default exists or has occurred and is continuing, to be held as cash collateral in the amount equal to one hundred five (105%) percent of the Letter of Credit Accommodations, and

(viii) eighth, to pay or prepay in full any Obligations to any Bank Product Provider arising under or pursuant to any Bank Products (other than to the extent provided for in clause (v) above).

(b) Notwithstanding anything to the contrary contained in Section 6.4(a) and the other provisions hereof, on and after the occurrence and continuance of a Triggering Event, all collections and proceeds of Collateral (subject to Section 6.4(d)(iii) hereof) shall be applied in the following order:

(i) first, to the payment of all fees, indemnities or expense reimbursements payable by Borrowers to Agent under the Financing Agreements, until paid in full;

(ii) second, to the payment of all fees, indemnities and expense reimbursements payable by Borrower to Revolving Loan A Lenders under the Financing Agreements, until paid in full;

(iii) third, to the payment in full of interest then due in respect of any Revolving Loans A (including any Special Agent Advances);

(iv) fourth, to the payment or prepayment in full of principal in respect of Special Agent Advances;

(v) fifth, ratably, to the payment or prepayment in full of principal in respect of the Revolving Loans A and to the payment or prepayment in full of Obligations arising under or pursuant to any Hedging Transactions of Borrower or Guarantor with any Bank Product Provider (up to the amount of any then effective Reserve established in respect of such Obligations);

(vi) sixth, to pay or prepay in full any other Obligations whether or not then due (but not including for this purpose any Obligations arising from or in connection with the Revolving Loans B or any Bank Products), in such order and manner as Agent determines and to be held as cash collateral in the amount equal to one hundred five (105%) percent of the amount of the Letter of Credit Accommodations;

(vii) seventh, to the payment of all fees, indemnities, or expense reimbursements payable by Borrowers to Revolving Loan B Lenders under the Financing Agreements, until paid in full;

(viii) eighth, to the payment in full of the interest then due in respect of the Revolving Loans B;

(ix) ninth, to the payment or prepayment in full of principal in respect of the Revolving Loans B;

(x) tenth, to the payment or prepayment in full of any other Obligations whether or not then due (excluding Obligations owing to any Bank Product arising under or pursuant to any Bank Products), in such order and manner as Agent may determine; and

(xi) eleventh, to pay any Obligations then due to any Bank Product Provider (other than to the extent provided for in clause (v) above) arising under or pursuant to any Bank Products.

(c) For purposes of this Section 6.4, “paid in full” and “payment in full” means payment of all amounts owing under the Financing Agreements according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any case under the U.S. Bankruptcy Code or any similar statute), default interest, interest on interest, and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any case under the U.S. Bankruptcy Code or any similar statute, but excluding (A) interest to the extent paid in excess of amounts based on the pre-default rates (but not any other interest) and (B) fees paid in respect of the waiver of an Event of Default, in each case as to amounts under clause (A) and (B) only to the extent that

such amounts are disallowed in any case under the U.S. Bankruptcy Code or any similar statute.

(d) Notwithstanding anything to the contrary contained in this Agreement, (i) unless so directed by Borrower, or unless a Default or an Event of Default shall exist or have occurred and be continuing, Agent shall not apply any payments which it receives to any Eurodollar Rate Loans made to Borrower, except (A) on the expiration date of the Interest Period applicable to any such Eurodollar Rate Loans or (B) in the event that there are no outstanding Prime Rate Loans made to any Borrower (it being understood that Agent will attempt to honor any written request received from Borrower to not apply payments to any Eurodollar Rate Loans prior to the expiration of the Interest Period applicable thereto but Agent shall have no liability for its failure to do so), and (ii) to the extent Borrower uses any proceeds of the Loans or Letters of Credit to acquire rights in or the use of any Collateral or to repay any Indebtedness used to acquire rights in or the use of any Collateral, payments in respect of the Obligations shall be deemed applied first to the Obligations arising from Loans and Letters of Credit that were not used for such purposes and second to the Obligations arising from Loans and Letters of Credit the proceeds of which were used to acquire rights in or the use of any Collateral in the chronological order in which Borrower acquired such rights in or the use of such Collateral.

(e) At Agent's option, all principal, interest, fees, costs, expenses and other charges provided for in this Agreement or the other Financing Agreements may be charged directly to the loan account(s) of Borrower maintained by Agent. If after receipt of any payment of, or proceeds of Collateral applied to the payment of, any of the Obligations, any Agent or any Lender is required to surrender or return such payment or proceeds to any Person for any reason, then the Obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received by such Agent or such Lender. Borrower and Guarantor shall be liable to pay to Agent, and do hereby indemnify and hold Agents and Lenders harmless for the amount of any payments or proceeds surrendered or returned. This Section 6.4(e) shall remain effective notwithstanding any contrary action which may be taken by Agent or any Lender in reliance upon such payment or proceeds. This Section 6.4 shall survive the payment of the Obligations and the termination of this Agreement.”

(iv) Section 7.1(a)(ii)(G) of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“(G) a month-end calculation of Borrowing Base A and Borrowing Base B reflecting the “Stock Ledger” activity for such month”

(v) Section 9.7(b) of the Loan Agreement is hereby amended to add the following additional Sections (ix) and (x) thereto:

“(ix) the sale by Borrower or Guarantor of trade fixtures, fixtures or IT-related Equipment of Borrower or Guarantor in connection with any sale-leaseback transaction, provided, that: as to any such sale, each of the following conditions is satisfied: (A) Borrower or Guarantor shall, substantially contemporaneously with the closing of the sale of any such property, leaseback such property, (B) Agent shall have received true, correct and complete copies of all material agreements, documents and instruments related to the sale and the leaseback of such property, (C) as of the date of any such sale and after giving effect thereto, no Event of Default shall exist or have occurred and be continuing, except as Agent may otherwise agree, (D) Borrower and Guarantor shall promptly apply all net cash proceeds payable or deliverable to Borrower or Guarantor in respect of such sale to the Obligations in accordance with Section 6.4 hereof, (E) such sale does not contravene the terms of the Unitary Leases or any other agreement to which Borrower or Guarantor is a party or by which it or its assets are bound and Borrower and Guarantor shall have obtained all consents and approvals to such sale as may be required which shall be in full force and effect, (F) such sale and sale-leaseback shall be on commercially reasonable prices and terms no less favorable than would be received in a bona fide arms-length transaction with a Person that is not an Affiliate of Borrower or Guarantor, (G) upon the consummation of the sale-leaseback of such assets (other than lighting fixtures), Borrower shall use commercially reasonable efforts promptly to provide to Agent an access and/or use agreement, as applicable, with respect to such assets, to the extent necessary or appropriate for the exercise by Agent of its rights and remedies with respect to the Collateral, duly authorized, executed and delivered by the purchaser and owner of such assets, (H) Agent shall have received not less than five (5) Business Days’ prior written notice of any such sale and sale-leaseback (or such shorter notice as agreed by the Agent), and (I) Borrower and Guarantor shall not optionally prepay any rent or similar amounts in connection with such leasebacks (other than prepayment of rent in an amount equal to rent for one month under any such lease); provided further that the conditions set forth in clauses (A) through (I) shall not need to be satisfied to the extent such sale-leaseback transaction results in the incurrence of purchase money Indebtedness (including Capital Leases) permitted by Section 9.9(b)(i) and such sale is on commercially reasonable prices and terms no less favorable than would be received in a bona fide arms-length transaction with a Person that is not an Affiliate of Borrower or Guarantor; and

(x) the sale by Borrower or Guarantor of assets (other than Inventory, Accounts and Restricted Leases) that are not trade fixtures, fixtures or IT-related Equipment of Borrower or Guarantor in connection with any sale-leaseback transaction; provided, that, Agent shall have provided its prior

written consent to such transaction; provided, further that the Agent's consent shall not be required to the extent such sale-leaseback transaction results in the incurrence of Indebtedness (including Capital Leases) to the extent permitted by Section 9.9(b)(i) or Section 9.9(b)(ii) and such sale is on commercially reasonable prices and terms no less favorable than would be received in a bona fide arms-length transaction with a Person that is not an Affiliate of Borrower or Guarantor;"

(vi) Section 9.9(b) of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“(b) (i) purchase money Indebtedness (including Capital Leases) arising after the date hereof to the extent secured by purchase money security interests in Equipment (including Capital Leases) not to exceed \$50,000,000 in the aggregate at any time outstanding for such Indebtedness arising from the purchase by Borrower of computer systems to replace information services provided to Borrower by Seller under the Transition Services Agreement (including Indebtedness arising in connection with sale-leaseback transactions to the extent permitted by Section 9.7) and, which amount may include, at Borrower's option, up to \$10,000,000 that may be used to acquire other Equipment, so long as, in each case, such security interests do not apply to any property of Borrower, Guarantor or any Subsidiary other than the Equipment so acquired, and the Indebtedness secured thereby does not exceed the cost of the Equipment so acquired, as the case may be; and

(ii) Indebtedness (including Capital Leases) arising after the date hereof, to the extent secured by Real Property acquired by a Borrower or Guarantor consisting of one or more new retail store locations (including Indebtedness arising in connection with sale-leaseback transactions to the extent permitted by Section 9.7); provided, that, (A) the aggregate amount of such Indebtedness shall not exceed the amount of \$30,000,000 incurred in the fiscal year of Borrowers ending January, 2007, \$45,000,000 incurred in the fiscal year of Borrowers ending January, 2008 or \$75,000,000 incurred in each subsequent fiscal year of Borrowers, (B) such Indebtedness shall only be secured by the Real Property acquired with the proceeds of the loans or advances giving rise to such Indebtedness, (C) such Indebtedness shall not exceed the cost of the Real Property so acquired, (D) immediately prior and immediately after giving effect to the incurrence of such Indebtedness, no Default or Event of Default shall exist or have occurred and be continuing and no Compliance Period shall then be in effect, (E) Agent shall have received not less than five (5) Business Days prior written notice of the intention of any

Borrower or Guarantor to incur any such Indebtedness, which notice shall specify the proposed amount of the Indebtedness to be incurred, the Person(s) to whom such Indebtedness shall be owed, the interest rate, payment schedule and other material terms applicable to such proposed Indebtedness as well as such other information with respect thereto as Agent may reasonably request, (F) upon the acquisition thereof, Borrowers shall use commercially reasonable efforts to promptly deliver to Agent a Collateral Access Agreement with respect to the Real Property, and (G) Borrowers shall deliver to Agent upon the inurrence of such Indebtedness, a true, complete and correct copy of all agreements, documents and instruments executed and/or delivered in connection with such Indebtedness;”

(vii) The following language is hereby added to the end of Section 9.18(b):

“For purposes of calculating compliance with the covenant set forth in Section 9.18(b) hereof, EBITDA for the month of January 2007 shall be increased by \$2,600,000 from that shown on the financial statements delivered to Agent for such month in accordance with Section 9.6 (a)(i) hereof, and the amount of Fixed Charges (by category) for the months indicated on Schedule 9.18 to Amendment No. 4 shall be decreased by the amounts set forth on such Schedule.”

(viii) Section 10.2 of the Loan Agreement is hereby amended to include the following new subsection (i):

“(i) Notwithstanding anything to the contrary contained herein, except as the Required Revolving Lenders B shall otherwise agree, Agent shall demand payment of the Obligations and Agent shall commence and pursue such other Enforcement Actions as Agent in good faith deems appropriate within ninety (90) days (except with respect to Events of Default described in Sections 10.1(g) and 10.1(h), Agent shall take such Enforcement Actions as it deems appropriate under the circumstances promptly upon receipt of notice) after the date of the receipt by Agent of written notice executed and delivered by the Required Revolving Lenders B of a Revolving Loans B Action Default, and requesting that Agent commence Enforcement Actions (the “Revolving Loans B Action Notice”), provided, that, (i) such Revolving Loans B Action Default has not been waived by Required Revolving Lenders B or cured, (ii) in the good faith determination of Agent, taking an Enforcement Action is permitted under the terms of the Financing Agreements and applicable law, (iii) taking an Enforcement Action shall not result in any liability of Agent or Lenders to Borrower, Guarantor or any other person, (iv) Agent shall be entitled to all of the benefits of Sections 12.2, 12.3 and 12.5 hereof, and (v) Agent shall not be required to take an Enforcement Action so long as, within the period provided above, Agent, shall, at its option, either (A) appoint a Revolving Loan B Lender, as an agent of Agent for purposes of exercising the rights of Agent to take an Enforcement Action, subject to the

terms hereof or (B) resign as Agent, and the Revolving Loan B Lender with the largest Pro Rata Share of outstanding Revolving B Loans shall automatically be deemed to be the successor Agent hereunder, except with respect to the provisions of Section 2 hereof and in connection with all matters relating to the determination of the Borrowing Base and each of its components (including Eligible Credit Card Receivables, Eligible Inventory, Reserves and receiving reports in respect of Collateral and conducting field examinations with respect to the Collateral and similar matters).”

(ix) Section 11.3(a) of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

(a) Neither this Agreement nor any other Financing Agreement nor any terms hereof or thereof may be amended, waived, discharged or terminated unless such amendment, waiver, discharge or termination is in writing signed by Agent and the Required Lenders or at Agent’s option, by Agent with the authorization or consent of the Required Lenders, and as to amendments to any of the Financing Agreements (other than with respect to any provision of Section 12 hereof), by Borrower and such amendment, waiver, discharge or termination shall be effective and binding as to all Lenders and issuers with respect to Letter of Credit Accommodations only in the specific instance and for the specific purpose for which given; provided, that,

(i) any amendment, modification, change, waiver, discharge or termination with respect to the following shall require the consent of Agent and all Lenders (other than Sponsor Affiliated Lenders):

(A) the release of any Collateral (except as expressly required by the Financing Agreements and except as permitted under Section 12.11(b) hereof),

(B) reduce any percentage specified in the definition of Required Lenders, Required Revolving Lenders A, Required Revolving Lenders B, Required Super-Majority Revolving Lenders A, Required Super-Majority Lenders,

(C) the consent to the assignment or transfer by Borrower or Guarantor of any of its rights and obligations under this Agreement, or

(D) the amendment, modification or waiver of this Section 11.3, and

(E) the amendment, modification or waiver of Sections 6.4 and 10.2(i), or the definition of Enforcement Action, Revolving Loans B Action Default or Triggering Event,

(ii) any amendment, modification, change, waiver, discharge or termination with respect to the following shall require the consent of Agent and each Revolving Loan A Lender directly affected thereby:

(A) a reduction in the interest rate or any fees or extension of time of payment of principal, interest or any fees or reduction in the principal amount of any of the Revolving Loans A or Letter of Credit Accommodations (other than as a result of waiving a Default or Event of Default), or

(B) an increase in the Revolving Loan A Commitment of such Revolving Loan A Lender over the amount thereof then in effect,

(iii) any change, waiver, discharge or termination with respect to the following shall require the consent of Agent, and each Revolving Loan B Lender directly affected thereby:

(A) a reduction in the interest rate or any fees or extension of time of payment of principal, interest or any fees or reduction in the principal amount of any of the Revolving Loans B (other than as a result of waiving a Default or Event of Default),

(B) an increase in the Revolving Loan B Commitment of such Revolving Loan B Lender over the amount thereof then in effect,

(C) the increase in the advance rates (in excess of the stated advance rates in effect on the date hereof) constituting part of Borrowing Base B, and

(D) the definition of "Borrowing Base" but only to the extent such proposed change would increase the advance rates above those in effect on the date hereof,

(iv) any increase of the advance rates constituting part of the Borrowing Base A or amend, modify or waive any provisions of the definition of Borrowing Base A or of any of the defined terms referred to in the definition of Borrowing Base if the effect thereof increases the amount of the Borrowing Base, or a change in the methodology for calculating the Reserves provided for in Section 1.138(c) hereof, shall require the consent of Agent and Required Super-Majority Revolving Lenders A and Required Super-Majority Lenders B,

(v) any amendment, modification, change, waiver, discharge or termination with respect to the following shall require the consent of Agent, Required Lenders and Required Revolving Lenders B:

(A) Sections 2.1(a)(ii), 2.1(c)(iii), 6.3, 7.1(a), 7.2, 7.3, 7.5, 7.7, 9.5, 10.2, 12.8 or 12.11 hereof,



(B) the definitions of Eligible Credit Card Receivables, Eligible Inventory, Excess Availability, Excess Availability A, Net Orderly Liquidation Value, Net Recovery Percentage, Pro Rata Share, Reserves, Revolving Loans B,

(C) an increase in the Revolving Loan B Limit,”

(x) The last sentence of Section 12.2 of the Loan Agreement is hereby deleted and the following is substituted therefor:

“As to any matters not expressly provided for by this Agreement or any other Financing Agreement, each Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Required Lenders, Required Revolving Lenders A, Required Revolving Lenders B, Required Super-Majority Revolving Lenders A or all Lenders as is required in such circumstance, and such instructions of such Agents and any action taken or failure to act pursuant thereto shall be binding on all Lenders.”

(xi) Section 12.8 of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“Agent shall not make any Loans or cause any issuer to provide any Letter of Credit Accommodations on behalf of Lenders intentionally and with actual knowledge that such Loans or Letter of Credit Accommodations would cause the aggregate amount of the total outstanding Revolving Loans A and Letter of Credit Accommodations to exceed the Borrowing Base A or the total outstanding Revolving Loans B to exceed the Borrowing Base B, without the prior consent of all Lenders, except, that, Agent may make such additional Revolving Loans A or provide such additional Letter of Credit Accommodations on behalf of Revolving Loan A Lenders, intentionally and with actual knowledge that such Revolving Loans A or Letter of Credit Accommodations will cause the total outstanding Revolving Loans A and Letter of Credit Accommodations to exceed the Borrowing Base A, as Agent may deem necessary or advisable in its discretion, provided, that: (a) the total principal amount of the additional Revolving Loans A or additional Letters of Credit which Agent may make or provide after obtaining such actual knowledge that the aggregate principal amount of the Revolving Loans A and Letters of Credit equal or exceed the Borrowing Base A, plus the amount of Special Agent Advances made pursuant to Section 12.11(a)(ii) hereof then outstanding, shall not exceed the aggregate amount equal to the greater of: (i) ten (10%) of the net book value of the Inventory as determined by Agent or (ii) \$40,000,000, (b) the aggregate principal amount of the Special Agent Advances outstanding at any time plus the then outstanding principal amount of the Revolving Loans A and Letters of Credit shall not exceed the Revolving Loan A Limit, and (c) no such additional Revolving

Loans A or Letter of Credit shall be outstanding more than ninety (90) days after the date such additional Revolving Loan A or Letter of Credit Accommodation is made or issued (as the case may be), except as the Required Revolving Lenders A and Required Revolving Lenders B (other than Sponsor Affiliated Lenders) may otherwise agree. Each Revolving Loan A Lender shall be obligated to pay Agent the amount of its Pro Rata Share of any such additional Revolving Loans A or Letter of Credit Accommodations.”

(xii) Section 12.11(a) of the Loan Agreement is hereby deleted in its entirety and the following substituted therefor:

“(a) Agent may, at its option, from time to time, at any time on or after an Event of Default and for so long as the same is continuing or upon any other failure of a condition precedent to the Loans and Letter of Credit Accommodations hereunder, make such disbursements and advances (“Special Agent Advances”) which Agent, in its sole discretion, deems necessary or desirable to (i) preserve or protect the Collateral or any portion thereof or (ii) to enhance the likelihood or maximize the amount of repayment by Borrower and Guarantor of the Loans and other Obligations, provided, that, the aggregate principal amount of the Special Agent Advances made pursuant to Section 12.11(a)(ii) hereof outstanding at any time, plus the then outstanding principal amount of the additional Loans and Letters of Credit which Agent may make or provide as set forth in Section 12.8 hereof, shall not exceed the amount (determined as of the date each advance is made) equal to the greater of: (1) ten (10%) of the net book value of the Inventory as determined by Agent or (2) \$40,000,000, or (iii) pay any other amount chargeable to Borrower or Guarantor pursuant to the terms of this Agreement or any of the other Financing Agreements consisting of (A) costs, fees and expenses and (B) payments to any issuer of Letter of Credit Accommodations. The aggregate principal amount of the Special Agent Advances outstanding at any time, plus the then outstanding principal amount of the Revolving Loans A and Letters of Credit, shall not exceed the Revolving Loan A Limit. The Special Agent Advances shall be repayable on demand and together with all interest thereon shall constitute Obligations secured by the Collateral. Special Agent Advances shall not constitute Loans but shall otherwise constitute Obligations hereunder. Interest on Special Agent Advances shall be payable at the Interest Rate then applicable to Revolving Loans A that are Prime Rate Loans and shall be payable on demand. Without limitation of its obligations pursuant to Section 6.10, each Revolving Loan A Lender agrees that it shall make available to Agent, upon Agent’s demand, in immediately available funds, the amount equal to such Revolving Loan A Lender’s Pro Rata Share of each such Special Agent Advance. If such funds are not made available to Agent by such Revolving Loan A Lender, such Lender shall be deemed a Defaulting Lender and Agent shall be entitled to recover such funds, on demand, from such Revolving Loan A

Lender together with interest thereon for each day from the date such payment was due until the date such amount is paid to Agent at the Federal Funds Rate for each day during such period (as published by the Federal Reserve Bank of New York or at Agent's option based on the arithmetic mean determined by Agent of the rates for the last transaction in overnight Federal funds arranged prior to 9:00 a.m. (New York City time) on that day by each of the three leading brokers of Federal funds transactions in New York City selected by Agent) and if such amounts are not paid within three (3) days of Agent's demand, at the highest Interest Rate provided for in Section 3.1 hereof applicable to Revolving Loans A that are Prime Rate Loans."

SECTION 2. REQUEST FOR REVOLVING LOANS. Subject to the satisfaction of all of the conditions set forth in Section 4 hereof, Borrower shall be deemed to have requested Loans against the Borrowing Base B in a principal amount equal to the lesser of Revolving Loans A and Borrowing Base B, and to have repaid an equal amount with respect to outstanding Revolving Loans A.

SECTION 3. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS Borrower and Guarantor each represents, warrants and covenants with and to Agent and Lenders as follows, which representations, warranties and covenants, together with the representations, warranties and covenants in the other Financing Agreements, are continuing and shall survive the execution and delivery hereof, and the truth and accuracy of, or compliance with each, being a continuing condition of the making of Loans by Lenders (or Agent on behalf of Lenders) to Borrower and Guarantor:

(a) This Amendment No. 4 and each agreement, document or instrument executed and delivered in connection therewith have each been duly executed and delivered by Borrower and Guarantor is in full force and effect as of the date hereof and the agreements and obligations of Borrower and Guarantor contained herein and thereunder constitute legal, valid and binding obligation of Borrower and Guarantor, enforceable against it in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, issuancy, reorganization, moratorium or similar laws affecting the enforceability of Creditors' rights generally at law or equitable principles relating to enforceability.

(b) No action of, or filing with, or consent or any governmental or public body or authority, and no approval or consent of any other party, is or will be required to authorize, or is or will be otherwise required in connection with, the execution, delivery and performance of this Amendment No. 4, other than such consents and approvals which have been obtained and are in full force and effect and fully executed copies of which have been delivered to Agent.

(c) This Amendment No. 4 and each other agreement, document or instrument to be executed and delivered by Borrower and Guarantor in connection therewith or herewith has been duly authorized, executed and delivered by all necessary action on the part of Borrower and Guarantor, and Amendment No. 4.

(d) Neither the execution and delivery of this Amendment No. 4 or the documents, agreements or instruments executed or delivered in connection therewith or related thereto, nor the consummation of the transactions herein or therein contemplated, nor compliance with the provisions hereof or thereof are in contravention of any law or regulation or any order or decree of any court or Governmental Authority applicable to Borrower or Guarantor in any respect, or conflict with or result in the breach of, or constitutes a default in any respect under any mortgage, deed of trust, security agreement, agreement or instrument to which Borrower or Guarantor is a party or may be bound, or violates any provision of the formation or other organizational documents of Borrower or Guarantor.

(e) No Default or Event of Default exists or has occurred and is continuing on the date of Amendment No. 4.

SECTION 4. CONDITIONS PRECEDENT. The effectiveness of the amendments contained herein shall be subject to the receipt by Agent of each of the following, in form and substance satisfactory to Agent:

(a) an original of this Amendment No. 4, duly authorized, executed and delivered by Borrower, Guarantor and Lenders;

(b) payment of the fees set forth in the Revolving B Loan Fee Letter and any other fees or amounts payable to Agent as of the date hereof in accordance with the Financing Agreements;

(c) Secretary's Certificate certifying the resolutions of the Member of each of the Borrower and Guarantor approving the execution, delivery and performance of this Amendment No.4 and the transactions contemplated thereby, including the increase in the Maximum Credit; and

(d) no Default or Event of Default exists or has occurred and is continuing on the date of Amendment No. 4.

SECTION 5. EFFECT OF THIS AMENDMENT. Except as expressly set forth herein, no other amendments, waiver, changes or modifications to the Financing Agreements are intended or implied, and in all other respects the Financing Agreements are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and Borrower and Guarantor shall not be entitled to any other or further amendment or waiver by virtue of the provisions of this Amendment No. 4 or with respect to the subject matter of this Amendment No. 4. To the extent of conflict between the terms of this Amendment No. 4 and the other Financing Agreements, the terms of this Amendment No. 4 shall control. The Loan Agreement and this Amendment No. 4 shall be read and construed as one agreement.

SECTION 6. FURTHER ASSURANCES. The parties hereto shall execute and deliver such additional documents and take such additional action as may be necessary or desirable to effectuate the provisions and purposes of this Amendment No. 4.

SECTION 7. GOVERNING LAW. The validity, interpretation and enforcement of this Amendment No. 4 and the other Financing Agreements and any dispute arising out of the

relationship between the parties hereto whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

SECTION 8. BINDING EFFECT. This Amendment No. 4 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 9. HEADINGS. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 4.

SECTION 10. COUNTERPARTS. This Amendment No. 4 may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement. In making proof of this Amendment No. 4, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto. Delivery of an executed counterpart of this Amendment No. 4 by telefacsimile or electronic mail shall have the same force and effect as delivery of an original executed counterpart of this Amendment No. 4. Any party delivering an executed counterpart of this Amendment No. 4 by telefacsimile or electronic mail also shall deliver an original executed counterpart of this Amendment No. 4, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment No. 4 as to such party or any other party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Agent, Lenders, Borrower and Guarantor have caused these presents to be duly executed as of the day and year first above written.

AGENT

WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN),  
as Agent and Lender

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

Title: Director

BORROWER

MERVYN'S LLC

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

Title: \_\_\_\_\_

GUARANTOR

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

SIGNATURES OF LENDERS CONTINUE ON FOLLOWING PAGES

IN WITNESS WHEREOF, Agent, Lenders, Borrower and Guarantor have caused these presents to be duly executed as of the day and year first above written.

AGENT

WACHOVIA CAPITAL FINANCE  
CORPORATION (WESTERN),  
as Agent and Lender

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

Title: \_\_\_\_\_

BORROWER

MERVYN'S LLC

By: *Cent*  
Title: Senior Vice President

GUARANTOR

MERVYN'S BRANDS, LLC

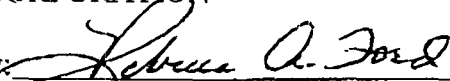
By: *Cent*  
Title: Senior Vice President


SIGNATURES OF LENDERS CONTINUE ON FOLLOWING PAGES

LENDER  
SIEMENS FINANCIAL SERVICES, INC.  
By: [Signature]  
Title: VP + Co-Head

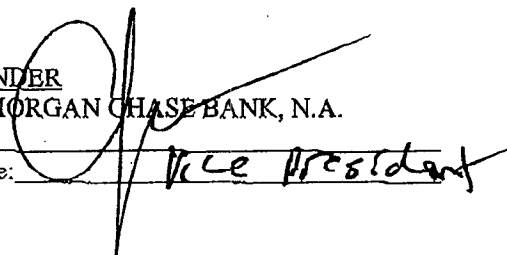


LENDER  
GENERAL ELECTRIC CAPITAL  
CORPORATION

By:   
Title: **Rebecca A. Ford**  
**Duly Authorized Signatory**

LENDER  
THE CIT GROUP/BUSINESS CREDIT, INC.  
By:   
Title: Manuel Borges  
**Vice President**

LENDER  
JPMORGAN CHASE BANK, N.A.

By:   
Title: Vice President

LENDER

WELLS FARGO FOOTHILL, LLC

By: David P Hill

Title: Vice President

LENDER

LASALLE RETAIL FINANCE, a division of  
LaSalle Business Credit, LLC as agent for Standard  
Federal Bank National Association

By: 

Title: AVP

LENDER

CF BLACKBURN LLC

By: GMAC Commercial Finance LLC (Servicer)

By: *Elysha White*

Title: *Director*

LENDER

BANK OF AMERICA, N.A.

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

Title: Managing Director

Schedule 1  
to  
Amendment No. 4

<u>Lender</u>	<u>Revolving Loan A Commitment</u>	<u>Pro Rata Share of Revolving Loan A Commitment</u>	<u>Revolving Loan B Commitment</u>	<u>Pro Rata Share of Revolving Loan B Commitment</u>	<u>Pro Rata Share of all Commitments</u>
Wachovia Capital Finance Corporation (Western)	\$100,000,000	18.182%	\$50,000,000	100%	25.00%
General Electric Capital Corporation	\$100,000,000	18.182%			16.667%
The CIT Group/Business Credit, Inc.	\$75,000,000	13.636%			12.5%
Bank of America, N.A.	\$60,000,000	10.909%			10.00%
JPMorgan Chase Bank, N.A.	\$50,000,000	9.091%			8.333%
LaSalle Retail Finance	\$50,000,000	9.091%			8.333%
Wells Fargo Foothill, LLC	\$50,000,000	9.091%			8.333%
CF Blackburn LLC, by GMAC Commercial Finance LLC (Servicer)	\$40,000,000	7.273%			6.667%
Siemens Financial Services, Inc.	\$25,000,000	4.545%			4.167%
TOTAL	\$550,000,000	100%	\$50,000,000	100%	100%



Schedule 9.18  
to  
Amendment No. 4

The following amounts shall be excluded from the calculation of Fixed Charges for the month set forth below in respect of the category of Capital Expenditures referenced next to such month:

<b>Catch-Up Capex:</b>	
February 2006	1,219,000
March 2006	3,815,000
April 2006	799,000
May 2006	3,166,000
June 2006	3,570,000
July 2006	2,572,000
August 2006	459,000
September 2006	1,789,000
October 2006	1,346,000
November 2006	1,490,000
December 2006	105,000
January 2007	1,176,000

<b>Profit Improvement &amp; DC Capex:</b>	
February 2006	682,000
March 2006	1,099,000
April 2006	11,000
May 2006	2,053,000
June 2006	1,482,000
July 2006	4,000
August 2006	460,000
September 2006	--
October 2006	81,000
November 2006	3,000
December 2006	100,000
January 2007	3,013,000

<b>IT Capex:</b>	
February 2006	2,648,000
March 2006	3,460,000
April 2006	12,777,000
May 2006	4,178,000
June 2006	6,421,000
July 2006	8,539,000
August 2006	11,273,000
September 2006	557,000
October 2006	5,596,000
November 2006	5,139,000
December 2006	1,499,000
January 2007	1,535,000

AMENDMENT NO. 5  
TO  
LOAN AND SECURITY AGREEMENT

This Amendment No. 5 to Loan and Security Agreement ("Amendment No. 5") dated November 27, 2007 is entered into by and among Mervyn's LLC, a California limited liability company ("Borrower"), Mervyn's Brands, LLC, a Minnesota limited liability company ("Guarantor"), the financial institutions from time to time parties to the Loan Agreement (as hereinafter defined) as lenders (individually, each a "Lender" and collectively, "Lenders"), and Wachovia Capital Finance Corporation (Western), as successor to Congress Financial Corporation (Western), a California corporation, in its capacity as administrative agent and collateral agent for the parties to the Loan Agreement (as hereinafter defined) from time to time as lenders (in such capacity "Agent") and as Sole Lead Arranger and Bookrunner. For purposes of this Amendment No. 5, all capitalized terms used herein, but not otherwise defined herein, including, but not limited to, those terms used in the recitals hereto shall have the respective meanings assigned thereto in the Loan Agreement.

W I T N E S S E T H:

WHEREAS, Agent, the financial institutions parties to the Loan Agreement as lenders (individually, each a "Lender" and collectively, "Lenders"), Borrower and Guarantor have entered into financing arrangements pursuant to which Lenders (or Agent on behalf of Lenders) have made and may make loans and advances and provide other financial accommodations to Borrower as set forth in the Loan and Security Agreement, dated September 2, 2004, by and among Agent, Lenders, Borrower and Guarantor, as amended by Amendment No. 1 to Loan and Security Agreement, dated October 25, 2004 by and among Agent, Lenders, Borrower and Guarantor, Amendment No. 2 to Loan and Security Agreement, dated December 22, 2005, by and among Agent, Lenders, Borrower and Guarantor, Amendment No. 3 to Loan and Security Agreement, dated June 8, 2006, by and among Agent, Lenders, Borrower and Guarantor and Amendment No. 4 to Loan and Security Agreement, dated March 14, 2007 (as further amended hereby and as the same may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements"); and

WHEREAS, Borrower and Guarantor have requested that Agent and Lenders agree to certain amendments to the Loan Agreement and Agent and Lenders are willing hereby to agree to such amendments, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing, and the respective agreements and covenants contained herein, the parties hereto agree as follows:

SECTION 1. AMENDMENTS.

(a) Additional Definitions. As used herein, the following term shall have the meaning given to it below and the Loan Agreement shall be deemed and is hereby amended to include, in addition and not in limitation, the following definitions:

(i) "Amendment No. 5" shall mean Amendment No. 5 to the Loan and Security Agreement, dated November 27, 2007, by and among Borrower, Guarantor, the Lenders and Agent, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(ii) "Sun Security Agreement" shall mean the Security Agreement, dated as of the date hereof, by and among Sun Subordinated Agent, Borrower and Guarantor as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(iii) "Sun Subordinated Agent" shall mean SCSF Mervyn's (US), LLC, a Delaware limited liability company, in its capacity as agent on behalf of each party to the Note Purchase Agreement as an investor, and any successor or replacement agent for and on behalf of the parties to the Note Purchase Agreement as investors.

(iv) "Sun Subordinated Lenders" shall mean SCSF Mervyn's (US), LLC, a Delaware limited liability company, in its individual capacity (and not as an agent), SCSF Mervyn's (Offshore), Inc., a Delaware corporation and any other purchaser of any Subordinated Note, and their respective successors and assigns.

(v) "Sun Subordinated Note Agreements" shall mean, collectively, the Sun Subordinated Notes, the Sun Security Agreement and all agreements, documents or instruments at any time executed and/or delivered by Borrower or Guarantor or any other Person with, to or in favor of Sun Subordinated Lenders in connection therewith or related thereto, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(vi) "Sun Subordinated Notes" shall mean the Secured Subordinated Promissory Note, dated as of the date hereof, and each issue date hereafter, made by Borrower in favor of the Sun Subordinated Lenders, each in its individual capacity, in the aggregate original principal amount of \$50,000,000 and any other Subordinated Promissory Note issued by Borrower, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(vii) "Sun Subordination Agreement" shall mean the Intercreditor and Subordination Agreement, dated as of the date hereof, by and among Agent and Sun Subordinated Agent and Sun Subordinated Lenders as acknowledged by Borrower and Guarantor, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(b) Amendments to Loan Agreement.

(i) Encumbrances. Section 9.5 of the Loan Agreement is hereby amended by adding the following new clause (r) at the end thereof:

“(r) the security interests and liens under the Sun Security Agreement as in effect on November 27, 2007, to secure the obligations of Borrower and Guarantor under the Sun Subordinated Note Agreements to the extent permitted under Section 9.9 (l) hereof.”

(ii) Indebtedness. Section 9.9 of the Loan Agreement is hereby amended by adding the following new clause (l) to the end thereof:

“(l) Indebtedness of Borrower and Guarantor to Sun Subordinated Lenders evidenced by the Sun Subordinated Note Agreements (as in effect on the date hereof); provided, that, (i) the aggregate principal amount of such Indebtedness shall not exceed \$50,000,000 plus any principal arising from after the date hereof pursuant to the payment of non-cash interest by incurring additional Indebtedness having substantially the same terms, less the aggregate amount of all repayments, repurchases or redemptions, whether optional or mandatory, in respect thereof, and the interest thereon shall not exceed the rate provided for in the Sun Subordinated Notes as in effect on the date hereof or as permitted to be amended pursuant to the Sun subordination Agreement, (ii) Agent shall have received true, correct and complete copies of all of the Sun Subordinated Note Agreements, as duly authorized, executed and delivered by the parties thereto, (iii) the Indebtedness evidenced by the Sun Subordinated Note Agreements shall be subject and subordinate in right of payment to the payment and satisfaction in full of all of the Obligations on terms and conditions set forth in the Sun Subordination Agreement, (iv) Borrower and Guarantor shall not make or be required to make any payments in respect of such Indebtedness whether pursuant to the terms of the Sun Subordinated Note Agreements or otherwise, except for payments that are expressly permitted by the terms of the Sun Subordination Agreement, (v) Borrower and Guarantor shall not, directly or indirectly, (A) amend, modify, alter or change the terms of any of the Sun Subordinated Note Agreements or any agreement, document or instrument related thereto, except, that, may amend, modify, alter or change the terms thereof so as to amend, modify, alter or change the provisions thereof to the extent permitted under the Sun Subordination Agreement; or (B) redeem, retire, defease, purchase or otherwise acquire such Indebtedness, or set aside or otherwise deposit or invest any sums for such purpose, except to the extent permitted under the Sun Subordination Agreement, (vi) Borrower and Guarantor shall furnish to Agent all demands and material notices in connection with such Indebtedness, promptly after the receipt thereof, or sent by

either of them or on their behalf, concurrently with the sending thereof, as the case may be, (vii) Agent shall have received the Sun Subordination Agreement, duly authorized, executed and delivered by the parties thereto and (viii) Borrower and Guarantor shall not, without the prior written consent of Agent, setoff against such Indebtedness.”

(iii) Section 9.9 of the Loan Agreement is hereby amended by deleting the phrase “Sections 9.9(b) and 9.9(e) hereof” from Section 9.9(j) of the Loan Agreement and substituting the phrase “Sections 9.9(b), 9.9(e) and 9.9(l) hereof” therefor.

SECTION 2. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS.

Borrower and Guarantor each represents, warrants and covenants with and to agent and lenders as follows, which representations, warranties and covenants, together with the representations, warranties and covenants in the other financing agreements, are continuing and shall survive the execution and delivery hereof, and the truth and accuracy of, or compliance with each, being a continuing condition of the making of loans by Lenders (or agent on behalf of Lenders) to Borrower and Guarantor:

(a) This Amendment No. 5 and each agreement, document or instrument executed and delivered in connection therewith have each been duly executed and delivered by Borrower and Guarantor is in full force and effect as of the date hereof and the agreements and obligations of Borrower and Guarantor contained herein and thereunder constitute legal, valid and binding obligation of Borrower and Guarantor, enforceable against it in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, issuancy, reorganization, moratorium or similar laws affecting the enforceability of Creditors’ rights generally at law or equitable principles relating to enforceability.

(b) No action of, or filing with, or consent or any governmental or public body or authority, and no approval or consent of any other party, is or will be required to authorize, or is or will be otherwise required in connection with, the execution, delivery and performance of this Amendment No. 5, other than such consents and approvals which have been obtained and are in full force and effect and fully executed copies of which have been delivered to Agent.

(c) This Amendment No. 5 and each other agreement, document or instrument to be executed and delivered by Borrower and Guarantor in connection therewith or herewith has been duly authorized, executed and delivered by all necessary action on the part of Borrower and Guarantor, and Amendment No. 5.

(d) Neither the execution and delivery of this Amendment No. 5 or the documents, agreements or instruments executed or delivered in connection therewith or related thereto, nor the consummation of the transactions herein or therein contemplated, nor compliance with the provisions hereof or thereof are in contravention of any law or regulation or any order or decree of any court or Governmental Authority applicable to Borrower or Guarantor in any respect, or conflict with or result in the breach of, or constitutes a default in any respect under any mortgage, deed of trust, security agreement, agreement or instrument to which Borrower or Guarantor is a party or may be bound, or violates any provision of the formation or other organizational documents of Borrower or Guarantor.

(e) No Default or Event of Default exists or has occurred and is continuing on the date of Amendment No. 5.

SECTION 3. CONDITIONS PRECEDENT. The effectiveness of the amendments contained herein shall be subject to the receipt by Agent of each of the following, in form and substance satisfactory to Agent:

(a) an original of this Amendment No. 5, duly authorized, executed and delivered by Borrower, Guarantor and Lenders;

(b) Agent shall have received true, complete and correct copies of each of the Sun Subordinated Note Agreements and the Sun Subordination Agreement, each as duly acknowledged, executed and delivered by the parties thereto;

(c) Secretary's Certificate certifying the resolutions of the Member of each of the Borrower and Guarantor approving the execution, delivery and performance of this Amendment No.5 and the transactions contemplated thereby; and

(d) no Default or Event of Default exists or has occurred and is continuing on the date of Amendment No. 5.

SECTION 4. EFFECT OF THIS AMENDMENT. Except as expressly set forth herein, no other amendments, waiver, changes or modifications to the Financing Agreements are intended or implied, and in all other respects the Financing Agreements are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and Borrower and Guarantor shall not be entitled to any other or further amendment or waiver by virtue of the provisions of this Amendment No. 5 or with respect to the subject matter of this Amendment No. 5. To the extent of conflict between the terms of this Amendment No. 5 and the other Financing Agreements, the terms of this Amendment No. 5 shall control. The Loan Agreement and this Amendment No. 5 shall be read and construed as one agreement.

SECTION 5. FURTHER ASSURANCES. The parties hereto shall execute and deliver such additional documents and take such additional action as may be necessary or desirable to effectuate the provisions and purposes of this Amendment No. 5.

SECTION 6. GOVERNING LAW. The validity, interpretation and enforcement of this Amendment No. 5 and the other Financing Agreements and any dispute arising out of the relationship between the parties hereto whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

SECTION 7. BINDING EFFECT. This Amendment No. 5 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 8. HEADINGS. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 5.

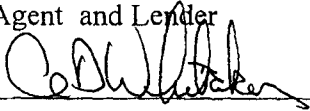
SECTION 9. COUNTERPARTS. This Amendment No. 5 may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement. In making proof of this Amendment No. 5, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto. Delivery of an executed counterpart of this Amendment No. 5 by telefacsimile or electronic mail shall have the same force and effect as delivery of an original executed counterpart of this Amendment No. 5. Any party delivering an executed counterpart of this Amendment No. 5 by telefacsimile or electronic mail also shall deliver an original executed counterpart of this Amendment No. 5, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment No. 5 as to such party or any other party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Agent, Lenders, Borrower and Guarantor have caused these presents to be duly executed as of the day and year first above written.

AGENT

WACHOVIA CAPITAL FINANCE  
CORPORATION (WESTERN),  
as Agent and Lender

By: 

Title: Director

BORROWER

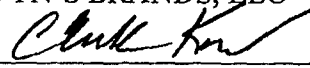
MERVYN'S LLC

By: 

Title: SVP/CFO

GUARANTOR

MERVYN'S BRANDS, LLC

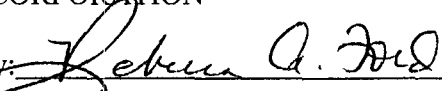
By: 

Title: SVP/CFO

[SIGNATURES OF LENDERS CONTINUE ON FOLLOWING PAGES]



LENDER  
GENERAL ELECTRIC CAPITAL  
CORPORATION

By:   
Title: Rebecca A. Ford  
**Duly Authorized Signatory**

LENDER

THE CIT GROUP/BUSINESS CREDIT, INC.

By: 

Title: Manuel Borges  
Vice President

LENDER

BANK OF AMERICA, N.A.

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

Title: \_\_\_\_\_

*[Handwritten Signature]*  
*Managing Director*

LENDER  
WELLS FARGO FOOTHILL, LLC

A handwritten signature in black ink, appearing to read 'M. Baranowski', with a horizontal line extending to the right.

By: Mike Baranowski  
Title: Vice President

LENDER

JPMORGAN CHASE BANK, N.A.

By:

Title: Vice President

LENDER

LASALLE RETAIL FINANCE, a division of  
LaSalle Business Credit, LLC as agent for Standard  
Federal Bank National Association

By: 

Title: First Vice President

LENDER

CF BLACKBURN LLC

By: GMAC Commercial Finance LLC (Servicer)

By: Michael Malcangi

Title: Vice President

PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT ("Pledge Agreement"), dated as of September 2, 2004, is by and between MERVYN'S LLC, a California limited liability company ("Pledgor"), to and in favor of CONGRESS FINANCIAL CORPORATION (WESTERN), a California corporation, in its capacity as agent for the Lenders described below (in such capacity, together with its successors and assigns, "Pledgee").

W I T N E S S E T H:

WHEREAS, Pledgor is now the direct and beneficial owner of all of the issued and outstanding membership interests of Mervyn's Brands, LLC, a Minnesota limited liability company ("Issuer"), as described on Exhibit A hereto and made a part hereof (the "Pledged Interests");

WHEREAS, Pledgor and Issuer have entered into financing arrangements with Pledgee and the parties to the Loan Agreement (as hereinafter defined) as lenders (collectively, "Lenders" and individually a "Lender") pursuant to which Lenders (or Pledgee on behalf of Lenders) may make loans and advances and provide other financial accommodations to Pledgor as set forth in the Loan and Security Agreement, dated of even date herewith, by and among Pledgor, certain of its affiliates, Pledgee and Lenders (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement") and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto, including, but not limited to, the Guarantee (as hereinafter defined) and this Pledge Agreement (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements"); and

WHEREAS, in order to induce Pledgee and Lenders to enter into the Loan Agreement and the other Financing Agreements and to make loans and advances and provide other financial accommodations to Borrower pursuant thereto, Pledgor has agreed to secure the payment and performance of the Obligations (as hereinafter defined) and to accomplish same by (i) executing and delivering to Pledgee this Pledge Agreement and (ii) delivering to Pledgee any and all other documents which Pledgee deems necessary to protect Pledgee's interests hereunder;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor hereby agrees as follows:

1. GRANT OF SECURITY INTEREST

(a) As collateral security for the prompt performance, observance and indefeasible payment in full of all of the Obligations, Pledgor hereby assigns, pledges, hypothecates, transfers and sets over to Pledgee and grants to Pledgee a security interest in and



lien upon the following (collectively, the "Collateral"): (i) the Pledged Interests and all other ownership interests of Pledgor in the Issuer, all certificates (if any) at any time representing or evidencing such ownership interests and (A) all right, title and interest in, to and under the Operating Agreement with respect to Issuer set forth on Exhibit A hereto (as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated, or replaced, "LLC Agreement"), including, without limitation, all of its right, title and interest as a member to participate in the operation or management of Issuer and all of its ownership interests under LLC Agreement, and (B) all present and future rights of Pledgor to receive payment of money or other distribution of payments arising out of or in connection with the Pledged Interests and all other ownership interests and its rights under LLC Agreement, now or hereafter owned by Pledgor, (ii) all proceeds of and to any of the property of Pledgor described above, including, without limitation, all causes of action, claims and warranties now or hereafter held by Pledgor in respect of any of the items listed above, and (iii) Pledgor's books and records with respect to any of the foregoing.

(b) This Pledge Agreement is executed only as security for the Obligations and, therefore, the execution and delivery of this Pledge Agreement shall not subject Pledgee or any Lender to, or transfer or pass to Pledgee or any Lender, or in any way affect or modify, the liability of Pledgor under the LLC Agreement or any related agreements, documents or instruments. In no event shall the acceptance of this Pledge Agreement by Pledgee or Lenders or the exercise by Pledgee or any Lender of any rights hereunder or assigned hereby, constitute an assumption of any liability or obligation of Pledgor to, under or in connection with the LLC Agreement or any related agreements, documents or instruments or otherwise.

## 2. OBLIGATIONS SECURED

The security interest, lien and other interests granted to Pledgee pursuant to this Pledge Agreement shall secure the prompt performance and payment in full of any and all obligations, liabilities and indebtedness of every kind, nature and description owing by Pledgor or Issuer to Pledgee or any Lender and/or any of their respective affiliates, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under this Pledge Agreement, the Guarantee, the Loan Agreement, or any of the other Financing Agreements, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Loan Agreement, or after the commencement of any case with respect to Pledgor or Issuer under the United States Bankruptcy Code or any State insolvency law or any similar statute (including, without limitation, the payment of interest and other amounts which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, and liquidated or unliquidated, secured, unsecured, and however acquired by Pledgee or any Lender (all of the foregoing being collectively referred to herein as the "Obligations").

### 3. REPRESENTATIONS, WARRANTIES AND COVENANTS

Pledgor hereby represents, warrants and covenants with and to Pledgee and Lenders the following (all of such representations, warranties and covenants being continuing so long as any of the Obligations are outstanding):

(a) The Pledged Interests are duly authorized, validly existing, fully paid and non-assessable and constitute all of the issued and outstanding membership interests in Issuer and Pledgor is the registered owner of such ownership interests. Pledgor is the holder of one hundred (100%) percent of the ownership interests therein and is the sole member of Issuer.

(b) The Collateral is directly, legally and beneficially owned by Pledgor, free and clear of all claims, liens, pledges and encumbrances of any kind, nature or description, except for the pledge, lien and security interest in favor of Pledgee and the pledges, claims, liens, encumbrances and security interests permitted under the Loan Agreement.

(c) Except for those restrictions imposed by Federal securities law and state blue sky laws, the Collateral is not subject to any restrictions relative to the transfer thereof and Pledgor has the right to transfer and hypothecate the Collateral free and clear of any liens, encumbrances or restrictions.

(d) The Collateral is duly and validly pledged to Pledgee, no consent or approval of any governmental or regulatory authority or of any securities exchange or the like, nor any consent or approval of any other third party, was or is necessary to the validity and enforceability of this Pledge Agreement.

(e) As of the date hereof, there are no certificates or other written instruments evidencing or representing the Pledged Interests. If at any time after the date hereof Pledgor shall become entitled to receive or acquire, or shall receive any membership interest certificate, or option or right with respect to the membership interests of Issuer (including without limitation, any certificate representing a distribution or exchange of or in connection with reclassification of the Pledged Interests) whether as an addition to, in substitution of, or in exchange for any of the Collateral or otherwise, Pledgor agrees to accept same as Pledgee's agent, to hold same in trust for Pledgee and to deliver same forthwith to Pledgee or Pledgee's agent or bailee in the form received, with the endorsement(s) of Pledgor where necessary and/or appropriate powers and/or assignments duly executed to be held by Pledgee or Pledgee's agent or bailee subject to the terms hereof, as further security for the Obligations.

(f) The Collateral is not and shall not at any time hereafter be investment property or otherwise subject to Article 8 of the Uniform Commercial Code as in effect in the State of New York on the date hereof (the "UCC"), except as Pledgee may otherwise expressly agree.

(g) Pledgor shall keep full and accurate books and records relating to the Collateral and stamp or otherwise mark such books and records in such manner as Pledgee may reasonably require in order to reflect the security interests granted by this Pledge Agreement.

(h) Pledgor shall not, without the prior consent of Pledgee, directly or indirectly, sell, assign, transfer, or otherwise dispose of, or grant any option with respect to the Collateral, nor shall Pledgor create, incur or permit any further pledge, hypothecation, encumbrance, lien, mortgage or security interest with respect to the Collateral.

(i) So long as no Event of Default (as hereinafter defined) has occurred and is continuing, Pledgor shall have the right to vote and otherwise exercise all limited liability company rights with respect to the Collateral, except as expressly prohibited herein or in the other Financing Agreements, and to receive any distributions payable in respect of the Collateral (but subject to terms of the Loan Agreement with respect thereto).

(j) Pledgor has delivered to Pledgee a true, correct and complete copy of the LLC Agreement and the certificate of formation of Issuer. There are and shall be no other agreements governing the formation, organization or terms of the membership interests with respect to Issuer.

(k) Pledgor acknowledges and agrees that the LLC Agreements permit (i) Pledgor to pledge and assign any and all membership interests in (or other ownership interests of) the Issuer (including, without limitation, the Pledged Interests) to Pledgee, for itself and the ratable benefit of Lenders and (ii) Pledgee may be admitted to the Issuer as a member thereof upon transfer of membership interests to Pledgee as provided in Section 6 hereof without compliance by Pledgee or any other person with any of the conditions or other requirements of the LLC Agreement and without conferring upon the Issuer or any other member thereof any option to acquire the membership interests so transferred to Pledgee or its designees.

(l) Pledgor shall not permit Issuer, directly or indirectly, to issue, sell, grant, assign, transfer or otherwise dispose of, any additional membership interests of Issuer or any option or warrant with respect to, or other right or security convertible into, any additional membership interests, now or hereafter authorized, unless all such additional membership interests, options, warrants, rights or other such securities are made and shall remain part of the Collateral subject to the pledge and security interest granted herein.

(m) Pledgor shall promptly notify Pledgee in writing of the occurrence of any event specified in the LLC Agreement or the certificate of formation of Issuer that would reasonably be expected to result in Issuer's dissolution or liquidation.

(n) Pledgor shall not, and shall not permit Issuer, directly or indirectly, to, amend, modify or supplement any of the provisions of the LLC Agreement or the certificate of formation of Issuer without the prior written consent of Pledgee if any such amendment, modification or supplement would or could affect any rights of Pledgee hereunder or under any of the other Financing Agreements or would limit or restrict the permissible activities in which Issuer may engage.

(o) In accordance with the LLC Agreement, Pledgor as the sole member of Issuer, hereby acknowledges and agrees that Pledgee or any of its successors, assigns or designees, shall, at Pledgee's option upon written notice to Pledgor of Pledgee's intent to be admitted itself (or to have any such successor, assignee or designee admitted) as a member of

Issuer at any time an Event of Default exists or has occurred and is continuing, be admitted as a member of Issuer without any further approval of Pledgor and without compliance by Pledgee or any other person with any of the conditions or other requirements of the LLC Agreement and without conferring upon any member thereof any option (whether under the LLC Agreement or otherwise) to acquire the membership interests so transferred to Pledgee, its successors, assigns, or designees. Pledgor agrees to take such other action and execute such further documents as Pledgee may reasonably request from time to time in order to give effect to the foregoing provisions of this Section.

(p) Pledgor shall pay all charges and assessments of any nature against the Collateral or with respect thereto prior to said charges and/or assessments being delinquent.

(q) Pledgor shall promptly reimburse Pledgee, on demand, together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement, for any charges, assessments or expenses paid or incurred by Pledgee for the protection, preservation and maintenance of the Collateral and the enforcement of Pledgee's or Lenders' rights hereunder, including, without limitation, reasonable attorneys' fees and legal expenses incurred by Pledgee in seeking to protect, collect or enforce its rights in the Collateral or otherwise hereunder. Any such amounts paid or incurred by Pledgee shall constitute part of the Obligations secured hereby and may be charged by Pledgee to any loan account of Borrower maintained by Pledgee or any Lender, at its option.

(r) Pledgor shall furnish, or cause to be furnished, to Pledgee such information concerning Issuer and the Collateral as Pledgee may from time to time reasonably request in good faith, including, without limitation, current financial statements to the extent available.

(s) Pledgee may notify Issuer or the appropriate transfer agent of the Collateral to register the security interest and pledge granted herein and to honor the rights of Pledgee with respect thereto.

(t) Pledgor authorizes Pledgee to: (i) perform any and all other acts which Pledgee deems reasonable and/or necessary for the protection and preservation of the Collateral or its value or Pledgee's security interest therein, and (ii) pay any charges or expenses which Pledgee deems necessary for the foregoing purpose, but without any obligation to do so (and any amounts so paid shall constitute Obligations under the Loan Agreement).

(u) Pledgor waives: (i) all rights to require Pledgee or Lenders to proceed against any other person, entity or collateral or to exercise any remedy, (ii) the defense of the statute of limitations in any action upon any of the Obligations, (iii) any right of subrogation or interest in the Obligations or Collateral until all Obligations have been paid in full in immediately available funds and the Loan Agreement has been terminated, (iv) any rights to notice of any kind or nature whatsoever, unless specifically required in this Pledge Agreement, the Loan Agreement (to the extent applicable to this Pledge Agreement) or non-waivable under any applicable law, and (v) to the extent permissible, its rights under Section 9-207 of the UCC. Pledgor agrees that the Collateral, other collateral, or any other guarantor or endorser may be released, substituted or added with respect to the Obligations, in whole or in part, without

releasing or otherwise affecting the liability of Pledgor, the pledge and security interests granted hereunder, or this Pledge Agreement. Pledgee is entitled to all of the benefits of a secured party set forth in Section 9-207 of the UCC.

4. NO ASSUMPTION OF LIABILITIES.

(a) Nothing herein shall be construed to make Pledgee or any Lender liable as a member of Issuer and Pledgee or any Lender by virtue of this Pledge Agreement or otherwise shall not have any of the duties, obligations or liabilities of a member of Issuer. The parties hereto expressly agree that this Pledge Agreement shall not be construed as creating a partnership or joint venture among Pledgee or any Lender and Pledgor and/or Issuer.

(b) By accepting this Pledge Agreement, Pledgee and Lenders do not intend to become a member of Issuer or otherwise be deemed to be a co-venturer with respect to Pledgor or Issuer either before or after an Event of Default shall have occurred. Pledgee and Lenders shall have only those powers set forth herein and shall assume none of the duties, obligations or liabilities of Pledgor or of a member of Issuer. Pledgee and Lenders shall not be obligated to perform or discharge any obligation of Pledgor as a result of the pledge hereby effected.

(c) The acceptance by Pledgee and Lenders of this Pledge Agreement, with all of the rights, powers, privileges and authority so created, shall not at any time or in any event obligate Pledgee or any Lender to appear in or defend any action or proceeding relating to the Collateral to which it is not a party, or to take any action hereunder or thereunder, or to expend any money or incur any expense or perform or discharge any obligation, duty or liability hereunder or otherwise with respect to the Collateral.

5. EVENTS OF DEFAULT

The occurrence or existence of any Event of Default under the Loan Agreement is referred to herein individually as an "Event of Default" and collectively as "Events of Default".

6. RIGHTS AND REMEDIES

At any time an Event of Default exists or has occurred and is continuing, in addition to all other rights and remedies of Pledgee and Lenders, whether provided under this Pledge Agreement, the Loan Agreement, the other Financing Agreements, applicable law or otherwise, Pledgee and Lenders shall have the following rights and remedies which may be exercised without notice to, or consent by, Pledgor except as such notice or consent is expressly provided for hereunder or under the Loan Agreement (to the extent applicable to this Pledge Agreement);

(a) Pledgee, at its option, shall be empowered to exercise its continuing right to instruct Issuer (or the appropriate transfer agent of the Collateral) to register any or all of the Collateral in the name of Pledgee or in the name of Pledgee's nominee and Pledgee may complete, in any manner Pledgee may deem expedient, any assignments or other documents heretofore or hereafter executed in blank by Pledgor and delivered to Pledgee. After said instruction, and without further notice, Pledgee shall have the exclusive right to exercise all rights with respect to the Collateral (including all voting and limited liability company rights), and exercise any and all rights of conversion, redemption, exchange, subscription or any other

rights, privileges, or options pertaining to the Collateral as if Pledgee were the absolute owner thereof, including, without limitation, the right to exchange, in its discretion, any and all of the Collateral upon any merger, consolidation, reorganization, recapitalization or other readjustment with respect thereto. Upon the exercise of any such rights, privileges or options by Pledgee, Pledgee shall have the right to deposit and deliver any and all of the Collateral to any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as Pledgee may determine, all without liability, except to account for property actually received by Pledgee. However, Pledgee shall have no duty to exercise any of the aforesaid rights, privileges or options (all of which are exercisable in the sole discretion of Pledgee) and shall not be responsible for any failure to do so or delay in doing so.

(b) Upon prior written notice thereof to Issuer and Pledgor, (i) Pledgee may transfer the membership interests of Pledgor in Issuer into the name of Pledgee (or its successors or assignees, or designee) and (ii) Pledgee (or its successors, assignees, or designees) shall be admitted as a member of Issuer in the place of Pledgor.

(c) In addition to all the rights and remedies of a secured party under the UCC or other applicable law, Pledgee shall have the right, at any time and without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon Pledgor or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived to the extent permitted by applicable law), to proceed forthwith to collect, redeem, recover, receive, appropriate, realize, sell, or otherwise dispose of and deliver the Collateral or any part thereof in one or more lots at public or private sale or sales at any exchange, broker's board or at any of Pledgee's offices or elsewhere at such prices and on such terms as Pledgee may deem best. The foregoing disposition(s) may be for cash or on credit or for future delivery without assumption of any credit risk, with Pledgee having the right to purchase all or any part of the Collateral so sold at any such sale or sales, public or private, free of any right or equity of redemption in Pledgor, which right or equity is hereby expressly waived or released by Pledgor. The proceeds of any such collection, redemption, recovery, receipt, appropriation, realization, sale or other disposition, after deducting all costs and expenses of every kind incurred relative thereto or incidental to the care, safekeeping or otherwise of any and all Collateral or in any way relating to the rights of Pledgee hereunder, including attorneys' fees and legal expenses, shall be applied first to the satisfaction of the Obligations (in such order as Pledgee may elect and whether or not due) and then to the payment of any other amounts required by applicable law, including Section 9-615(a)(3) of the UCC, with Pledgor to be and remain liable for any deficiency. Pledgor shall be liable to Pledgee and Lenders for the payment on demand of all such costs and expenses, together with interest at the rate then applicable to Obligations set forth in the Loan Agreement and any reasonable attorneys' fees and legal expenses incurred by Pledgee. Pledgor agrees that ten (10) days prior written notice by Pledgee designating the place and time of any public sale or of the time after which any private sale or other intended disposition of any or all of the Collateral is to be made, is reasonable notification of such matters.

(d) Pledgor recognizes that Pledgee may be unable to effect a public sale of all or part of the Collateral by reason of certain prohibitions contained in the Securities Act of 1933, as amended, as now or hereafter in effect or in applicable Blue Sky or other state securities law, as now or hereafter in effect, but may be compelled to resort to one or more private sales to

a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral for their own account for investment and not with a view to the distribution or resale thereof. If at the time of any sale of the Collateral or any part thereof, the same shall not, for any reason whatsoever, be effectively registered (if required) under the Securities Act of 1933 (or other applicable state securities law), as then in effect, Pledgee in its sole and absolute discretion is authorized to sell such Collateral or such part thereof by private sale in such manner and under such circumstances as Pledgee or its counsel may deem necessary or advisable in order that such sale may legally be effected without registration. Pledgor agrees that private sales so made may be at prices and other terms less favorable to the seller than if such Collateral were sold at public sale, and that Pledgee has no obligation to delay the sale of any such Collateral for the period of time necessary to permit Issuer, even if Issuer would agree, to register such Collateral for public sale under such applicable securities laws. Pledgor agrees that any private sales made under the foregoing circumstances shall be deemed to have been in a commercially reasonable manner.

(e) All of the rights and remedies of Pledgee and Lenders, including, but not limited to, the foregoing and those otherwise arising under this Pledge Agreement, the Loan Agreement and the other Financing Agreements, the instruments comprising the Collateral, applicable law or otherwise, shall be cumulative and not exclusive and shall be enforceable alternatively, successively or concurrently as Pledgee may deem expedient. No failure or delay on the part of Pledgee or any Lender in exercising any of its options, powers or rights or partial or single exercise thereof, shall constitute a waiver of such option, power or right.

7. JURY TRIAL WAIVER; OTHER WAIVERS  
AND CONSENTS; GOVERNING LAW

(a) The validity, interpretation and enforcement of this Pledge Agreement and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

(b) Each of Pledgor and Pledgee irrevocably consents and submits to the non-exclusive jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York, whichever Pledgee may elect, and waives any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Pledge Agreement or in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Pledge Agreement or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agrees that any dispute with respect to any such matters shall be heard only in the courts described above (except that Pledgee shall have the right to bring any action or proceeding against Pledgor or its property in the courts of any other jurisdiction which Pledgee deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against Pledgor or its property).

(c) Pledgor hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested)

directed to its address and to the attention of the person set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Pledgee's option, by service upon Pledgor in any other manner provided under the rules of any such courts.

(d) EACH OF PLEDGOR AND PLEDGEE HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS PLEDGE AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF PLEDGOR AND PLEDGEE OR ANY LENDER IN RESPECT OF THIS PLEDGE AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. PLEDGOR HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT PLEDGOR OR PLEDGEE MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS PLEDGE AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Pledgee and Lenders shall not have any liability to Pledgor (whether in tort, contract, equity or otherwise) for losses suffered by Pledgor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Pledge Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Pledgee or such Lender, that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. In any such litigation, Pledgee shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Pledge Agreement.

## 8. MISCELLANEOUS

(a) Pledgor agrees that at any time and from time to time upon the written request of Pledgee, Pledgor shall execute and deliver such further documents, in form satisfactory to Pledgee, and will take or cause to be taken such further acts as Pledgee may request in order to effect the purposes of this Pledge Agreement and perfect or continue the perfection of the security interest in the Collateral granted to Pledgee hereunder.

(b) Beyond the exercise of reasonable care to assure the safe custody of the Collateral (whether such custody is exercised by Pledgee, or Pledgee's nominee, agent or bailee) Pledgee or Pledgee's nominee agent or bailee shall have no duty or liability to protect or preserve any rights pertaining thereto and shall be relieved of all responsibility for the Collateral upon surrendering it to Pledgor or foreclosure with respect thereto.

(c) All notices, requests and demands to or upon the respective parties hereto shall be in writing and shall be deemed to have been duly given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon



sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by registered or certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

If to Pledgor: Mervyn's LLC  
22301 Foothill Boulevard  
Hayward, California 94541  
Attention: Chief Executive Officer  
Telephone No.: 510-727-5123  
Telecopier No.: 510-727-5125

with a copy to: Mervyn's Holdings, LLC  
c/o Sun Capital Partners Group, Inc.  
5200 Town Center Circle, Suite 470  
Boca Raton, Florida 33486  
Attention: Mr. Marc J. Leder,  
Mr. Rodger R. Krouse and  
C. Deryl Couch, Esq.  
Telephone No.: 561-394-0550  
Telecopier No.: 561-394-0540

If to Pledgee: Congress Financial Corporation (Western), as Agent  
251 South Lake Avenue  
Suite 900  
Pasadena, California 91101  
Telecopier: (626) 304-4969  
Attention: Portfolio Manager - Mervyn's

(d) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural. All references to Pledgor, Issuer, Borrower, Pledgee or any Lender pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns. The words "hereof," "herein," "hereunder," "this Pledge Agreement" and words of similar import when used in this Pledge Agreement shall refer to this Pledge Agreement as a whole and not any particular provision of this Pledge Agreement and as this Pledge Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 8(g) hereof or is cured in a manner satisfactory to Pledgee. All references to the term "Person" or "persons" herein shall mean any individual, sole proprietorship, partnership, corporation (including, without limitation, any corporation which elects subchapter S status under the Internal Revenue Code of 1986, as amended), limited liability corporation, limited liability company, limited liability partnership, business trust, unincorporated association, joint stock company, trust, joint venture or other entity or any government or any agency, instrumentality or political subdivision thereof.

(e) This Pledge Agreement, shall be binding upon Pledgor and its successors and assigns and inure to the benefit of and be enforceable by Pledgee and Lenders and their respective successors and assigns.

(f) If any provision of this Pledge Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Pledge Agreement as a whole, but this Pledge Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

(g) To the extent of a conflict between the terms of this Pledge Agreement and the Loan Agreement, the terms of the Loan Agreement shall control.

(h) Neither this Pledge Agreement nor any provision hereof shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement signed by an authorized officer of Pledgee. Pledgee and Lenders shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of their rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of Pledgee (and Lenders with respect to any waiver of an Event of Default). Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Pledgee or any Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Pledgee or such Lender would otherwise have on any future occasion, whether similar in kind or otherwise.

(i) This Pledge Agreement (i) may be executed in separate counterparts, each of which taken together shall constitute one and the same instrument and (ii) may be executed and delivered by telecopier with the same force and effect as if it were as a manually executed and delivered counterpart.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Pledgor has executed this Pledge Agreement as of the day and year first above written.

MERVYN'S LLC

By: 

Title: \_\_\_\_\_

**Vice-President**

EXHIBIT A  
TO  
PLEDGE AND SECURITY AGREEMENT

<u>Issuer</u>	<u>Operating Agreement (Date)</u>	<u>Percentage Interest Owned</u>
Mervyn's Brands, LLC	Limited Liability Company Agreement dated September 2, 2004	100%

GUARANTEE

September 2, 2004

Congress Financial Corporation (Western),  
as Agent  
251 South Lake Avenue  
Suite 900  
Pasadena, California 91101

Re: Mervyn's LLC (the "Borrower")

Ladies and Gentlemen:

Borrower and its affiliate, Mervyn's Brands, LLC (the "Guarantor"), have entered into or are about to enter into financing arrangements with Congress Financial Corporation (Western) in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lenders (in such capacity, "Agent") and the financial institutions which are parties to the Loan Agreement as lenders (each individually, a "Lender" and collectively, "Lenders") pursuant to which Agent and Lenders may make loans and advances and provide other financial accommodations to Borrower, as set forth in the Loan Agreement, dated of even date herewith, by and among Agent, Lenders, Borrower and Guarantor, (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement") and other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto, including, but not limited to, this Guarantee (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements"). Terms not defined herein shall have the meaning ascribed to them in the Loan Agreement.

Due to the close business and financial relationships between Borrower and the Guarantor, in consideration of the benefits which will accrue to Guarantor and as an inducement for and in consideration of Lenders (or Agent on behalf of Lenders) making loans and advances and providing other financial accommodations to Borrower pursuant to the Loan Agreement and the other Financing Agreements, Guarantor hereby agrees in favor of Agent and Lenders as follows:

1. Guarantee.

(a) Guarantor absolutely and unconditionally, guarantees and agrees to be liable for the full and indefeasible payment and performance when due of the following (all of which are

collectively referred to herein as the "Guaranteed Obligations"): (i) all obligations, liabilities and indebtedness of any kind, nature and description of Borrower to Agent and/or any Lender and/or any of their respective affiliates, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or, otherwise, arising under the Loan Agreement, the other Financing Agreements or otherwise, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Loan Agreement or after the commencement of any case with respect to Borrower or Guarantor under the United States Bankruptcy Code or any similar statute (including, without limitation, the payment of interest and other amounts, which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in any such case and including loans, interest, fees, charges and expenses related thereto and all other obligations of Borrower or its successors to Agent and any Lender arising after the commencement of such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and however acquired by Agent or any Lender and (ii) all obligations, liabilities and indebtedness of every kind, nature and description owing by Borrower to Agent and/or any Lender and/or their respective successors and assigns or to Bank Product Provider, pursuant to any Bank Products, whether now existing or hereafter arising to the extent included in the definition of "Obligations" in the Loan Agreement and (iii) all expenses (including, without limitation, reasonable attorneys' fees and legal expenses) incurred by Agent or any Lender in connection with the preparation, execution, delivery, recording, administration, collection, liquidation, enforcement and defense of Borrower's obligations, liabilities and indebtedness as aforesaid to Agent or any Lender, the rights of Agent or any Lender in any collateral or under this Guarantee and all other Financing Agreements or in any way involving claims by or against Agent or any Lender directly or indirectly arising out of or related to the relationships between Borrower, any Guarantor or other Obligor (as hereinafter defined) and Agent or any Lender, whether such expenses are incurred before, during or after the initial or any renewal term of the Loan Agreement and the other Financing Agreements or after the commencement of any case with respect to Borrower or Guarantor under the United States Bankruptcy Code or any similar statute.

(b) This Guarantee is a guaranty of payment and not of collection. Guarantor agrees that Agent and Lenders need not attempt to collect any Guaranteed Obligations from Borrower, Guarantor or any other Obligor or to realize upon any collateral, but may require Guarantor to make immediate payment of all of the Guaranteed Obligations to Agent when due, whether by maturity, acceleration or otherwise, or at any time thereafter. Agent and Lenders may apply any amounts received in respect of the Guaranteed Obligations to any of the Guaranteed Obligations, in whole or in part (including reasonable attorneys' fees and legal expenses incurred by Agent or any Lender with respect thereto or otherwise chargeable to Borrower or Guarantor) and in such order as Agent may elect.

(c) Payment by Guarantor shall be made to Agent at the office of Agent from time to time on demand as Guaranteed Obligations become due. Guarantor shall make all payments to Agent on the Guaranteed Obligations free and clear of, and without deduction or withholding for or on account of, any setoff, counterclaim, defense, duties, taxes, levies, imposts, fees, deductions, withholding, restrictions or conditions of any kind. One or more successive or concurrent actions may be brought hereon against any Guarantor either in the same action in which Borrower or Guarantor or any other Obligor is sued or in separate actions. In the event any claim or action, or action on any judgment, based on this Guarantee is brought against

Guarantor, Guarantor agrees not to deduct, set-off, or seek any counterclaim for or recoup any amounts which are or may be owed by Agent or any Lender to Guarantor.

(d) Notwithstanding anything to the contrary contained herein, the amount of the obligations payable by Guarantor under this Guarantee shall be the aggregate amount of the Guaranteed Obligations unless a court of competent jurisdiction adjudicates Guarantor's obligations to be invalid, avoidable or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers), in which case the amount of the obligations payable by Guarantor hereunder shall be limited to the maximum amount that could be guaranteed by Guarantor without rendering Guarantor's obligations under this Guarantee invalid, avoidable or unenforceable under such applicable law.

## 2. Waivers and Consents.

(a) Notice of acceptance of this Guarantee, the making of loans and advances and providing other financial accommodations to Borrower and presentment, demand, protest, notice of protest, notice of nonpayment or default and all other notices to which Borrower or Guarantor are entitled are hereby waived by Guarantor. Guarantor also waives notice of and hereby consents to, (i) any amendment, modification, supplement, extension, renewal, or restatement of the Loan Agreement and any of the other Financing Agreements, including, without limitation, extensions of time of payment of or increase or decrease in the amount of any of the Guaranteed Obligations, the interest rate, fees, other charges, or any collateral, and the guarantee made herein shall apply to the Loan Agreement and the other Financing Agreements and the Guaranteed Obligations as so amended, modified, supplemented, renewed, restated or extended, increased or decreased, (ii) the taking, exchange, surrender and releasing of collateral or guarantees now or at any time held by or available to Agent or any Lender for the obligations of Borrower or any other party at any time liable on or in respect of the Guaranteed Obligations or who is the owner of any property which is security for the Guaranteed Obligations (individually, an "Obligor" and collectively, the "Obligors"), (iii) the exercise of, or refraining from the exercise of any rights against Borrower or any other Obligor or any collateral, (iv) the settlement, compromise or release of, or the waiver of any default with respect to, any of the Guaranteed Obligations and (v) any financing by Agent or any Lender of Borrower under Section 364 of the United States Bankruptcy Code or consent to the use of cash collateral by Agent or Lenders under Section 363 of the United States Bankruptcy Code. Guarantor agrees that the amount of the Guaranteed Obligations shall not be diminished and the liability of Guarantor hereunder shall not be otherwise impaired or affected by any of the foregoing.

(b) No invalidity, irregularity or unenforceability of all or any part of the Guaranteed Obligations shall affect, impair or be a defense to this Guarantee, nor shall any other circumstance which might otherwise constitute a defense available to or legal or equitable discharge of Borrower in respect of any of the Guaranteed Obligations, or Guarantor in respect of this Guarantee, affect, impair or be a defense to this Guarantee. Without limitation of the foregoing, the liability of Guarantor hereunder shall not be discharged or impaired in any respect by reason of any failure by Agent to perfect or continue perfection of any lien or security interest in any collateral or any delay by Agent in perfecting any such lien or security interest. As to interest, fees and expenses, whether arising before or after the commencement of any case with respect to Borrower under the United States Bankruptcy Code or any similar statute, Guarantor

shall be liable therefor, even if Borrower's liability for such amounts does not, or ceases to, exist by operation of law. Guarantor acknowledges that Agent and Lenders have not made any representations to Guarantor with respect to Borrower or any other Obligor or otherwise in connection with the execution and delivery by Guarantor of this Guarantee and Guarantor is not in any respect relying upon Agent or any Lender or any statements by Agent or any Lender in connection with this Guarantee.

(c) Until all of the Obligations have been fully and finally paid and satisfied in immediately available funds and the Loan Agreement and the other Financing Agreements have been terminated, Guarantor hereby irrevocably and unconditionally waives and relinquishes all statutory, contractual, common law, equitable and all other claims against Borrower, any collateral for the Guaranteed Obligations or other assets of Borrower or any other Obligor, for subrogation, reimbursement, exoneration, contribution, indemnification, setoff or other recourse in respect to sums paid or payable to Agent or any Lender by Guarantor hereunder and Guarantor hereby further irrevocably and unconditionally waives and relinquishes any and all other benefits which Guarantor might otherwise directly or indirectly receive or be entitled to receive by reason of any amounts paid by or collected or due from Guarantor, Borrower or any other Obligor upon the Guaranteed Obligations or realized from their property.

3. Subordination. Payment of all amounts now or hereafter owed to Guarantor by Borrower or any other Obligor is hereby subordinated in right of payment to the full and final payment to Agent and Lenders of the Guaranteed Obligations and, except as permitted to be paid by Borrower to Guarantor pursuant to and in accordance with the Loan Agreement, all such amounts and any security and guarantees therefor are hereby assigned to Agent as security for the Guaranteed Obligations.

4. Acceleration. Notwithstanding anything to the contrary contained herein or any of the terms of any of the other Financing Agreements, the liability of Guarantor for the entire Guaranteed Obligations shall mature and become immediately due and payable, even if the liability of Borrower or any other Obligor therefor does not, upon the occurrence of any act, condition or event which constitutes an Event of Default as such term is defined in the Loan Agreement.

5. Account Stated. The books and records of Agent showing the account between Agent and Borrower shall be admissible in evidence in any action or proceeding against or involving Guarantor as prima facie proof of the items therein set forth, and the monthly statements of Agent rendered to Borrower, to the extent to which no written objection is made within thirty (30) days from the date of sending thereof to Borrower, shall be deemed conclusively correct and constitute an account stated between Agent and Borrower and be binding on Guarantor.

6. Termination. This Guarantee is continuing, unlimited, absolute and unconditional. All Guaranteed Obligations shall be conclusively presumed to have been created in reliance on this Guarantee. Guarantor shall continue to be liable hereunder until the earlier to occur of the following: (a) subject to the terms of Section 7 of this Guarantee, the Guaranteed Obligations have been paid and satisfied in full in cash or other immediately funds and (b) one of Agent's officers actually receives a written termination notice from Guarantor sent to Agent at its address set forth above by certified mail, return receipt requested and thereafter as set forth below.



Revocation or termination hereof by Guarantor shall not affect, in any manner, the rights of Agent or any obligations or duties of Guarantor under this Guarantee with respect to (i) Guaranteed Obligations which have been created, contracted, assumed or incurred prior to the receipt by Agent of such written notice of revocation or termination as provided herein, including, without limitation, (A) all amendments, extensions, renewals and modifications of such Guaranteed Obligations (whether or not evidenced by new or additional agreements, documents or instruments executed on or after such notice of revocation or termination), (B) all interest, fees and similar charges accruing or due on and after revocation or termination, and (C) all reasonable attorneys' fees and legal expenses, costs and other expenses paid or incurred on or after such notice of revocation or termination in attempting to collect or enforce any of the Guaranteed Obligations against Borrower, Guarantor or any other Obligor (whether or not suit be brought), or (ii) Guaranteed Obligations which have been created, contracted, assumed or incurred after the receipt by Agent of such written notice of revocation or termination as provided herein pursuant to any contract entered into by Agent or any Lender prior to receipt of such notice. The sole effect of such revocation or termination by Guarantor shall be to exclude from this Guarantee the liability of Guarantor for those Guaranteed Obligations arising after the date of receipt by Agent of such written notice which are unrelated to Guaranteed Obligations arising or transactions entered into prior to such date. Without limiting the foregoing, this Guarantee may not be terminated and shall continue so long as the Loan Agreement shall be in effect (whether during its original term or any renewal, substitution or extension thereof).

7. Reinstatement. If after receipt of any payment of, or proceeds of collateral applied to the payment of, any of the Guaranteed Obligations, Agent or any Lender is required to surrender or return such payment or proceeds to any Person for any reason, then the Guaranteed Obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Guarantee shall continue in full force and effect as if such payment or proceeds had not been received by Agent or such Lender. Guarantor shall be liable to pay to Agent and Lenders, and does indemnify and hold Agent and Lenders harmless for the amount of any payments or proceeds surrendered or returned. This Section 7 shall remain effective notwithstanding any contrary action which may be taken by Agent or any Lender in reliance upon such payment or proceeds. This Section 7 shall survive the termination or revocation of this Guarantee.

8. Amendments and Waivers. Neither this Guarantee nor any provision hereof shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement signed by an authorized officer of Agent. Agent shall not by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of Agent. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Agent of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Agent would otherwise have on any future occasion, whether similar in kind or otherwise.

9. Corporate Existence, Power and Authority. Guarantor is an entity duly organized or formed and in good standing under the laws of its state and is duly qualified as a foreign entity and in good standing in all states or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary, except for those jurisdictions in which the failure to so qualify would not have a material adverse effect on the financial condition, results of operation or businesses of Guarantor or the rights of Agent

and Lenders hereunder or under any of the other Financing Agreements. The execution, delivery and performance of this Guarantee is within the corporate powers of Guarantor, has been duly authorized and is not in contravention of law or organizational documentation of Guarantor, or any indenture, agreement or undertaking to which Guarantor is a party or by which any Guarantor or its property are bound. This Guarantee constitutes the legal, valid and binding obligation of Guarantor enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws of general application affecting the enforceability of creditors' rights generally or by general principles of equity limiting the availability of equitable remedies.

10. Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.

(a) The validity, interpretation and enforcement of this Guarantee and any dispute arising out of the relationship between Guarantor and Agent or any Lender, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York without regard to principals of conflicts of laws, but excluding any rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

(b) Guarantor hereby irrevocably consents and submits to the non-exclusive jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York and waives any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Guarantee or any of the other Financing Agreements or in any way connected with or related or incidental to the dealings of Guarantor and Agent or any Lender in respect of this Guarantee or any of the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or hereafter arising and whether in contract, tort, equity or otherwise, and agrees that any dispute arising out of the relationship between Guarantor or Borrower and Agent or any Lender or the conduct of any such persons in connection with this Guarantee, the other Financing Agreements or otherwise shall be heard only in the courts described above (except that Agent and Lenders shall have the right to bring any action or proceeding against any Guarantor or its property in the courts of any other jurisdiction which Agent deems necessary or appropriate in order to realize on any collateral at any time granted by Borrower or Guarantor to Collateral Agent or any Lender or to otherwise enforce its or their rights against Guarantor or its property).

(c) Guarantor hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth on the signature pages hereof and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Agent's option, by service upon Guarantor in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, Guarantor so served shall appear in answer to such process, failing which Guarantor shall be deemed in default and judgment may be entered by Agent against Guarantor for the amount of the claim and other relief requested.

(d) GUARANTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS GUARANTEE OR ANY OF THE OTHER FINANCING AGREEMENTS OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF ANY

GUARANTOR AND AGENT OR ANY LENDER IN RESPECT OF THIS GUARANTEE OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. GUARANTOR HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT GUARANTOR OR AGENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF GUARANTOR TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Agent and Lenders shall not have any liability to Guarantor (whether in tort, contract, equity or otherwise) for losses suffered by Guarantor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Guarantee, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Agent or such Lender that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. In any such litigation, Agent and Lenders shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of the Loan Agreement and the other Financing Agreements.

11. Notices. All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

If to Guarantor: Mervyn's LLC  
22301 Foothill Boulevard  
Hayward California 94541  
Attention: Chief Executive Officer  
Telephone No.: 510-727-5123  
Telecopier No.: 510-727-5125

with a copy to: Mervyn's Holdings, LLC  
c/o Sun Capital Partners Group, Inc.  
5200 Town Center Circle, Suite 470  
Boca Raton, Florida 33486  
Attention: Marc J. Leder, Rodger R. Krouse  
and C. Deryl Couch, Esq.  
Telephone No.: 561-394-0550  
Telecopier No.: 561-394-0540

with a copy to: Kirkland & Ellis LLP  
Aon Center  
200 East Randolph Drive  
Chicago, Illinois 60601  
Attention: Jocelyn A. Hirsch, Esq.  
Telephone No.: 312-861-2000  
Telecopy No.: 312-861-2200

If to Agent and Congress Financial Corporation (Western), as Agent  
Lenders: 251 South Lake Avenue  
Suite 900  
Pasadena, California 91101  
Attention: Portfolio Manager - Mervyn's  
Telephone No.: 626-304-4900  
Telecopier No.: 626-304-4969

12. Partial Invalidity. If any provision of this Guarantee is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Guarantee as a whole, but this Guarantee shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

13. Entire Agreement. This Guarantee represents the entire agreement and understanding of this parties concerning the subject matter hereof, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts between the parties concerning the subject matter hereof, whether oral or written.

14. Successors and Assigns. This Guarantee shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Agent and each Lender and their respective successors, endorsees, transferees and assigns. The liquidation, dissolution or termination of Guarantor shall not terminate this Guarantee as to Guarantor.

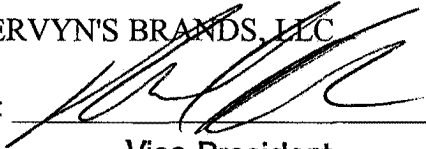
15. Construction. All references to the term "Guarantor" wherever used herein shall mean Guarantor and its successors and assigns (including, without limitation, any receiver, trustee or custodian for Guarantor or any of its assets or Guarantor in its capacity as debtor or debtor-in-possession under the United States Bankruptcy Code). All references to the term "Agent" wherever used herein shall mean Agent and its successors and assigns. All references to the term "Lender" wherever used herein shall mean Lender and its permitted successors and assigns. All references to the term "Borrower" wherever used herein shall mean Borrower and its successors and assigns (including, without limitation, any receiver, trustee or custodian for Borrower or any of its assets or Borrower in its capacity as debtor or debtor-in-possession under the United States Bankruptcy Code). All references to the term "Person" or "person" wherever used herein shall mean any individual, sole proprietorship, partnership, corporation (including, without limitation, any corporation which elects subchapter S status under the Internal Revenue Code of 1986, as amended), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or

any government or any agency or instrumentality or political subdivision thereof. All references to the plural shall also mean the singular and to the singular shall also mean the plural.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guarantee as of the day and year first above written.

MERVYN'S BRANDS, LLC

By: 

Vice-President

Title: \_\_\_\_\_



**UNITED STATES PATENT AND TRADEMARK OFFICE**

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

MARCH 29, 2005

PTAS



\*102845321A\*

TRACEY D. BENNETT  
C/O OTTERBOURG STEINDLER HOUSTON & ROSEN  
230 PARK AVENUE  
NEW YORK, NY 10169

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 09/27/2004

REEL/FRAME: 003054/0486  
NUMBER OF PAGES: 24

BRIEF: SECURITY AGREEMENT

ASSIGNOR:

MERVYN'S BRANDS, LLC

DOC DATE: 09/02/2004  
CITIZENSHIP: MINNESOTA  
ENTITY: LIMITED LIABILITY  
COMPANY

ASSIGNEE:

CONGRESS FINANCIAL CORPORATION  
(WESTERN), AS AGENT  
251 SOUTH LAKE AVENUE, SUITE 900  
PASADENA, CALIFORNIA 91101

CITIZENSHIP: CALIFORNIA  
ENTITY: CORPORATION

APPLICATION NUMBER: 76512750  
REGISTRATION NUMBER:

FILING DATE: 05/08/2003  
ISSUE DATE:

MARK: BABY SPROCKETS  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78203564  
REGISTRATION NUMBER:

FILING DATE: 01/15/2003  
ISSUE DATE:

MARK: BIG REWARDS  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78091522  
REGISTRATION NUMBER:

FILING DATE: 11/02/2001  
ISSUE DATE:

MARK: COWBOYS & ANGELS  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78303594  
REGISTRATION NUMBER:

FILING DATE: 09/22/2003  
ISSUE DATE:

MARK: DIAMONDSTAR  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78388422  
REGISTRATION NUMBER:

FILING DATE: 03/22/2004  
ISSUE DATE:

MARK: FANCY FLING  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 78146594  
REGISTRATION NUMBER: 2880275

FILING DATE: 07/23/2002  
ISSUE DATE: 08/31/2004

MARK: FRENCH LAUNDRY  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78146592  
REGISTRATION NUMBER:

FILING DATE: 07/23/2002  
ISSUE DATE:

MARK: FRENCH LAUNDRY  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78420495  
REGISTRATION NUMBER:

FILING DATE: 05/18/2004  
ISSUE DATE:

MARK: HILLARD & HANSON  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN BLOCK FORM

APPLICATION NUMBER: 78312626  
REGISTRATION NUMBER:

FILING DATE: 10/13/2003  
ISSUE DATE:

MARK: PINKIE'S PALACE  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78264325  
REGISTRATION NUMBER:

FILING DATE: 06/19/2003  
ISSUE DATE:

MARK: SIERRA HOME COLLECTIONS  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM



APPLICATION NUMBER: 76512758  
REGISTRATION NUMBER:

FILING DATE: 05/08/2003  
ISSUE DATE:

MARK: SPROCKETS

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76512765  
REGISTRATION NUMBER:

FILING DATE: 05/08/2003  
ISSUE DATE:

MARK:

DRAWING TYPE: MISCELLANEOUS DESIGN

APPLICATION NUMBER: 78165640  
REGISTRATION NUMBER:

FILING DATE: 09/19/2002  
ISSUE DATE:

MARK: VINTAGE LUXE

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73517904  
REGISTRATION NUMBER: 1354125

FILING DATE: 01/17/1985  
ISSUE DATE: 08/13/1985

MARK: BAKER, HART & STUART

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76512760  
REGISTRATION NUMBER: 2854824

FILING DATE: 05/08/2003  
ISSUE DATE: 06/15/2004

MARK:

DRAWING TYPE: MISCELLANEOUS DESIGN

APPLICATION NUMBER: 78002470  
REGISTRATION NUMBER: 2557350

FILING DATE: 04/04/2000  
ISSUE DATE: 04/02/2002

MARK: CAMBRIA

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73639948  
REGISTRATION NUMBER: 1460966

FILING DATE: 01/15/1987  
ISSUE DATE: 10/13/1987

MARK: CARESS

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 74444376  
REGISTRATION NUMBER: 1844485

FILING DATE: 10/06/1993  
ISSUE DATE: 07/12/1994

MARK: CARESS

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73481153  
REGISTRATION NUMBER: 1334429

FILING DATE: 05/21/1984  
ISSUE DATE: 05/07/1985

MARK: CASCADE BLUES

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS AND DESIGN

APPLICATION NUMBER: 73687468  
REGISTRATION NUMBER: 1489460

FILING DATE: 10/02/1987  
ISSUE DATE: 05/24/1988

MARK: CASCADE BLUES  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 74694526  
REGISTRATION NUMBER: 2001011

FILING DATE: 06/27/1995  
ISSUE DATE: 09/17/1996

MARK: CASCADE BLUES  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73623177  
REGISTRATION NUMBER: 1442140

FILING DATE: 09/30/1986  
ISSUE DATE: 06/09/1987

MARK: CELEBRATION  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73261328  
REGISTRATION NUMBER: 1262449

FILING DATE: 05/08/1980  
ISSUE DATE: 12/27/1983

MARK: CHEETAH  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73453458  
REGISTRATION NUMBER: 1438104

FILING DATE: 11/18/1983  
ISSUE DATE: 04/28/1987

MARK: CHEETAH  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76391976  
REGISTRATION NUMBER: 2669086

FILING DATE: 04/05/2002  
ISSUE DATE: 12/31/2002

MARK: CHEETAH  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75599904  
REGISTRATION NUMBER: 2320990

FILING DATE: 12/04/1998  
ISSUE DATE: 02/22/2000

MARK: COLOR CIRCUIT  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75209710  
REGISTRATION NUMBER: 2116264

FILING DATE: 12/09/1996  
ISSUE DATE: 11/25/1997

MARK:  
DRAWING TYPE: MISCELLANEOUS DESIGN

APPLICATION NUMBER: 73446918  
REGISTRATION NUMBER: 1312258

FILING DATE: 10/06/1983  
ISSUE DATE: 01/01/1985

MARK: DIAMONDSTAR  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75668289  
REGISTRATION NUMBER: 2381884

FILING DATE: 03/26/1999  
ISSUE DATE: 08/29/2000

MARK: E GIRL

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73832958  
REGISTRATION NUMBER: 2135128

FILING DATE: 10/23/1989  
ISSUE DATE: 02/10/1998

MARK: ELLEMENNO

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78062013  
REGISTRATION NUMBER: 2599650

FILING DATE: 05/04/2001  
ISSUE DATE: 07/23/2002

MARK: EXTEND THE CHEER, PAY NEXT YEAR

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76093933  
REGISTRATION NUMBER: 2570917

FILING DATE: 07/24/2000  
ISSUE DATE: 05/21/2002

MARK: FRENCH LAUNDRY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73089647  
REGISTRATION NUMBER: 1070269

FILING DATE: 06/07/1976  
ISSUE DATE: 07/26/1977

MARK: GALLERIA

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73404097  
REGISTRATION NUMBER: 1344538

FILING DATE: 11/29/1982  
ISSUE DATE: 06/25/1985

MARK: HIGH SIERRA

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73510832  
REGISTRATION NUMBER: 1475977

FILING DATE: 11/28/1984  
ISSUE DATE: 02/09/1988

MARK: HIGH SIERRA

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78234819  
REGISTRATION NUMBER: 2819984

FILING DATE: 04/07/2003  
ISSUE DATE: 03/02/2004

MARK: HIGH SIERRA

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75224641  
REGISTRATION NUMBER: 2121733

FILING DATE: 01/14/1997  
ISSUE DATE: 12/16/1997

MARK: HILLARD & HANSON

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75231115  
REGISTRATION NUMBER: 2121787

FILING DATE: 01/16/1997  
ISSUE DATE: 12/16/1997

MARK: HILLARD & HANSON

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78163930  
REGISTRATION NUMBER: 2828600

FILING DATE: 09/13/2002  
ISSUE DATE: 03/30/2004

MARK: HILLARD & HANSON

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73460859  
REGISTRATION NUMBER: 1312435

FILING DATE: 01/16/1984  
ISSUE DATE: 01/01/1985

MARK: JUNIOR CONNECTION

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 74652796  
REGISTRATION NUMBER: 2133640

FILING DATE: 03/29/1995  
ISSUE DATE: 02/03/1998

MARK: LEFT COAST

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76412161  
REGISTRATION NUMBER: 2706820

FILING DATE: 05/22/2002  
ISSUE DATE: 04/15/2003

MARK: LOCAL HERO

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73080804  
REGISTRATION NUMBER: 1063553

FILING DATE: 03/19/1976  
ISSUE DATE: 04/12/1977

MARK: MERVYN'S

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73080805  
REGISTRATION NUMBER: 1068170

FILING DATE: 03/19/1976  
ISSUE DATE: 06/21/1977

MARK: MERVYN'S

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 74600830  
REGISTRATION NUMBER: 1946614

FILING DATE: 11/21/1994  
ISSUE DATE: 01/09/1996

MARK: MERVYN'S

DRAWING TYPE: STYLIZED WORDS, LETTERS, OR NUMBERS

APPLICATION NUMBER: 74622017  
REGISTRATION NUMBER: 2005153

FILING DATE: 01/17/1995  
ISSUE DATE: 10/01/1996

MARK: MERVYN'S CALIFORNIA

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 78204338  
REGISTRATION NUMBER: 2786644

FILING DATE: 01/17/2003  
ISSUE DATE: 11/25/2003

MARK: MERVYN'S COMMUNITY CLOSET  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75156160  
REGISTRATION NUMBER: 2119297

FILING DATE: 08/23/1996  
ISSUE DATE: 12/09/1997

MARK: MERVYN'S UNIVERSITY  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76394563  
REGISTRATION NUMBER: 2669103

FILING DATE: 03/28/2002  
ISSUE DATE: 12/31/2002

MARK: PARTNERS  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73480412  
REGISTRATION NUMBER: 1363547

FILING DATE: 05/14/1984  
ISSUE DATE: 10/01/1985

MARK: PLAYFUL PALS  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76387393  
REGISTRATION NUMBER: 2672095

FILING DATE: 03/27/2002  
ISSUE DATE: 01/07/2003

MARK: PRIVATE LUXURIES  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 76335681  
REGISTRATION NUMBER: 2598012

FILING DATE: 11/08/2001  
ISSUE DATE: 07/23/2002

MARK: SPROCKETS  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 75981911  
REGISTRATION NUMBER: 2611384

FILING DATE: 10/15/2001  
ISSUE DATE: 08/27/2002

MARK: SPROCKETS  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73464681  
REGISTRATION NUMBER: 1319523

FILING DATE: 02/08/1984  
ISSUE DATE: 02/12/1985

MARK: TJW  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73564071  
REGISTRATION NUMBER: 1394925

FILING DATE: 10/21/1985  
ISSUE DATE: 05/27/1986

MARK: TOUCH OF LUXURY  
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

003054/0486 PAGE 8

APPLICATION NUMBER: 73623113  
REGISTRATION NUMBER: 1436485

FILING DATE: 09/30/1986  
ISSUE DATE: 04/14/1987

MARK: TOUCH OF LUXURY

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

APPLICATION NUMBER: 73832962  
REGISTRATION NUMBER: 1596584

FILING DATE: 10/23/1989  
ISSUE DATE: 05/15/1990

MARK: WINDRIDGE

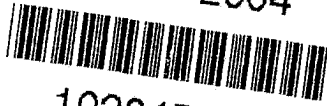
DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

MARCUS KIRK, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

9.27.04

09-27-2004

RECORDATION  
TRAD



102845321

9-27-04

To the Director of the U. S. Patent and Trademark Office: Please receive this document at the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):  
Mervyn's Brands, LLC

Individual(s)       Association  
 General Partnership       Limited Partnership  
 Corporation-State  
 Other Limited Liability Company

Citizenship (see guidelines) Minnesota

Execution Date(s) 9/2/04

Additional names of conveying parties attached?  Yes  No

2. Name and address of receiving party(ies)  Yes  
 No

Additional names, addresses, or citizenship attached?  Yes  No

Name: Congress Financial Corporation (Western),  
as Agent

Street Address: 251 South Lake Avenue, Suite 900  
City: Pasadena  
State: California  
Country: USA Zip: 91101

Association      Citizenship \_\_\_\_\_  
 General Partnership      Citizenship \_\_\_\_\_  
 Limited Partnership      Citizenship \_\_\_\_\_  
 Corporation      Citizenship California  
 Other      Citizenship \_\_\_\_\_

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)

3. Nature of conveyance:

Assignment       Merger  
 Security Agreement       Change of Name  
 Other \_\_\_\_\_

4. Application number(s) or registration number(s) and identification or description of the Trademark

A. Trademark Application No.(s)  
See Schedule A attached hereto.

B. Trademark Registration No.(s)  
See Schedule A attached hereto.

Additional sheet(s) attached?  Yes  No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

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

Name: Tracey D. Bennett

Internal Address: c/o Otterbourg, Steindler, Houston & Rosen, P.C.

Street Address: 230 Park Avenue

City: New York

State: New York Zip: 10169

Phone Number: 212-661-9100

Fax Number: 212-682-6104

Email Address: tbennett@oshr.com

6. Total number of applications and registrations involved: 57

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 1,440.00

Authorized to be charged by credit card  
 Authorized to be charged to deposit account  
 Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number \_\_\_\_\_

Authorized User Name \_\_\_\_\_

9. Signature: Tracey D. Bennett 9/24/04  
Signature Date

Tracey D. Bennett  
Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 24

RECEIVED  
SEP 27 PM 3:36  
ASSIGNMENTS DIV

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

09/28/2004 6TGM11 00000004 1354125

01 FC:8521 40.00 OP  
02 FC:8522 1400.00 OP

SCHEDULE A  
TO  
TRADEMARK COVER SHEET

Trademarks and Trademark Applications

U.S. Federal Registrations

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
BAKER, HART & STUART	1,354,125	8/13/85
BABY SPROCKETS DESIGN (Image of dog)	2,854,824	6/15/04
CAMBRIA	2,557,350	4/2/02
CARESS	1,460,966	10/13/87
CARESS	1,844,485	7/12/94
CASCADE BLUES	1,334,429	5/7/85
CASCADE BLUES	1,489,460	5/24/88
CASCADE BLUES	2,001,011	9/17/96
CELEBRATION	1,442,140	6/9/87
CHEETAH	1,262,449	12/27/83
CHEETAH	1,438,104	4/28/87
CHEETAH	2,669,086	12/31/02
COLOR CIRCUIT	2,320,990	2/22/00
DESIGN ONLY (CURVED LINES)	2,116,264	11/25/97
DIAMONDSTAR*	1,312,258	1/1/85
E GIRL	2,381,884	8/29/00
ELLEMENNO	2,135,128	2/10/98
EXTEND THE CHEER, PAY NEXT YEAR	2,599,650	7/23/02
FRENCH LAUNDRY	2,570,917	5/21/02



<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
GALLERIA	1,070,269	7/26/77
HIGH SIERRA	1,344,538	11/29/82
HIGH SIERRA	1,475,977	2/9/88
HIGH SIERRA	2,819,984	3/2/04
HILLARD & HANSON	2,121,733	12/16/97
HILLARD & HANSON	2,121,787	12/16/97
HILLARD & HANSON	2,828,600	3/30/04
JUNIOR CONNECTION	1,312,435	1/1/85
LEFT COAST	2,133,640	2/3/98
LOCAL HERO	2,706,820	4/15/03
MERVYN'S	1,063,553	4/12/77
MERVYN'S	1,068,170	6/21/77
MERVYN'S AND DESIGN	1,946,614	1/9/96
MERVYN'S CALIFORNIA	2,005,153	10/1/96
MERVYN'S COMMUNITY CLOSET	2,786,644	11/25/03
MERVYN'S UNIVERSITY	2,119,297	12/9/97
PARTNERS	2,669,103	12/31/02
PLAYFUL PALS	1,363,547	2/5/91
PRIVATE LUXURIES	2,672,095	1/17/03
SPROCKETS	2,598,012	7/23/02
SPROCKETS	2,611,384	8/27/02
TJW	1,319,523	2/12/85
TOUCH OF LUXURY	1,394,925	5/27/56
TOUCH OF LUXURY	1,436,485	4/14/92

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
WINDRIDGE	1,596,584	6/22/99

U.S. Federal Applications

<u>Trademark Application</u>	<u>Application Date</u>	<u>Application/Serial No.</u>
BABY SPROCKETS	76/512,750	9/25/03
BIG REWARDS	78/203,564	1/15/03
COWBOYS & ANGELS	78/091,522	11/2/02
DIAMONDSTAR*	78/303,594	9/22/03
FANCY FLING	78/388422	3/22/04
FRENCH LAUNDRY	78/146,594	7/23/02
FRENCH LAUNDRY	78/146,592	7/23/02
HILLARD & HANSON	78/420,495	5/24/04
PINKIE'S PALACE	78/312,626	10/13/03
SIERRA HOME COLLECTIONS	78/264,325	6/19/03
SPROCKETS	76/512,758	5/8/03
SPROCKETS DESIGN	76/512,765	5/8/03
VINTAGE LUXE**	78/165,640	9/19/02

TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

THIS TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT ("Agreement"), dated September 2, 2004, is by and between MERVYN'S BRANDS, LLC, a Minnesota limited liability company ("Debtor"), and CONGRESS FINANCIAL CORPORATION (WESTERN), a California corporation, in its capacity as agent (together with its successors and assigns, "Secured Party"), pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lenders.

WITNESSETH:

WHEREAS, Debtor has adopted, used and/or is using, and is the owner of the entire right, title, and interest in and to the trademarks, trade names, terms, designs and applications therefor described in Exhibit A hereto and made a part hereof;

WHEREAS, Debtor, Mervyn's LLC ("Borrower") have entered into or are about to enter into financing arrangements with Secured Party and the financial institutions which are parties to the Loan Agreement as lenders (each individually, a "Lender" and collectively, "Lenders") pursuant to which Lenders (or Secured Party on behalf of Lenders) may make loans and advances and provide other financial accommodations to Debtor as set forth in the Loan and Security Agreement, dated of even date herewith, by and among Debtor, Borrower, Secured Party and Lenders (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), and other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto, including, but not limited to, the Guarantee (as defined below) this Agreement (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements");

WHEREAS, Debtor has absolutely and unconditionally guaranteed the payment and performance of all now existing and hereafter arising obligations, liabilities and indebtedness of Borrower to Secured Party as set forth in the Guarantee, dated of even date herewith, by Debtor in favor of Secured Party (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Guarantee"); and

WHEREAS, in order to induce Secured Party and Lenders to enter into the Loan Agreement and the other Financing Agreements and to make loans and advances and provide other financial accommodations to Borrower pursuant thereto, Debtor has agreed to grant to Secured Party certain collateral security as set forth herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby agrees as follows:

1. GRANT OF SECURITY INTEREST. As collateral security for the prompt performance, observance and indefeasible payment in full of all of the Obligations (as hereinafter defined), Debtor hereby grants to Secured Party a continuing security interest in and a general lien upon, and a conditional assignment of, the following (being collectively referred to herein as the "Collateral"): (a) all of Debtor's now existing or hereafter acquired right, title, and interest in and to: (i) all of Debtor's trademarks, trade names, trade styles and service marks and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office, or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country, including, without limitation, the trademarks, terms, designs and applications described in Exhibit A hereto, together with all rights and privileges arising under applicable law with respect to Debtor's use of any trademarks, trade names, trade styles and service marks, and all reissues, extensions, continuation and renewals thereof (all of the foregoing being collectively referred to herein as the "Trademarks"); and (ii) all prints and labels on which such trademarks, trade names, trade styles and service marks appear, have appeared or will appear, and all designs and general intangibles of a like nature; (b) the goodwill of the business symbolized by each of the Trademarks, including, without limitation, all customer lists and other records relating to the distribution of products or services bearing the Trademarks; (c) all present and future license and distribution agreements (subject to the rights of the licensees therein) pertaining to the Trademarks; (d) all income, fees, royalties and other payments at any time due or payable with respect thereto, including, without limitation, payments under all licenses at any time entered into in connection therewith; (e) the right to sue for past, present and future infringements thereof; (f) all rights corresponding thereto throughout the world; and (g) any and all other proceeds of any of the foregoing, including, without limitation, damages and payments or claims by Debtor against third parties for past or future infringement of the Trademarks.

2. OBLIGATIONS SECURED

The security interest, lien and other interests granted to Secured Party pursuant to this Agreement shall secure the prompt performance, observance and payment in full of any and all obligations, liabilities and indebtedness of every kind, nature and description owing by Debtor to Secured Party and/or any Lender and/or their respective successors and assigns, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether arising under the Guarantee, this Agreement, the Loan Agreement, the other Financing Agreements, or otherwise, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Loan Agreement or after the commencement of any case with respect to Debtor or Borrower under the United States Bankruptcy Code or any similar statute (including, without limitation, the payment of interest and other amounts which would accrue and become due but for the commencement of such case whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and however acquired by Secured Party or any Lender including, without limitation, any other obligations, liabilities and indebtedness that are set forth in the definition of Obligations in the Loan Agreement (all of the foregoing being collectively referred to herein as the "Obligations").

### 3. REPRESENTATIONS, WARRANTIES AND COVENANTS

Debtor hereby represents, warrants and covenants with and to Secured Party the following (all of such representations, warranties and covenants being continuing so long as any of the Obligations are outstanding):

(a) Debtor shall pay and perform all of the Obligations according to their terms.

(b) To the Debtor's knowledge, all of the existing Collateral is valid and subsisting in full force and effect. Debtor owns the sole, full and clear title to such Collateral, and the right and power to grant the security interest and conditional assignment granted hereunder. Debtor shall, at Debtor's expense, perform all acts and execute all documents necessary to maintain the existence of the Collateral, including, without limitation, the filing of any renewal affidavits and applications. The Collateral is not subject to any liens, claims, mortgages, assignments, licenses, security interests or encumbrances of any nature whatsoever, except: (i) the security interests granted hereunder and pursuant to the Loan Agreement, (ii) the security interests permitted under the Loan Agreement, and (iii) the licenses permitted under Section 3(e) below.

(c) Debtor shall not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license relating to the Collateral, or otherwise dispose of any of the Collateral, in each case without the prior written consent of Secured Party, except as otherwise permitted herein or in the Financing Agreements. Nothing in this Agreement shall be deemed a consent by Secured Party to any such action, except as such action is expressly permitted hereunder.

(d) Debtor shall, at Debtor's expense, promptly perform all acts and execute all documents requested at any time by Secured Party to evidence, perfect, maintain, record or enforce the security interest in and conditional assignment of or general lien upon the Collateral granted hereunder or to otherwise further the provisions of this Agreement. Debtor hereby authorizes Secured Party to execute and file one or more financing statements (or similar documents) with respect to the Collateral, signed only by Secured Party or as otherwise determined by Secured Party. Debtor further authorizes Secured Party to have this Agreement or any other similar security agreement filed with the Commissioner of Patents and Trademarks, CIPO or any other appropriate federal, state, provincial or government office.

(e) As of the date hereof, Debtor, to its knowledge, does not have any Trademarks, or pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those described in Exhibit A hereto and has not granted any licenses with respect thereto other than as set forth in Exhibit B hereto.

(f) Debtor shall, concurrently with the execution and delivery of this Agreement, execute and deliver to Secured Party five (5) originals of a Special Power of Attorney in the form of Exhibit C annexed hereto for the implementation of the assignment, sale or other disposition of the Collateral pursuant to Secured Party's exercise of the rights and remedies granted to Secured Party hereunder.

(g) Secured Party may, in its discretion, pay any amount or do any act which Debtor fails to pay or do as required hereunder or as requested by Secured Party to preserve, defend, protect, maintain, record or enforce the Obligations, the Collateral, or the security interest and conditional assignment or general lien granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, reasonable attorneys' fees and legal expenses. Debtor shall be liable to Secured Party for any such payment, which payment shall be deemed an advance by Secured Party to Debtor, shall be payable on demand together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement, and shall be part of the Obligations secured hereby.

(h) In the event Debtor shall file any application for the registration of a Trademark with the United States Patent and Trademark Office, or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, Debtor shall provide Secured Party with written notice of such action as soon as practicable but in no event later than thirty (30) days after such action. If, after the date hereof, Debtor shall (i) obtain any registered trademark or trade name, or apply for any such registration in the United States Patent and Trademark Office or in any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, or (ii) become the owner of any trademark registrations or applications for trademark registration used in the United States, any State thereof, any political subdivision thereof or in any other country, the provisions of Section 1 hereof shall automatically apply thereto. Upon the request of Secured Party, Debtor shall promptly execute and deliver to Secured Party any and all assignments, agreements, instruments, documents and such other papers as may be requested by Secured Party to evidence the security interest in and conditional assignment of or general lien upon such Trademark in favor of Secured Party.

(i) Debtor has not abandoned any of the Trademarks and Debtor will not do any act, nor omit to do any act, whereby the Trademarks may become abandoned, invalidated, unenforceable, avoided, or avoidable; provided, that, Debtor may, after written notice to Secured Party, abandon, cancel, not renew or otherwise not maintain a Trademark so long as (i) such Trademark is no longer used or useful in the business of Debtor or any of its affiliates or subsidiaries, (ii) such Trademark has not been used in the business of Debtor or any of its affiliates or subsidiaries for a period of six (6) consecutive months, (iii) such Trademark is not otherwise material to the business of Debtor or any of its affiliates or subsidiaries in any respect, (iv) such Trademark has little or no value, and (v) no Event of Default, or event, act or condition which with notice or passage of time or both would constitute an Event of Default, shall exist or have occurred as of such time. Debtor shall notify Secured Party promptly if it knows or has reason to know of any reason why any application, registration, or recording with respect to the Trademarks may become abandoned, canceled, invalidated, avoided, or avoidable.

(j) Debtor shall render any assistance, as Secured Party shall determine is necessary, to Secured Party in any proceeding before the United States Patent and Trademark Office any federal, state court, or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, to maintain such application and registration of the Trademarks as Debtor's exclusive property and to protect Secured Party's interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings.

(k) To Debtor's best knowledge no material infringement or unauthorized use presently is being made of any of the Trademarks that would adversely affect in any material respect the fair market value of the Collateral or the benefits of this Agreement granted to Secured Party, including, without limitation, the validity, priority or perfection of the security interest granted herein or the remedies of Secured Party hereunder. Debtor shall promptly notify Secured Party if Debtor (or any affiliate or subsidiary thereof) learns of any use by any person of any term or design which infringes on any Trademark or is likely to cause confusion with any Trademark. If requested by Secured Party, Debtor, at Debtor's expense, shall join with Secured Party in such action as Secured Party, in Secured Party's discretion, may deem advisable for the protection of Secured Party's interest in and to the Trademarks.

(l) Debtor assumes all responsibility and liability arising from the use of the Trademarks and Debtor hereby indemnifies and holds Secured Party and Lenders harmless from and against any claim, suit, loss, damage, or expense (including reasonable attorneys' fees and legal expenses) arising out of any alleged defect in any product manufactured, promoted, or sold by Debtor (or any affiliate or subsidiary thereof) in connection with any Trademark or out of the manufacture, promotion, labeling, sale or advertisement of any such product by Debtor (or any affiliate or subsidiary thereof). The foregoing indemnity shall survive the payment of the Obligations, the termination of this Agreement and the termination or non-renewal of the Loan Agreement.

(m) Debtor shall promptly pay Secured Party and Lenders for any and all expenditures made by Secured Party or any Lender pursuant to the provisions of this Agreement or for the defense, protection or enforcement of the Obligations, the Collateral, or the security interests and conditional assignment or general lien granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, travel expenses, and reasonable attorneys' fees and legal expenses. Such expenditures shall be payable on demand, together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement, and shall be part of the Obligations secured hereby.

#### 4. EVENTS OF DEFAULT.

The occurrence or existence of any Event of Default under the Loan Agreement is referred to herein individually as an "Event of Default", and collectively as "Events of Default".

#### 5. RIGHTS AND REMEDIES

At any time an Event of Default exists or has occurred and is continuing, in addition to all other rights and remedies of Secured Party, whether provided under this Agreement, the Loan Agreement, any of the other Financing Agreements, applicable law or otherwise, Secured Party shall have the following rights and remedies which may be exercised without notice to, or consent by, Debtor except as such notice or consent is expressly provided for hereunder:

(a) Secured Party may require that neither Debtor nor any affiliate or subsidiary of Debtor make any use of the Trademarks or any marks similar thereto for any purpose whatsoever. Secured Party may make use of any Trademarks for the sale of goods, completion of work-in-process or rendering of services or otherwise in connection with enforcing any other

security interest granted to Secured Party by Debtor or any subsidiary or affiliate of Debtor or for such other reason as Secured Party may determine.

(b) Secured Party may grant such license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner, as Secured Party shall in its discretion deem appropriate. Such license or licenses may be general, special or otherwise, and may be granted on an exclusive or non-exclusive basis throughout all or any part of the United States of America, its territories and possessions, and all foreign countries.

(c) Without limiting the generality of Section 10.2 of the Loan Agreement, Secured Party may assign, sell or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations except that if notice to Debtor of intended disposition of Collateral is required by law, the giving of ten (10) days prior written notice to Debtor of any proposed disposition shall be deemed reasonable notice thereof and Debtor waives any other notice with respect thereto. Secured Party shall have the power to buy the Collateral or any part thereof, and Secured Party shall also have the power to execute assurances and perform all other acts which Secured Party may, in its discretion, deem appropriate or proper to complete such assignment, sale, or disposition. In any such event, Debtor shall be liable for any deficiency.

(d) In addition to the foregoing, in order to implement the assignment, sale, or other disposition of any of the Collateral pursuant to the terms hereof, after the occurrence and during the continuance of any Event of Default Secured Party may at any time execute and deliver on behalf of Debtor, pursuant to the authority granted in the Powers of Attorney described in Section 3(f) hereof, one or more instruments of assignment of the Trademarks (or any application, registration, or recording relating thereto), in form suitable for filing, recording, or registration. Debtor agrees to pay Secured Party on demand all costs incurred in any such transfer of the Collateral, including, but not limited to, any taxes, fees, and reasonable attorneys' fees and legal expenses. Debtor agrees that Secured Party and Lenders have no obligation to preserve rights to the Trademarks against any other parties.

(e) Secured Party may first apply the proceeds actually received from any such license, assignment, sale or other disposition of any of the Collateral to the costs and expenses thereof, including, without limitation, reasonable attorneys' fees and all legal, travel and other expenses which may be incurred by Secured Party. Thereafter, Secured Party may apply any remaining proceeds to such of the Obligations in accordance with the terms of the Loan Agreement. Debtor shall remain liable to Secured Party for any of the Obligations remaining unpaid after the application of such proceeds, and Debtor shall pay Secured Party on demand any such unpaid amount, together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement.

(f) Debtor shall supply to Secured Party or to Secured Party's designee, Debtor's knowledge and expertise relating to the manufacture, sale and distribution of the products and services bearing the Trademarks and Debtor's customer lists and other records relating to the Trademarks and the distribution thereof.

(g) Nothing contained herein shall be construed as requiring Secured Party or any Lender to take any such action at any time. All of Secured Party's and Lenders' rights and remedies, whether provided under this Agreement, the other Financing Agreements, applicable



law, or otherwise, shall be cumulative and none is exclusive. Such rights and remedies may be enforced alternatively, successively, or concurrently.

6. JURY TRIAL WAIVER; OTHER WAIVERS  
AND CONSENTS; GOVERNING LAW

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York without regard to principals of conflicts of laws, but excluding any rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

(b) Debtor and Secured Party irrevocably consent and submit to the non-exclusive jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York, whichever Secured Party may elect, and waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Financing Agreements or in any way connected or related or incidental to the dealings of Debtor and Secured Party or any Lender in respect of this Agreement or the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or thereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Secured Party shall have the right to bring any action or proceeding against Debtor or its property in the courts of any other jurisdiction which Secured Party deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against Debtor or its property).

(c) Debtor hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Secured Party's option, by service upon Debtor in any other manner provided under the rules of any such courts.

(d) DEBTOR AND SECURED PARTY EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF DEBTOR AND SECURED PARTY OR ANY LENDER IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. DEBTOR AND SECURED PARTY EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT DEBTOR OR SECURED PARTY MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF DEBTOR AND SECURED PARTY TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Notwithstanding any other provision contained herein, Secured Party and Lenders shall not have any liability to Debtor (whether in tort, contract, equity or otherwise) for losses suffered by Debtor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Secured Party or such Lender that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. In any such litigation, Secured Party and Lenders shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement, the Loan Agreement and the other Financing Agreements.

## 7. MISCELLANEOUS

(a) All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

If to Debtor:                    Mervyn's Brands, LLC  
22301 Foothill Boulevard  
Hayward, California 94541  
Attention: Chief Executive Officer  
Telephone No.: 510-727-5123  
Telecopier No.: 510-727-5125

with a copy to:                Mervyn's Holdings, LLC  
c/o Sun Capital Partners Group, Inc.  
5200 Town Center Circle, Suite 470  
Boca Raton, Florida 33486  
Attention: Mr. Marc J. Leder,  
Mr. Rodger R. Krouse and  
C. Deryl Couch, Esq.  
Telephone No.: 561-394-0550  
Telecopier No.: 561-394-0540

with a copy to:                Kirkland & Ellis LLP  
200 E. Randolph Drive  
Chicago, Illinois 60601  
Attention: Douglas Gessner, Esq.  
Telephone No.: 312-861-2301  
Telecopy No.: 312-861-2200

If to Secured Party: Congress Financial Corporation (Western), as Agent  
251 South Lake Avenue  
Suite 900  
Pasadena, California 91101  
Attention: Portfolio Manager - Mervyn's  
Telephone No.: 626-304-4900  
Telecopier No.: 626-304-4969

(b) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural. All references to Debtor, Secured Party, Borrower and any Lender pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns. The words "hereof," "herein," "hereunder," "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 7(e) hereof. All references to the term "Person" or "person" herein shall mean any individual, sole proprietorship, partnership, corporation (including, without limitation, any corporation which elects subchapter S status under the Internal Revenue Code of 1986, as amended), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock company, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

(c) This Agreement, the Loan Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon Debtor and its successors and assigns and inure to the benefit of and be enforceable by Secured Party, Lenders and their respective successors and assigns.

(d) If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

(e) Neither this Agreement nor any provision hereof shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement signed by an authorized officer of Secured Party. Secured Party and Lenders shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of Secured Party. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Secured Party or any Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Secured Party or such Lender would otherwise have on any future occasion, whether similar in kind or otherwise.

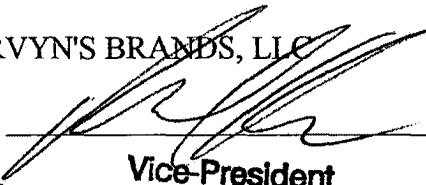
(f) This Agreement (i) may be executed in separate counterparts, each of which taken together shall constitute one and the same instrument and (ii) may be executed and delivered by

telecopier with the same force and effect as if it were as a manually executed and delivered counterpart.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the day and year first above written.

MERVYN'S BRANDS, LLC

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

Title: **Vice-President** \_\_\_\_\_

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent

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

Title: \_\_\_\_\_

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the day and year first above written.

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent

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

Title: **Sr. Vice President** \_\_\_\_\_

STATE OF New York )  
COUNTY OF New York ) ss.:

On the 27<sup>th</sup> day of August, 2004, before me personally came Michael Ross, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the Vice President of MERVYN'S BRANDS, LLC, the limited liability company that executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

CONCETTA BOLOGNA  
Notary Public, State of New York  
No. 01BO6068262  
Qualified in Kings County  
Commission Expires Dec. 31, 2005

Concetta Bologna  
Notary Public

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

On this \_\_\_ day of \_\_\_\_\_, 2004, before me personally came \_\_\_\_\_, to me known, who, being duly sworn, did depose and say, that he/she is the \_\_\_\_\_ of CONGRESS FINANCIAL CORPORATION (WESTERN), the corporation described in and that executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_, 2004, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the \_\_\_\_\_ of MERVYN'S BRANDS, LLC, the limited liability company that executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On this 27<sup>th</sup> day of AUGUST, 2004, before me personally came TIFFANY LIFF, to me known, who, being duly sworn, did depose and say, that ~~he~~/she is the S.V.P. of CONGRESS FINANCIAL CORPORATION (WESTERN), the corporation described in and that executed the foregoing instrument; and that ~~he~~/she signed ~~his~~/her name thereto by order of the Board of Directors of said corporation.

Tracey D. Bennett

Notary Public

TRACEY D. BENNETT  
Notary Public, State of New York  
No. 01BE6022715  
Qualified in Queens County  
Commission Expires 4/15/2007



EXHIBIT A  
TO  
TRADEMARK COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT

Trademarks and Trademark Applications

U.S. Federal Registrations

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
BAKER, HART & STUART	1,354,125	8/13/85
BABY SPROCKETS DESIGN (Image of dog)	2,854,824	6/15/04
CAMBRIA	2,557,350	4/2/02
CARESS	1,460,966	10/13/87
CARESS	1,844,485	7/12/94
CASCADE BLUES	1,334,429	5/7/85
CASCADE BLUES	1,489,460	5/24/88
CASCADE BLUES	2,001,011	9/17/96
CELEBRATION	1,442,140	6/9/87
CHEETAH	1,262,449	12/27/83
CHEETAH	1,438,104	4/28/87
CHEETAH	2,669,086	12/31/02
COLOR CIRCUIT	2,320,990	2/22/00
DESIGN ONLY (CURVED LINES)	2,116,264	11/25/97
DIAMONDSTAR*	1,312,258	1/1/85
E GIRL	2,381,884	8/29/00
ELLEMENNO	2,135,128	2/10/98
EXTEND THE CHEER, PAY NEXT YEAR	2,599,650	7/23/02

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
FRENCH LAUNDRY	2,570,917	5/21/02
GALLERIA	1,070,269	7/26/77
HIGH SIERRA	1,344,538	11/29/82
HIGH SIERRA	1,475,977	2/9/88
HIGH SIERRA	2,819,984	3/2/04
HILLARD & HANSON	2,121,733	12/16/97
HILLARD & HANSON	2,121,787	12/16/97
HILLARD & HANSON	2,828,600	3/30/04
JUNIOR CONNECTION	1,312,435	1/1/85
LEFT COAST	2,133,640	2/3/98
LOCAL HERO	2,706,820	4/15/03
MERVYN'S	1,063,553	4/12/77
MERVYN'S	1,068,170	6/21/77
MERVYN'S AND DESIGN	1,946,614	1/9/96
MERVYN'S CALIFORNIA	2,005,153	10/1/96
MERVYN'S COMMUNITY CLOSET	2,786,644	11/25/03
MERVYN'S UNIVERSITY	2,119,297	12/9/97
PARTNERS	2,669,103	12/31/02
PLAYFUL PALS	1,363,547	2/5/91
PRIVATE LUXURIES	2,672,095	1/17/03
SPROCKETS	2,598,012	7/23/02
SPROCKETS	2,611,384	8/27/02
TJW	1,319,523	2/12/85

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
TOUCH OF LUXURY	1,394,925	5/27/56
TOUCH OF LUXURY	1,436,485	4/14/92
WINDRIDGE	1,596,584	6/22/99

U.S. Federal Applications

<u>Trademark Application</u>	<u>Application Date</u>	<u>Application/Serial No.</u>
BABY SPROCKETS	76/512,750	9/25/03
BIG REWARDS	78/203,564	1/15/03
COWBOYS & ANGELS	78/091,522	11/2/02
DIAMONSTAR*	78/303,594	9/22/03
FANCY FLING	78/388422	3/22/04
FRENCH LAUNDRY	78/146,594	7/23/02
FRENCH LAUNDRY	78/146,592	7/23/02
HILLARD & HANSON	78/420,495	5/24/04
PINKIE'S PALACE	78/312,626	10/13/03
SIERRA HOME COLLECTIONS	78/264,325	6/19/03
SPROCKETS	76/512,758	5/8/03
SPROCKETS DESIGN	76/512,765	5/8/03
VINTAGE LUXE**	78/165,640	9/19/02

\*This application is currently suspended.

\*\*This application is currently abandoned; however, Mervyn's Brands, LLC is attempting to reinstate the application.

Foreign Applications

<u>Country</u>	<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
MEXICO	MERVYN'S	607,321	6/26/03
CANADA	MERVYN'S	1,174,171	4/16/03

EXHIBIT B  
TO  
TRADEMARK COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT

Licenses

Short Term License Agreement, dated August 28, 2004, between Target Corporation and Mervyn's Brands, LLC.

Sprocket-High Sierra License Agreement, dated July 31, 2004, between the May Department Stores Company and Mervyn's Brands, LLC.

AMC-Boscor's License Agreement, dated July 27, 2004, between Target Brands, Inc. and Associated Merchandising Corporation, as assigned to Mervyn's Brands, LLC.

License Agreement, dated August ~~28~~, 2004, between Mervyn's LLC and Mervyn's Brands, LLC.

Debtor has also granted non-exclusive, implied licenses to its contractors and franchisees.



STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_, 2004, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the \_\_\_\_\_ of MERVYN'S BRANDS, LLC, the limited liability company that executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

\_\_\_\_\_

Notary Public

SPECIAL POWER OF ATTORNEY

STATE OF ILLINOIS )  
 ) ss.:  
COUNTY OF COOK )

KNOW ALL MEN BY THESE PRESENTS, that MERVYN'S BRANDS, LLC ("Debtor"), having an office at 22301 Foothill Boulevard, Hayward, California 95541, hereby appoints and constitutes, CONGRESS FINANCIAL CORPORATION (WESTERN), as Agent ("Secured Party"), and each of its officers, its true and lawful attorney, with full power of substitution and with full power and authority to perform the following acts on behalf of Debtor:

1. Execution and delivery of any and all agreements, documents, instrument of assignment, or other papers which Secured Party, in its discretion, deems necessary or advisable for the purpose of assigning, selling, or otherwise disposing of all right, title, and interest of Debtor in and to any trademarks and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to the foregoing.

2. Execution and delivery of any and all documents, statements, certificates or other papers which Secured Party, in its discretion, deems necessary or advisable to further the purposes described in Subparagraph 1 hereof.

This Power of Attorney is made pursuant to a Trademark Collateral Assignment and Security Agreement, dated of even date herewith, between Debtor and Secured Party (the "Security Agreement") and is subject to the terms and provisions thereof. This Power of Attorney, being coupled with an interest, is irrevocable until all "Obligations", as such term is defined in the Security Agreement, are paid in full and the Security Agreement is terminated in writing by Secured Party.

Dated: September 2, 2004

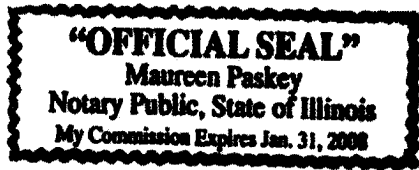
MERVYN'S BRANDS, LLC  
By: \_\_\_\_\_  
Title: Vice-President

STATE OF Illinois )  
 ) ss.:  
COUNTY OF COOK )

On the 1<sup>st</sup> day of September, 2004, before me personally came Michael KAD, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the Vice President of MERVYN'S BRANDS, LLC, the limited liability company that executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

Maureen Paskey

Notary Public







**UNITED STATES PATENT AND TRADEMARK OFFICE**

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

MARCH 23, 2005

PTAS  
OTTERBOURG, STEINDLER, HOUSTON ET AL  
TRACEY D. BENNETT  
230 PARK AVENUE  
NEW YORK, NY 10169



\*102845358A\*

UNITED STATES PATENT AND TRADEMARK OFFICE  
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 09/27/2004

REEL/FRAME: 015810/0426

NUMBER OF PAGES: 19

BRIEF: SECURITY INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

MERVYN'S BRANDS, LLC

DOC DATE: 09/02/2004

ASSIGNEE:

CONGRESS FINANCIAL CORPORATION  
(WESTERN) AS AGENT  
251 SOUTH LAKE AVENUE  
SUITE 900  
PASADENA, CALIFORNIA 91101

SERIAL NUMBER: 29035057

FILING DATE:

PATENT NUMBER: D366546

ISSUE DATE: 01/23/1996

TITLE: SHOPPING STROLLER/CART

015810/0426 PAGE 2

VIOLET MCCOY, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

09-27-2004

Form PTO-1595 (Rev. 06/04)  
OMB No. 0651-0027 (exp. 6/30/2005)

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



REC-102845358  
**PATENTS ONLY**

9-27-04

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

9-27-04

**1. Name of conveying party(ies)/Execution Date(s):**

Mervyn's Brands, LLC

Execution Date(s) 9/2/04

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

**3. Nature of conveyance:**

- Assignment
- Merger
- Security Agreement
- Change of Name
- Government Interest Assignment
- Executive Order 9424, Confirmatory License
- Other \_\_\_\_\_

**2. Name and address of receiving party(ies)**

Name: Congress Financial Corporation (Western), as Agent

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

Street Address: 251 South Lake Avenue

Suite 900

City: Pasadena

State: California

Country: USA

Zip: 91101

Additional name(s) & address(es) attached?  Yes  No

**4. Application or patent number(s):**

This document is being filed together with a new application.

A. Patent Application No.(s)

None.

B. Patent No.(s)

D366,546

Additional numbers attached?  Yes  No

RECEIVED OPR  
2004 SEP 27 PM 3:36  
ASSIGNMENTS DIV

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

Name: Tracey D. Bennett

Internal Address: Otterbourg, Steindler, Houston  
& Rosen, P.C.

Street Address: 230 Park Avenue

City: New York

State: New York

Zip: 10169

Phone Number: 212-661-9100

Fax Number: 212-682-6104

Email Address: tbennett@gsr.com

**6. Total number of applications and patents involved:**

1

**7. Total fee (37 CFR 1.21(h) & 3.41) \$ 40.00**

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed
- None required (government interest not affecting title)

**8. Payment Information**

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number \_\_\_\_\_

Authorized User Name \_\_\_\_\_

**9. Signature:**

*Tracey D. Bennett*  
Signature

9/24/04  
Date

Tracey D. Bennett

Name of Person Signing

Total number of pages including cover sheet, attachments, and documents:

19

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450

09/28/2004 6T0N11 00000003 0366546

01 FC:8021

40.00 DP

PATENT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

THIS PATENT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT ("Agreement"), dated September 2, 2004, is by and between MERVYN'S BRANDS, LLC, a Minnesota limited liability company ("Debtor"), and CONGRESS FINANCIAL CORPORATION (WESTERN), a California corporation, in its capacity as agent (together with its successors and assigns, "Secured Party"), pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lenders.

W I T N E S S E T H :

WHEREAS, Debtor has adopted, used and/or is using, and is the owner of the entire right, title, and interest in and to the patents and applications therefor described in Exhibit A hereto and made a part hereof;

WHEREAS, Debtor and Mervyn's LLC ("Borrower") have entered into or are about to enter into financing arrangements with Secured Party and the financial institutions which are parties to the Loan Agreement as lenders (each individually, a "Lender" and collectively, "Lenders") pursuant to which Lenders (or Secured Party on behalf of Lenders) may make loans and advances and provide other financial accommodations to Debtor as set forth in the Loan and Security Agreement, dated of even date herewith, by and among Debtor, Borrower, Secured Party and Lenders (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), and other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto, including, but not limited to, the Guarantee (as defined below) this Agreement (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements");

WHEREAS, Debtor has absolutely and unconditionally guaranteed the payment and performance of all now existing and hereafter arising obligations, liabilities and indebtedness of Borrower to Secured Party as set forth in the Guarantee, dated of even date herewith, by Debtor in favor of Secured Party (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Guarantee"); and

WHEREAS, in order to induce Secured Party and Lenders to enter into the Loan Agreement and the other Financing Agreements and to make loans and advances and provide other financial accommodations to Borrower pursuant thereto, Debtor has agreed to grant to Secured Party certain collateral security as set forth herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby agrees as follows:

1. GRANT OF SECURITY INTEREST. As collateral security for the prompt performance, observance and indefeasible payment in full of all of the Obligations (as hereinafter defined), Debtor hereby grants to Secured Party a continuing security interest in and a general lien upon, and a conditional assignment of, the following (being collectively referred to herein as the "Collateral"): (a) all of Debtor's now existing or hereafter acquired right, title, and interest in and to all of Debtor's interest in any patents and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country, including, without limitation, those patents applications, registrations and recordings described in Exhibit A hereto, together with all rights and privileges arising under applicable law with respect to Debtor's use of any patents and all reissues, divisions, continuations and renewals thereof (all of the foregoing being collectively referred to herein as the "Patents"); (b) all present and future inventions and improvements described and claimed therein; (c) all present and future license and distribution agreements (subject to the rights of the licensors therein) pertaining to the Patents; (d) all income, fees, royalties and other payments at any time due or payable with respect thereto, including, without limitation, payments under all licenses at any time entered into in connection therewith; (e) the right to sue for past, present and future infringements thereof; (f) all rights corresponding thereto throughout the world; and (g) any and all other proceeds of any of the foregoing, including, without limitation, damages and payments or claims by Debtor against third parties for past or future infringement of the Patents.

2. OBLIGATIONS SECURED

The security interest, lien and other interests granted to Secured Party pursuant to this Agreement shall secure the prompt performance, observance and payment in full of any and all obligations, liabilities and indebtedness of every kind, nature and description owing by Debtor to Secured Party and/or any Lender and/or their respective successors and assigns, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether arising under the Guarantee, this Agreement, the Loan Agreement, the other Financing Agreements, or otherwise, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Loan Agreement or after the commencement of any case with respect to Debtor or Borrower under the United States Bankruptcy Code, or any similar statute (including, without limitation, the payment of interest and other amounts which would accrue and become due but for the commencement of such case whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and however acquired by Secured Party or any Lender including, without limitation, any other obligations, liabilities and indebtedness that are set forth in the definition of Obligations in the Loan Agreement (all of the foregoing being collectively referred to herein as the "Obligations").

3. REPRESENTATIONS, WARRANTIES AND COVENANTS

Debtor hereby represents, warrants and covenants with and to Secured Party the following (all of such representations, warranties and covenants being continuing so long as any of the Obligations are outstanding):

(a) Debtor shall pay and perform all of the Obligations according to their terms.

(b) To the Debtor's knowledge, all of the existing Collateral is valid and subsisting in full force and effect. Debtor owns the sole, full and clear title to such Collateral, and the right and power to grant the security interest and conditional assignment granted hereunder. Debtor shall, at Debtor's expense, perform all acts and execute all documents necessary to maintain the existence of the Collateral, including, without limitation, the filing of any renewal affidavits and applications. The Collateral is not subject to any liens, claims, mortgages, assignments, licenses, security interests or encumbrances of any nature whatsoever, except: (i) the security interests granted hereunder and pursuant to the Loan Agreement, (ii) the security interests permitted under the Loan Agreement, and (iii) the licenses permitted under Section 3(e) below.

(c) Debtor shall not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license relating to the Collateral, or otherwise dispose of any of the Collateral, in each case without the prior written consent of Secured Party, except as otherwise permitted herein or in the Financing Agreements. Nothing in this Agreement shall be deemed a consent by Secured Party to any such action, except as such action is expressly permitted hereunder.

(d) Debtor shall, at Debtor's expense, promptly perform all acts and execute all documents requested at any time by Secured Party to evidence, perfect, maintain, record or enforce the security interest in and conditional assignment of, or general lien upon the Collateral granted hereunder or to otherwise further the provisions of this Agreement. Debtor hereby authorizes Secured Party to execute and file one or more financing statements (or similar documents) with respect to the Collateral, signed only by Secured Party or as otherwise determined by Secured Party. Debtor further authorizes Secured Party to have this Agreement or any other similar security agreement filed with the Commissioner of Patents and Trademarks, CIPO or any other appropriate federal, state, provincial or government office.

(e) As of the date hereof, Debtor, to its knowledge, does not have any Patents registered, or pending applications, in the United States Patent and Trademark Office, or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those described in Exhibit A hereto and has not granted any licenses with respect thereto other than as set forth in Exhibit B hereto.

(f) Debtor shall, concurrently with the execution and delivery of this Agreement, execute and deliver to Secured Party five (5) originals of a Special Power of Attorney in the form of Exhibit C annexed hereto for the implementation of the assignment, sale or other disposition of the Collateral pursuant to Secured Party's exercise of the rights and remedies granted to Secured Party hereunder.

(g) Secured Party may, in its discretion, pay any amount or do any act which Debtor fails to pay or do as required hereunder or as requested by Secured Party to preserve, defend, protect, maintain, record or enforce the Obligations, the Collateral, or the security interest and conditional assignment or general lien granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, reasonable attorneys' fees and legal expenses. Debtor shall be liable to Secured Party for any such payment, which payment shall be deemed an advance by Secured Party to Debtor, shall be payable on demand together with interest at the rate

then applicable to the Obligations set forth in the Loan Agreement, and shall be part of the Obligations secured hereby.

(h) In the event Debtor shall file any application for the registration of a Patent with the United States Patent and Trademark Office, or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, Debtor shall provide Secured Party with written notice of such action as soon as practicable but in no event later than thirty (30) days after such action. If, after the date hereof, Debtor shall (i) obtain any patent, including any reissue, division, continuation, continuation-in-part, or extension of any patent, file any patent application, including any application for reissue or extension of any patent, or any divisional, continuation, or continuation-in-part application in the United States Patent and Trademark Office, or in any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, or (ii) become the owner of any patent or new patentable inventions used in the United States or Canada, any State or Province thereof, any political subdivision thereof or in any other country, the provisions of Section 1 hereof shall automatically apply thereto. Upon the request of Secured Party, Debtor shall promptly execute and deliver to Secured Party any and all assignments, agreements, instruments, documents and such other papers as may be requested by Secured Party to evidence the security interest in and conditional assignment of or general lien upon such Patents in favor of Secured Party.

(i) Debtor has not abandoned any of the Patents and Debtor will not do any act, nor omit to do any act, whereby the Patents may become abandoned, invalidated, unenforceable, avoided, or avoidable; provided, that, Debtor may, after written notice to Secured Party, abandon, cancel, not renew or otherwise not maintain a Patent so long as (i) such Patent is no longer used or useful in the business of Debtor or any of its affiliates or subsidiaries, (ii) such Patent has not been used in the business of Debtor or any of its affiliates or subsidiaries for a period of six (6) consecutive months, (iii) such Patent is not otherwise material to the business of Debtor or any of its affiliates or subsidiaries in any respect, (iv) such Patent has little or no value, and (v) no Event of Default, or event, act or condition which with notice or passage of time or both would constitute an Event of Default, shall exist or have occurred as of such time. Debtor shall notify Secured Party promptly if it knows or has reason to know of any reason why any application, registration, or recording with respect to the Patents may become abandoned, canceled, invalidated, avoided, or avoidable.

(j) Debtor shall render any assistance, as Secured Party shall determine is necessary, to Secured Party in any proceeding before the United States Patent and Trademark Office, any federal or state court, or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, to maintain such application and registration of the Patents as Debtor's exclusive property and to protect Secured Party's interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings.

(k) To Debtor's best knowledge no material infringement or unauthorized use presently is being made of any of the Patents that would adversely affect in any material respect the fair market value of the Patents or the benefits of this Agreement granted to Secured Party, including, without limitation the remedies of Secured Party hereunder. Debtor shall promptly notify Secured Party if Debtor (or any affiliate or subsidiary thereof) learns of any use by any person of any other process or product which infringes upon any Patent. If requested by Secured Party,

Debtor, at Debtor's expense, shall join with Secured Party in such action as Secured Party, in Secured Party's discretion, may deem advisable for the protection of Secured Party's interest in and to the Patents.

(l) Debtor assumes all responsibility and liability arising from the use of the Patents and Debtor hereby indemnifies and holds Secured Party and Lenders harmless from and against any claim, suit, loss, damage, or expense (including reasonable attorneys' fees and legal expenses) arising out of any alleged defect in any product manufactured, promoted, or sold by Debtor (or any affiliate or subsidiary thereof) in connection with any Patent or out of the manufacture, promotion, labeling, sale or advertisement of any such product by Debtor (or any affiliate or subsidiary thereof). The foregoing indemnity shall survive the payment of the Obligations, the termination of this Agreement and the termination or non-renewal of the Loan Agreement.

(m) Debtor shall promptly pay Secured Party and Lenders for any and all expenditures made by Secured Party or any Lender pursuant to the provisions of this Agreement or for the defense, protection or enforcement of the Obligations, the Collateral, or the security interests, general lien and conditional assignment granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, travel expenses, and reasonable attorneys' fees and legal expenses. Such expenditures shall be payable on demand, together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement, and shall be part of the Obligations secured hereby.

#### 4. EVENTS OF DEFAULT.

The occurrence or existence of any Event of Default under the Loan Agreement is referred to herein individually as an "Event of Default", and collectively as "Events of Default".

#### 5. RIGHTS AND REMEDIES

At any time an Event of Default exists or has occurred and is continuing, in addition to all other rights and remedies of Secured Party, whether provided under this Agreement, the Loan Agreement, any of the other Financing Agreements, applicable law or otherwise, Secured Party shall have the following rights and remedies which may be exercised without notice to, or consent by, Debtor except as such notice or consent is expressly provided for hereunder:

(a) Secured Party may require that neither Debtor nor any affiliate or subsidiary of Debtor make any use of the Patents for any purpose whatsoever. Secured Party may make use of any Patents for the sale of goods, completion of work-in-process or rendering of services or otherwise in connection with enforcing any other security interest granted to Secured Party by Debtor or any subsidiary or affiliate of Debtor or for such other reason as Secured Party may determine.

(b) Secured Party may grant such license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner, as Secured Party shall in its discretion deem appropriate. Such license or licenses may be general, special or otherwise, and may be granted on an exclusive or non-exclusive basis throughout all or any part of the United States of America, its territories and possessions and all foreign countries.



(c) Without limiting the generality of Section 10.2 of the Loan Agreement, Secured Party may assign, sell or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations except that if notice to Debtor of intended disposition of Collateral is required by law, the giving of ten (10) days prior written notice to Debtor of any proposed disposition shall be deemed reasonable notice thereof and Debtor waives any other notice with respect thereto. Secured Party shall have the power to buy the Collateral or any part thereof, and Secured Party shall also have the power to execute assurances and perform all other acts which Secured Party may, in its discretion, deem appropriate or proper to complete such assignment, sale, or disposition. In any such event, Debtor shall be liable for any deficiency.

(d) In addition to the foregoing, in order to implement the assignment, sale, or other disposition of any of the Collateral pursuant to the terms hereof, after the occurrence and during the continuance of any Event of Default Secured Party may at any time execute and deliver on behalf of Debtor, pursuant to the authority granted in the Powers of Attorney described in Section 3(f) hereof, one or more instruments of assignment of the Patents (or any application, registration, or recording relating thereto), in form suitable for filing, recording, or registration. Debtor agrees to pay Secured Party on demand all costs incurred in any such transfer of the Collateral, including, but not limited to, any taxes, fees, and reasonable attorneys' fees and legal expenses. Debtor agrees that Secured Party and Lenders have no obligation to preserve rights to the Patents against any other parties.

(e) Secured Party may first apply the proceeds actually received from any such license, assignment, sale or other disposition of any of the Collateral to the costs and expenses thereof, including, without limitation, reasonable attorneys' fees and all legal, travel and other expenses which may be incurred by Secured Party. Thereafter, Secured Party may apply any remaining proceeds to such of the Obligations in accordance with the terms of the Loan Agreement. Debtor shall remain liable to Secured Party for any of the Obligations remaining unpaid after the application of such proceeds, and Debtor shall pay Secured Party on demand any such unpaid amount, together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement.

(f) Debtor shall supply to Secured Party or to Secured Party's designee, Debtor's knowledge and expertise relating to the manufacture, sale and distribution of the products and services to which the Patents relate and Debtor's customer lists and other records relating to the Patents and the distribution thereof.

(g) Nothing contained herein shall be construed as requiring Secured Party or any Lender to take any such action at any time. All of Secured Party's and Lenders' rights and remedies, whether provided under this Agreement, the other Financing Agreements, applicable law, or otherwise, shall be cumulative and none is exclusive. Such rights and remedies may be enforced alternatively, successively, or concurrently.

6. JURY TRIAL WAIVER; OTHER WAIVERS  
AND CONSENTS; GOVERNING LAW

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State

of New York without regard to principals of conflicts of laws, but excluding any rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

(b) Debtor and Secured Party irrevocably consent and submit to the non-exclusive jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York, whichever Secured Party may elect, and waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Financing Agreements or in any way connected or related or incidental to the dealings of Debtor and Secured Party or any Lender in respect of this Agreement or the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or thereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Secured Party shall have the right to bring any action or proceeding against Debtor or its property in the courts of any other jurisdiction which Secured Party deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against Debtor or its property).

(c) Debtor hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Secured Party's option, by service upon Debtor in any other manner provided under the rules of any such courts.

(d) DEBTOR AND SECURED PARTY EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF DEBTOR AND SECURED PARTY OR ANY LENDER IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. DEBTOR AND SECURED PARTY EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT DEBTOR OR SECURED PARTY MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF DEBTOR AND SECURED PARTY TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Notwithstanding any other provision contained herein, Secured Party and Lenders shall not have any liability to Debtor (whether in tort, contract, equity or otherwise) for losses suffered by Debtor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Secured Party or such Lender that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. In any such litigation, Secured Party and Lenders shall be entitled to the benefit of the rebuttable presumption that it acted in good faith

and with the exercise of ordinary care in the performance by it of the terms of this Agreement, the Loan Agreement and the other Financing Agreements.

7. MISCELLANEOUS

(a) All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

If to Debtor:                   Mervyn's Brands, LLC  
22301 Foothill Boulevard  
Hayward, California 94541  
Attention: Chief Executive Officer  
Telephone No.: 510-727-5123  
Telecopier No.: 510-727-5125

with a copy to:               Mervyn's Holdings, LLC  
c/o Sun Capital Partners Group, Inc.  
5200 Town Center Circle, Suite 470  
Boca Raton, Florida 33486  
Attention: Mr. Marc J. Leder,  
Mr. Rodger R. Krouse and  
C. Deryl Couch, Esq.  
Telephone No.: 561-394-0550  
Telecopier No.: 561-394-0540

with a copy to:               Kirkland & Ellis LLP  
200 E. Randolph Drive  
Chicago, Illinois 60601  
Attention: Douglas Gessner, Esq.  
Telephone No.: 312-861-2301  
Telecopy No.: 312-861-2200

If to Secured Party: Congress Financial Corporation (Western), as Agent  
251 South Lake Avenue  
Suite 900  
Pasadena, California 91101  
Attention: Portfolio Manager - Mervyn's  
Telephone No.: 626-304-4900  
Telecopier No.: 626-304-4969

(b) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural. All references to Debtor, Secured Party, Borrower and any Lender pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns. The words "hereof," "herein," "hereunder," "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 7(e) hereof. All references to the term "Person" or "person" herein shall mean any individual, sole proprietorship, partnership, corporation (including, without limitation, any corporation which elects subchapter S status under the Internal Revenue Code of 1986, as amended), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock company, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

(c) This Agreement, the Loan Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon Debtor and its successors and assigns and inure to the benefit of and be enforceable by Secured Party, Lenders, and their respective successors and assigns.

(d) If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

(e) Neither this Agreement nor any provision hereof shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement signed by an authorized officer of Secured Party. Secured Party and Lenders shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of Secured Party. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Secured Party or any Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Secured Party or such Lender would otherwise have on any future occasion, whether similar in kind or otherwise.


(f) This Agreement (i) may be executed in separate counterparts, each of which taken together shall constitute one and the same instrument and (ii) may be executed and delivered by

telecopier with the same force and effect as if it were as a manually executed and delivered counterpart.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the day and year first above written.

MERVYN'S BRANDS, LLC

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

Title: Vice-President \_\_\_\_\_

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Collateral Agent

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

Title: \_\_\_\_\_

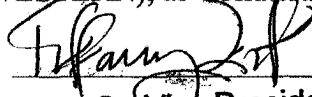
IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the day and year first above written.

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Collateral Agent

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

Title: **Sr. Vice President** \_\_\_\_\_

STATE OF

New York

)

COUNTY OF

New York

)

ss.:

On the 27 day of April, 2004, before me personally came Michael, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the Vice President of MERVYN'S BRANDS, LLC, the limited liability company that executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

Ornette Elogu

Notary Public

STATE OF

)

) ss.:

COUNTY OF

)

On this \_\_\_ day of \_\_\_\_\_, 2004, before me personally came \_\_\_\_\_, to me known, who, being duly sworn, did depose and say, that he/she is the \_\_\_\_\_ of CONGRESS FINANCIAL CORPORATION (WESTERN), the corporation described in and that executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public



STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_, 2004, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the \_\_\_\_\_ of MERVYN'S BRANDS, LLC, the limited liability company which executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On this 27<sup>th</sup> day of AUGUST, 2004, before me personally came TIFFANYLIFF, to me known, who, being duly sworn, did depose and say, that he/she is the S.V.P. of CONGRESS FINANCIAL CORPORATION (WESTERN), the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

Tracey D. Bennett

Notary Public

TRACEY D. BENNETT  
Notary Public, State of New York  
No. 01BE6022715  
Qualified in Queens County  
Commission Expires 4/15/2007

EXHIBIT A  
TO  
PATENT COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT

List of Patents and Patent Applications

<b><u>Patent Description</u></b>	<b><u>Registration Number</u></b>	<b><u>Registration Date</u></b>	<b><u>Expiration Date</u></b>
Shopping Stroller/Cart	D 366,546	January 23, 1996	January 23, 2010

EXHIBIT B  
TO  
PATENT COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT

Licenses

None.

EXHIBIT C  
TO  
PATENT COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT

SPECIAL POWER OF ATTORNEY

STATE OF )  
 ) ss.:  
COUNTY OF )

KNOW ALL MEN BY THESE PRESENTS, that MERVYN'S BRANDS, LLC ("Debtor"), having an office at 22301 Foothill Boulevard, Hayward, California 94541, hereby appoints and constitutes, CONGRESS FINANCIAL CORPORATION (WESTERN), as Agent ("Secured Party"), and each of its officers, its true and lawful attorney, with full power of substitution and with full power and authority to perform the following acts on behalf of Debtor:

1. Execution and delivery of any and all agreements, documents, instrument of assignment, or other papers which Secured Party, in its discretion, deems necessary or advisable for the purpose of assigning, selling, or otherwise disposing of all right, title, and interest of Debtor in and to any patents and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to the foregoing.
2. Execution and delivery of any and all documents, statements, certificates or other papers which Secured Party, in its discretion, deems necessary or advisable to further the purposes described in Subparagraph 1 hereof.

This Power of Attorney is made pursuant to an Patent Collateral Assignment and Security Agreement, dated of even date herewith, between Debtor and Secured Party (the "Security Agreement") and is subject to the terms and provisions thereof. This Power of Attorney, being coupled with an interest, is irrevocable until all "Obligations", as such term is defined in the Security Agreement, are paid in full and the Security Agreement is terminated in writing by Secured Party.

Dated: \_\_\_\_\_, 2004

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_, 2004, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the \_\_\_\_\_ of MERVYN'S BRANDS, LLC, the limited liability company that executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

\_\_\_\_\_  
Notary Public

SPECIAL POWER OF ATTORNEY

STATE OF ILLINOIS )  
   ) ss.:  
COUNTY OF COOK )

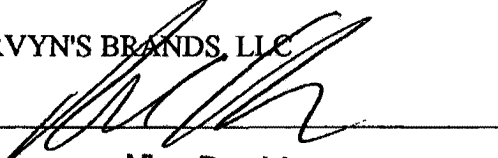
KNOW ALL MEN BY THESE PRESENTS, that MERVYN'S BRANDS, LLC ("Debtor"), having an office at 22301 Foothill Boulevard, Hayward, California 95541, hereby appoints and constitutes, CONGRESS FINANCIAL CORPORATION (WESTERN), as Agent ("Secured Party"), and each of its officers, its true and lawful attorney, with full power of substitution and with full power and authority to perform the following acts on behalf of Debtor:

1. Execution and delivery of any and all agreements, documents, instrument of assignment, or other papers which Secured Party, in its discretion, deems necessary or advisable for the purpose of assigning, selling, or otherwise disposing of all right, title, and interest of Debtor in and to any patents and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to the foregoing.

2. Execution and delivery of any and all documents, statements, certificates or other papers which Secured Party, in its discretion, deems necessary or advisable to further the purposes described in Subparagraph 1 hereof.

This Power of Attorney is made pursuant to an Patent Collateral Assignment and Security Agreement, dated of even date herewith, between Debtor and Secured Party (the "Security Agreement") and is subject to the terms and provisions thereof. This Power of Attorney, being coupled with an interest, is irrevocable until all "Obligations", as such term is defined in the Security Agreement, are paid in full and the Security Agreement is terminated in writing by Secured Party.

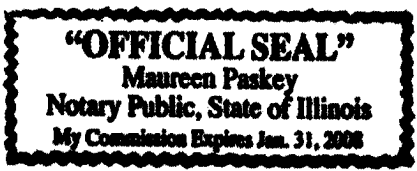
Dated: September 2, 2004

MERVYN'S BRANDS, LLC  
By:   
Title: Vice-President

STATE OF Illinois )  
 ) ss.:  
COUNTY OF COOK )

On the 1<sup>st</sup> day of September, 2004, before me personally came Michael Kaeb, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the Vice President of MERVYN'S BRANDS, LLC, the limited liability company that executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

Maureen Paskey  
Notary Public



**RECORDED DOCUMENTS****FL-10A****DATE:** November 4, 2004

Otterbourg, Steindler, Houston and Rosen, PC  
230 Park Avenue  
New York, NY 10169

**ATTN:** Tracey D. Bennett

---

We have recorded the enclosed document(s) in the official records of the Copyright Office:

<b>VOLUME</b>	<b>3515</b>
<b>DOC. NO.</b>	<b>548</b>

The recording fee has been handled as follows:

<b>RECEIVED</b>	<b>\$</b>
<b>APPLIED</b>	<b>\$</b>
<b>REFUNDED (under separate cover)</b>	<b>\$</b>
<b>CHARGED TO YOUR DEPOSIT ACCOUNT</b>	<b>\$</b>

Sincerely yours,  
Register of Copyrights

**ENCL(s):**  
**DOC(s): 1**

---





# Certificate of Recordation

---

This is to certify that the attached document was recorded  
in the Copyright Office on the date and in the place shown below.

This certificate is issued under the seal of the  
United States Copyright Office.

---

**DATE OF RECORDATION**

24Sep04

---

**VOLUME**

**DOC. NO.**

3515

548

---

**VOLUME**

**DOC. NO.**

---

*Marybeth Peters*

Register of Copyrights and  
Associate Librarian for Copyright Services

Copyright Office fees are subject to change. For current fees, check the Copyright Office website at [www.copyright.gov](http://www.copyright.gov), write the Copyright Office, or call (202) 707-3000.

**DOCUMENT COVER SHEET** 

For Recordation of Documents  
UNITED STATES COPYRIGHT OFFICE

DATE OF RECORDATION  
(Assigned by Copyright Office) **SEP 24 2004**  
Month Day Year

Volume **3515** Page **548**

Volume \_\_\_\_\_ Page \_\_\_\_\_

FUNDS RECEIVED \_\_\_\_\_

FOR OFFICE USE ONLY

Do not write above this line.

**To the Register of Copyrights:**

*Please record the accompanying original document or copy thereof.*

**1** Name of the party or parties to the document spelled as they appear in the document (List up to the first three)  
Mervyn's Brands, LLC  
Congress Financial Corporation (Western), as Agent

**2** Date of execution and/or effective date of the accompanying document 9 2 2004  
(month) (day) (year)

**3** Completeness of document  
 Document is complete by its own terms.  
 Document is not complete. Record "as is."

**4** Description of document  
 Termination of Transfer(s) [Section 304]  Other \_\_\_\_\_  
 Transfer of Copyright  Shareware \_\_\_\_\_  
 Security Interest  Life, Identity, Death Statement [Section 302] \_\_\_\_\_  
 Change of Name of Owner  Transfer of Mask Works \_\_\_\_\_

**5** Title of first work as given in the document Mervyn's California Vendor Policies Manual

**6** Total number of titles in document 14

**7** Amount of fee calculated  
\$ 120.00

**8** Fee enclosed  
 Check  
 Money Order

Fee authorized to be charged to :  
Copyright Office  
Deposit Account number \_\_\_\_\_  
Account name \_\_\_\_\_

**9** Affirmation\*: I hereby affirm to the Copyright Office that the information given on this form is a true and correct representation of the accompanying document. This affirmation will not suffice as a certification of a photocopy signature on the document. (Affirmation must be signed even if you are also signing Space 10.)

Tracey D. Bennett  
Signature 9/23/04  
Date 212-661-9100 212-682-6104  
Phone Number Fax Number

**10** Certification\*: Complete this certification in addition to the Affirmation if a photocopy of the original signed document is substituted for a document bearing the actual signature.  
NOTE: This space *may not* be used for an official certification.  
I certify under penalty of perjury under the laws of the United States of America that the accompanying document is a true copy of the original document.

Signature \_\_\_\_\_  
Duly Authorized Agent of: \_\_\_\_\_  
Date \_\_\_\_\_

Recordation will be mailed in window envelope to this address:

Name ▼ Tracey D. Bennett c/o Otterbourg, Steindler, Houston & Rosen, P.C.  
Number/Street/Apt ▼ 230 Park Avenue  
City/State/ZIP ▼ New York, New York 10169

**YOU MUST:**

- Complete all necessary spaces
- Sign your Cover Sheet in Space 9

**SEND ALL 3 ELEMENTS TOGETHER:**

1. Two copies of the Document Cover Sheet
2. Check/money order payable to Register of Copyrights
3. Document

**MAIL TO:**

Library of Congress, Copyright Office  
Documents Recordation Section, LM-462  
101 Independence Avenue, S.E.  
Washington, D.C. 20559-6000

Fees are subject to change. For current fees, check the Copyright Office website at [www.copyright.gov](http://www.copyright.gov), write the Copyright Office, or call (202) 707-3000.

\*Knowingly and willfully falsifying material facts on this form may result in criminal liability. 18 U.S.C. §1001.



COPYRIGHT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

THIS COPYRIGHT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT ("Agreement"), dated September 2, 2004, is by and between MERVYN'S BRANDS, LLC, a Minnesota limited liability company ("Debtor"), and CONGRESS FINANCIAL CORPORATION (WESTERN), a California corporation, in its capacity as agent (together with its successors and assigns, "Secured Party"), pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lenders

W I T N E S S E T H :

WHEREAS, Debtor has adopted, used and/or is using, and is the owner of the entire right, title, and interest in and to the copyrights described in Exhibit A hereto and made a part hereof;

WHEREAS, Debtor, Mervyn's LLC ("Borrower") have entered into or are about to enter into financing arrangements with Secured Party and the financial institutions which are parties to the Loan Agreement as lenders (each individually, a "Lender" and collectively, "Lenders") pursuant to which Lenders (or Secured Party on behalf of Lenders) may make loans and advances and provide other financial accommodations to Debtor as set forth in the Loan and Security Agreement, dated of even date herewith, by and among Debtor, Borrower, Secured Party and Lenders (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), and other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto, including, but not limited to, the Guarantee (as defined below) this Agreement (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements");

WHEREAS, Debtor has absolutely and unconditionally guaranteed the payment and performance of all now existing and hereafter arising obligations, liabilities and indebtedness of Borrower to Secured Party as set forth in the Guarantee, dated of even date herewith, by Debtor in favor of Secured Party (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Guarantee"); and

WHEREAS, in order to induce Secured Party and Lenders to enter into the Loan Agreement and the other Financing Agreements and to make loans and advances and provide other financial accommodations to Borrower pursuant thereto, Debtor has agreed to grant to Secured Party certain collateral security as set forth herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby agrees as follows:

1. GRANT OF SECURITY INTEREST. As collateral security for the prompt performance, observance and indefeasible payment in full of all of the Obligations (as hereinafter defined), Debtor hereby grants to Secured Party a continuing security interest in and a general lien upon, and a conditional assignment of, the following (being collectively referred to herein as the "Collateral"): (a) all of Debtor's now existing or hereafter acquired right, title, and interest in and to all of Debtor's copyrights and all applications, registrations and recordings relating to such copyrights in the United States Copyright Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country, including, without limitation, the copyrights and applications, registrations and recordings described in Exhibit A hereto, together with all rights and privileges arising under applicable law with respect to Debtor's use of any copyrights, and all reissues, divisions, continuations and renewals thereof (all of the foregoing being collectively referred to herein as the "Copyrights"); (b) all present and future license and distribution agreements (subject to the rights of the licensees therein) pertaining to the Copyrights; (c) all income, fees, royalties and other payments at any time due or payable with respect thereto, including, without limitation, payments under all licenses at any time entered into in connection therewith; (d) the right to sue for past, present and future infringements thereof; (e) all rights corresponding thereto throughout the world; and (f) any and all other proceeds of any of the foregoing, including, without limitation, damages and payments or claims by Debtor against third parties for past or future infringement of the Copyrights.

2. OBLIGATIONS SECURED

The security interest, lien and other interests granted to Secured Party pursuant to this Agreement shall secure the prompt performance, observance and payment in full of any and all obligations, liabilities and indebtedness of every kind, nature and description owing by Debtor to Secured Party and/or any Lender and/or their respective successors and assigns, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether arising under the Guarantee, this Agreement, the Loan Agreement, the other Financing Agreements, or otherwise, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Loan Agreement or after the commencement of any case with respect to Debtor or Borrower under the United States Bankruptcy Code or any similar statute (including, without limitation, the payment of interest and other amounts which would accrue and become due but for the commencement of such case whether or not such amounts are allowed or allowable in whole or in part in such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and however acquired by Secured Party or any Lender, including, without limitation, any other obligations, liabilities and indebtedness that are set forth in the definition of Obligations in the Loan Agreement (all of the foregoing being collectively referred to herein as the "Obligations").

3. REPRESENTATIONS, WARRANTIES AND COVENANTS

Debtor hereby represents, warrants and covenants with and to Secured Party the following (all of such representations, warranties and covenants being continuing so long as any of the Obligations are outstanding):

- (a) Debtor shall pay and perform all of the Obligations according to their terms.

(b) To the Debtor's knowledge, all of the existing Collateral is valid and subsisting in full force and effect. Debtor owns the sole, full and clear title to such Collateral, and the right and power to grant the security interest and conditional assignment granted hereunder. Debtor shall, at Debtor's expense, perform all acts and execute all documents necessary to maintain the existence of the Collateral, including, without limitation, the filing of any renewal affidavits and applications. The Collateral is not subject to any liens, claims, mortgages, assignments, licenses, security interests or encumbrances of any nature whatsoever, except: (i) the security interests granted hereunder and pursuant to the Loan Agreement, (ii) the security interests permitted under the Loan Agreement, and (iii) the licenses permitted under Section 3(e) below.

(c) Debtor shall not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license relating to the Collateral, or otherwise dispose of any of the Collateral, in each case without the prior written consent of Secured Party, except as otherwise permitted herein or in the Financing Agreements. Nothing in this Agreement shall be deemed a consent by Secured Party to any such action, except as such action is expressly permitted hereunder.

(d) Debtor shall, at Debtor's expense, promptly perform all acts and execute all documents requested at any time by Secured Party to evidence, perfect, maintain, record or enforce the security interest in and conditional assignment of the Collateral granted hereunder or to otherwise further the provisions of this Agreement. Debtor hereby authorizes Secured Party to execute and file one or more financing statements (or similar documents) with respect to the Collateral, signed only by Secured Party or as otherwise determined by Secured Party. Debtor further authorizes Secured Party to have this Agreement or any other similar security agreement filed with the United States Copyright Office or any other appropriate federal, state or government office.

(e) As of the date hereof, Debtor, to its knowledge, does not have any Copyrights registered, or the subject of pending applications, in the United States Copyright Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those described in Exhibit A hereto and has not granted any licenses with respect thereto other than as set forth in Exhibit B hereto.

(f) Debtor shall, concurrently with the execution and delivery of this Agreement, execute and deliver to Secured Party five (5) originals of a Special Power of Attorney in the form of Exhibit C annexed hereto for the implementation of the assignment, sale or other disposition of the Collateral pursuant to Secured Party's exercise of the rights and remedies granted to Secured Party hereunder.

(g) Secured Party may, in its discretion, pay any amount or do any act which Debtor fails to pay or do as required hereunder or as requested by Secured Party to preserve, defend, protect, maintain, record or enforce the Obligations, the Collateral, or the security interest and conditional assignment granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, reasonable attorneys' fees and legal expenses. Debtor shall be liable to Secured Party for any such payment, which payment shall be deemed an advance by Secured Party to Debtor, shall be payable on demand together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement, and shall be part of the Obligations secured hereby.

(h) In the event Debtor shall file any application for the registration of a Copyright with the United States Copyright Office or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, Debtor shall provide Secured Party with written notice of such action as soon as practicable but in no event later than thirty (30) days after such action. If, after the date hereof, Debtor shall (i) obtain any registered copyright, or apply for any such registration in the United States Copyright Office or in any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, or (ii) become the owner of any copyright registrations or applications for copyright registration used in the United States, any State thereof, any political subdivision thereof or in any other country, the provisions of Section 1 hereof shall automatically apply thereto. Upon the request of Secured Party, Debtor shall promptly execute and deliver to Secured Party any and all assignments, agreements, instruments, documents and such other papers as may be requested by Secured Party to evidence the security interest in and conditional assignment of or general lien upon such Copyright in favor of Secured Party.

(i) Debtor has not abandoned any of the Copyrights and Debtor will not do any act, nor omit to do any act, whereby the Copyrights may become abandoned, invalidated, unenforceable, avoided, or avoidable; provided, that , Debtor may, after written notice to Secured Party, abandon, cancel, not renew or otherwise not maintain a Copyright so long as (i) such Copyrights is no longer used or useful in the business of Debtor or any of its affiliates or subsidiaries, (ii) such Copyrights has not been used in the business of Debtor or any of its affiliates or subsidiaries for a period of six (6) consecutive months, (iii) such Copyrights is not otherwise material to the business of Debtor or any of its affiliates or subsidiaries in any respect, (iv) such Copyrights has little or no value, and (v) no Event of Default, or event, act or condition which with notice or passage of time or both would constitute an Event of Default, shall exist or have occurred as of such time. Debtor shall notify Secured Party promptly if it knows or has reason to know of any reason why any application, registration, or recording with respect to the Copyrights may become abandoned, canceled, invalidated, avoided, or avoidable.

(j) Debtor shall render any assistance, as Secured Party shall determine is necessary, to Secured Party in any proceeding before the United States Copyright Office, any federal or state court, or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, to maintain such application and registration of the Copyrights as Debtor's exclusive property and to protect Secured Party's interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings.

(k) To Debtor's best knowledge no material infringement or unauthorized use presently is being made of any of the Copyrights that would adversely affect in any material respect the fair market value of the Copyrights or the benefits of this Agreement granted to Secured Party, including, without limitation, the validity, priority or perfection of the security interest granted herein or the remedies of Secured Party hereunder. Debtor shall promptly notify Secured Party if Debtor (or any affiliate or subsidiary thereof) learns of any use by any person of any other process or product which infringes upon any Copyright. If requested by Secured Party, Debtor, at Debtor's expense, shall join with Secured Party in such action as Secured Party, in Secured Party's discretion, may deem advisable for the protection of Secured Party's interest in and to the Copyrights.

(l) Debtor assumes all responsibility and liability arising from the use of the Copyrights and Debtor hereby indemnifies and holds Secured Party and Lenders harmless from and against any claim, suit, loss, damage, or expense (including reasonable attorneys' fees and legal expenses) arising out of any alleged defect in any product manufactured, promoted, or sold by Debtor (or any affiliate or subsidiary thereof) in connection with any Copyright or out of the manufacture, promotion, labeling, sale or advertisement of any such product by Debtor (or any affiliate or subsidiary thereof). The foregoing indemnity shall survive the payment of the Obligations, the termination of this Agreement and the termination or non-renewal of the Loan Agreement.

(m) Debtor shall promptly pay Secured Party and Lenders for any and all expenditures made by Secured Party or any Lender pursuant to the provisions of this Agreement or for the defense, protection or enforcement of the Obligations, the Collateral, or the security interests and conditional assignment or general lien granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, travel expenses, and reasonable attorneys' fees and legal expenses. Such expenditures shall be payable on demand, together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement, and shall be part of the Obligations secured hereby.

#### 4. EVENTS OF DEFAULT.

The occurrence or existence of any Event of Default under the Loan Agreement is referred to herein individually as an "Event of Default", and collectively as "Events of Default".

#### 5. RIGHTS AND REMEDIES

At any time an Event of Default exists or has occurred and is continuing, in addition to all other rights and remedies of Secured Party, whether provided under this Agreement, the Loan Agreement, any of the other Financing Agreements, applicable law or otherwise, Secured Party shall have the following rights and remedies which may be exercised without notice to, or consent by, Debtor except as such notice or consent is expressly provided for hereunder:

(a) Secured Party may require that neither Debtor nor any affiliate or subsidiary of Debtor make any use of the Copyrights for any purpose whatsoever. Secured Party may make use of any Copyrights for the sale of goods, completion of work-in-process or rendering of services or otherwise in connection with enforcing any other security interest granted to Secured Party by Debtor or any subsidiary or affiliate of Debtor or for such other reason as Secured Party may determine.

(b) Secured Party may grant such license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner, as Secured Party shall in its discretion deem appropriate. Such license or licenses may be general, special or otherwise, and may be granted on an exclusive or non-exclusive basis throughout all or any part of the United States of America, its territories and possessions, and all foreign countries.

(c) Without limiting the generality of Section 10.2 of the Loan Agreement, Secured Party may assign, sell or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations except that if notice to Debtor of intended disposition

of Collateral is required by law, the giving of ten (10) days prior written notice to Debtor of any proposed disposition shall be deemed reasonable notice thereof and Debtor waives any other notice with respect thereto. Secured Party shall have the power to buy the Collateral or any part thereof, and Secured Party shall also have the power to execute assurances and perform all other acts which Secured Party may, in its discretion, deem appropriate or proper to complete such assignment, sale, or disposition. In any such event, Debtor shall be liable for any deficiency.

(d) In addition to the foregoing, in order to implement the assignment, sale, or other disposition of any of the Collateral pursuant to the terms hereof, after the occurrence and during the continuance of any Event of Default Secured Party may at any time execute and deliver on behalf of Debtor, pursuant to the authority granted in the Powers of Attorney described in Section 3(f) hereof, one or more instruments of assignment of the Copyrights (or any application, registration, or recording relating thereto), in form suitable for filing, recording, or registration. Debtor agrees to pay Secured Party on demand all costs incurred in any such transfer of the Collateral, including, but not limited to, any taxes, fees, and reasonable attorneys' fees and legal expenses. Debtor agrees that Secured Party and Lenders have no obligation to preserve rights to the Copyrights against any other parties.

(e) Secured Party may first apply the proceeds actually received from any such license, assignment, sale or other disposition of any of the Collateral to the costs and expenses thereof, including, without limitation, reasonable attorneys' fees and all legal, travel and other expenses which may be incurred by Secured Party. Thereafter, Secured Party may apply any remaining proceeds to such of the Obligations in accordance with the terms of the Loan Agreement. Debtor shall remain liable to Secured Party for any of the Obligations remaining unpaid after the application of such proceeds, and Debtor shall pay Secured Party on demand any such unpaid amount, together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement.

(f) Debtor shall supply to Secured Party or to Secured Party's designee, Debtor's knowledge and expertise relating to the manufacture, sale and distribution of the products to which the Copyrights relate.

(g) Nothing contained herein shall be construed as requiring Secured Party or any Lender to take any such action at any time. All of Secured Party's and Lenders' rights and remedies, whether provided under this Agreement, the other Financing Agreements, applicable law, or otherwise, shall be cumulative and none is exclusive. Such rights and remedies may be enforced alternatively, successively, or concurrently.

6. JURY TRIAL WAIVER; OTHER WAIVERS  
AND CONSENTS; GOVERNING LAW

(a) The validity, interpretation and enforcement of this Agreement and the other Financing Agreements and any dispute arising out of the relationship between the parties hereto, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of New York without regard to principals of conflicts of laws, but excluding any rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.



(b) Debtor and Secured Party irrevocably consent and submit to the non-exclusive jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York, whichever Secured Party may elect, and waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Financing Agreements or in any way connected or related or incidental to the dealings of Debtor and Secured Party or any Lender in respect of this Agreement or the other Financing Agreements or the transactions related hereto or thereto, in each case whether now existing or thereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Secured Party shall have the right to bring any action or proceeding against Debtor or its property in the courts of any other jurisdiction which Secured Party deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against Debtor or its property).

(c) Debtor hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at Secured Party's option, by service upon Debtor in any other manner provided under the rules of any such courts.

(d) DEBTOR AND SECURED PARTY EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF DEBTOR AND SECURED PARTY OR ANY LENDER IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. DEBTOR AND SECURED PARTY EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT DEBTOR OR SECURED PARTY MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF DEBTOR AND SECURED PARTY TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Notwithstanding any other provision contained herein, Secured Party and Lenders shall not have any liability to Debtor (whether in tort, contract, equity or otherwise) for losses suffered by Debtor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Secured Party or such Lender that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. In any such litigation, Secured Party and Lenders shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement, the Loan Agreement and the other Financing Agreements.

7. MISCELLANEOUS

(a) All notices, requests and demands hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands upon the parties are to be given to the following addresses (or to such other address as any party may designate by notice in accordance with this Section):

If to Debtor: Mervyn's Brands, LLC  
22301 Foothill Boulevard  
Hayward, California 94541  
Attention: Chief Executive Officer  
Telephone No.: 510-727-5123  
Telecopier No.: 510-727-5125

with a copy to: Mervyn's Holdings, LLC  
c/o Sun Capital Partners Group, Inc.  
5200 Town Center Circle, Suite 470  
Boca Raton, Florida 33486  
Attention: Mr. Marc J. Leder,  
Mr. Rodger R. Krouse and  
Deryl Couch, Esq.  
Telephone No.: 561-394-0550  
Telecopier No.: 561-394-0540

with a copy to: Kirkland & Ellis LLP  
200 E. Randolph Drive  
Chicago, Illinois 60601  
Attention: Douglas Gessner, Esq.  
Telephone No.: 312-861-2301  
Telecopy No.: 312-861-2200

If to Secured Party: Congress Financial Corporation (Western), as Agent  
251 South Lake Avenue  
Suite 900  
Pasadena, California 91101  
Attention: Portfolio Manager - Mervyn's  
Telephone No.: 626-304-4900  
Telecopier No.: 626-304-4969

(b) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural. All references to Debtor, Secured Party and any Lender pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns. The words "hereof," "herein," "hereunder," "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 7(e) hereof. All references to the term "Person" or "person" herein shall mean any individual, sole proprietorship, partnership, corporation (including, without limitation, any corporation which elects subchapter S status under the Internal Revenue Code of 1986, as amended), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock company, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

(c) This Agreement, the Loan Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon Debtor and its successors and assigns and inure to the benefit of and be enforceable by Secured Party Lenders, and their respective successors and assigns.

(d) If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate this Agreement as a whole, but this Agreement shall be construed as though it did not contain the particular provision held to be invalid or unenforceable and the rights and obligations of the parties shall be construed and enforced only to such extent as shall be permitted by applicable law.

(e) Neither this Agreement nor any provision hereof shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement signed by an authorized officer of Secured Party. Secured Party and Lenders shall not, by any act, delay, omission or otherwise be deemed to have expressly or impliedly waived any of its rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of Secured Party. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Secured Party or any Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Secured Party or such Lender would otherwise have on any future occasion, whether similar in kind or otherwise.

(f) This Agreement (i) may be executed in separate counterparts, each of which taken together shall constitute one and the same instrument and (ii) may be executed and delivered by

telecopier with the same force and effect as if it were as a manually executed and delivered counterpart.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the day and year first above written.

MERVYN'S BRANDS, LLC

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

Title:           Vice-President          

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent

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

Title: \_\_\_\_\_

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the day and year first above written.

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent

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

Title: **Sr. Vice President** \_\_\_\_\_

STATE OF New York )  
COUNTY OF New York ) ss.:

On the 27 day of August, 2004, before me personally came Michael Kall, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the Vice President of MERVYN'S BRANDS, LLC, the limited liability company which executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

Concetta Bologna

Notary Public

CONCETTA BOLOGNA  
Notary Public, State of New York  
No. 01BO6068262  
Qualified in Kings County  
Commission Expires Dec. 31, 2005

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

On this \_\_\_ day of \_\_\_\_\_, 2004, before me personally came \_\_\_\_\_, to me known, who, being duly sworn, did depose and say, that he/she is the \_\_\_\_\_ of CONGRESS FINANCIAL CORPORATION (WESTERN), the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_, 2004, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the \_\_\_\_\_ of MERVYN'S BRANDS, LLC, the limited liability company that executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On this 27<sup>th</sup> day of AUGUST, 2004, before me personally came TIFFANY LIFF, to me known, who, being duly sworn, did depose and say, that he/she is the S.V.P. of CONGRESS FINANCIAL CORPORATION (WESTERN), the corporation described in and that executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

Tracey D. Bennett  
Notary Public

TRACEY D. BENNETT  
Notary Public, State of New York  
No. 01BE6022715  
Qualified in Queens County  
Commission Expires 4/15/2027



EXHIBIT A  
TO  
COPYRIGHT COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT

List of Copyrights and Copyright Applications

(a) Registrations

<u>Copyright Title</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
Mervyn's California Vendor Policies Manual	TX 4-649-797	10/16/1997
Quality, a state of mind: Mervyn's guide to Successful Vendor Quality Assurance: Apparel	TX 4-643-457	10/16/1997
CARTOON CAT DESIGN (with Purse)	VA 1-233-304	03/10/2004
Sprockets dog	VA 937-669	01/14/1998
Cheetah logo	VA 912-857	01/26/1998
AN UNCOMMON MISSION	TX 5-618-297	01/15/2003
E-girl Web Site	VA 959-237	01/13/1999

(b) Applications

<u>Copyright Title</u>	<u>Application Date</u>
Cartoon Cat (Lying Down)	03/18/2004
Cartoon Cat (Front View)	03/18/2004
Cartoon Cat (Back View)	03/18/2004
Cartoon Cat (Stretching)	03/18/2004
Cartoon Cat (Head)	03/18/2004
Collection of Cartoon Female Dog Designs	05/12/2004
Collection of Cartoon Male Dog Designs	05/12/2004

EXHIBIT B  
TO  
COPYRIGHT COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT

Licenses

Debtor has granted non-exclusive, implied licenses to its contractors and franchisees.

EXHIBIT C  
TO  
COPYRIGHT COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT

SPECIAL POWER OF ATTORNEY

STATE OF )  
  ) ss.:  
COUNTY OF )

KNOW ALL MEN BY THESE PRESENTS, that MERVYN'S BRANDS, LLC ("Debtor"), having an office at 22301 Foothill Boulevard, Hayward, California 94541, hereby appoints and constitutes, CONGRESS FINANCIAL CORPORATION (WESTERN), as Agent ("Secured Party"), and each of its officers, its true and lawful attorney, with full power of substitution and with full power and authority to perform the following acts on behalf of Debtor:

1. Execution and delivery of any and all agreements, documents, instrument of assignment, or other papers which Secured Party, in its discretion, deems necessary or advisable for the purpose of assigning, selling, or otherwise disposing of all right, title, and interest of Debtor in and to any copyrights and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to the foregoing.

2. Execution and delivery of any and all documents, statements, certificates or other papers which Secured Party, in its discretion, deems necessary or advisable to further the purposes described in Subparagraph 1 hereof.

This Power of Attorney is made pursuant to a Copyright Collateral Assignment and Security Agreement, dated of even date herewith, between Debtor and Secured Party (the "Security Agreement") and is subject to the terms and provisions thereof. This Power of Attorney, being coupled with an interest, is irrevocable until all "Obligations", as such term is defined in the Security Agreement, are paid in full and the Security Agreement is terminated in writing by Secured Party.

Dated: \_\_\_\_\_, 2004

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

STATE OF )  
 ) ss.:  
COUNTY OF )

On the \_\_\_ day of \_\_\_\_\_, 2004, before me personally came \_\_\_\_\_, to me known, who being by me duly sworn, did depose, acknowledge and say that he/she is the \_\_\_\_\_ of MERVYN'S BRANDS, LLC, the limited liability company that executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

---

Notary Public

SPECIAL POWER OF ATTORNEY

STATE OF ILLINOIS )  
 ) ss.:  
COUNTY OF COOK )

KNOW ALL MEN BY THESE PRESENTS, that MERVYN'S BRANDS, LLC ("Debtor"), having an office at 22301 Foothill Boulevard, Hayward, California 95541, hereby appoints and constitutes, CONGRESS FINANCIAL CORPORATION (WESTERN), as Agent ("Secured Party"), and each of its officers, its true and lawful attorney, with full power of substitution and with full power and authority to perform the following acts on behalf of Debtor:

1. Execution and delivery of any and all agreements, documents, instrument of assignment, or other papers which Secured Party, in its discretion, deems necessary or advisable for the purpose of assigning, selling, or otherwise disposing of all right, title, and interest of Debtor in and to any copyrights and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to the foregoing.

2. Execution and delivery of any and all documents, statements, certificates or other papers which Secured Party, in its discretion, deems necessary or advisable to further the purposes described in Subparagraph 1 hereof.

This Power of Attorney is made pursuant to a Copyright Collateral Assignment and Security Agreement, dated of even date herewith, between Debtor and Secured Party (the "Security Agreement") and is subject to the terms and provisions thereof. This Power of Attorney, being coupled with an interest, is irrevocable until all "Obligations", as such term is defined in the Security Agreement, are paid in full and the Security Agreement is terminated in writing by Secured Party.

Dated: September 2, 2004

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

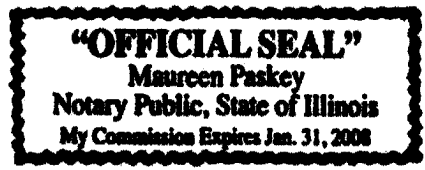
  
Vice-President

STATE OF Illinois )  
 ) ss.:  
COUNTY OF COOK )

On the 1<sup>st</sup> day of September, 2004, before me personally came Michael Kalb, to me known, who, being by me duly sworn, did depose, acknowledge and say that he/she is the Vice President of MERVYN'S BRANDS, LLC, the limited liability company that executed the foregoing instrument and that he/she signed his/her name thereto by order of managers of such limited liability company.

*Maureen Paskey*

Notary Public




**UCC FINANCING STATEMENT**  
 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**04-1003578381**

**09/02/2004 15:24**

**A. NAME & PHONE OF CONTACT AT FILER (optional)**

**B. SEND ACKNOWLEDGMENT TO: (Name and Address)**



10024734

**AmeriSearch**

1232 Q Street  
Sacramento, CA 95814



**FILED**

CALIFORNIA  
SECRETARY OF STATE

SOS



82192003

UCC 1 FILING

THE ABOVE SPACE IS FOR FILING UPPERCASE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names**

**1a. ORGANIZATION'S NAME**  
**MERVYN'S LLC**

**OR**

**1b. INDIVIDUAL'S LAST NAME** \_\_\_\_\_ **FIRST NAME** \_\_\_\_\_ **MIDDLE NAME** \_\_\_\_\_ **SUFFIX** \_\_\_\_\_

**1c. MAILING ADDRESS**  
 22301 Foothill Boulevard **CITY** Hayward **STATE** CA **POSTAL CODE** 95541 **COUNTRY**

**1d. SEE INSTRUCTIONS** **ADDL INFO RE ORGANIZATION DEBTOR** **1e. TYPE OF ORGANIZATION** LLC **1f. JURISDICTION OF ORGANIZATION** California **1g. ORGANIZATIONAL ID #, if any** C0200424010002  NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

**2a. ORGANIZATION'S NAME**

**OR**

**2b. INDIVIDUAL'S LAST NAME** \_\_\_\_\_ **FIRST NAME** \_\_\_\_\_ **MIDDLE NAME** \_\_\_\_\_ **SUFFIX** \_\_\_\_\_

**2c. MAILING ADDRESS**  
 \_\_\_\_\_ **CITY** \_\_\_\_\_ **STATE** \_\_\_\_\_ **POSTAL CODE** \_\_\_\_\_ **COUNTRY**

**2d. SEE INSTRUCTIONS** **ADDL INFO RE ORGANIZATION DEBTOR** **2e. TYPE OF ORGANIZATION** \_\_\_\_\_ **2f. JURISDICTION OF ORGANIZATION** \_\_\_\_\_ **2g. ORGANIZATIONAL ID #, if any** \_\_\_\_\_  NONE

**3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNOR of ASSIGNOR'S P/P) - insert only one secured party name (3a or 3b)**

**3a. ORGANIZATION'S NAME**  
**CONGRESS FINANCIAL CORPORATION (WESTERN), AS AGENT**

**OR**

**3b. INDIVIDUAL'S LAST NAME** \_\_\_\_\_ **FIRST NAME** \_\_\_\_\_ **MIDDLE NAME** \_\_\_\_\_ **SUFFIX** \_\_\_\_\_

**3c. MAILING ADDRESS**  
 251 South Lake Avenue **CITY** Pasadena **STATE** CA **POSTAL CODE** 91101 **COUNTRY**

**4. This FINANCING STATEMENT covers the following collateral:**  
 All now existing or hereafter arising or acquired property and assets of the Debtor, including, without limitation, all accounts, general intangibles, chattel paper, documents, instruments, letters of credit, letter-of-credit rights, investment property, software, supporting obligations, deposit accounts, inventory, equipment and other goods, fixtures and all products and proceeds of all of the foregoing and including all of the types and items of property described on Exhibit A hereto.

MS-A2256-00

**5. ALTERNATIVE DESIGNATION (if applicable):**  LESSOR/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  SELLER/BUYER  AG LIEN  NON-UCC FILING

**6. THIS FINANCING STATEMENT is to be filed (or recorded) (or reported) in the REAL ESTATE RECORDS:**  **7. CHECK IF PRELIMINARY SEARCH REPORT(S) on Debtor(s) (Additional Fee):**  All Debtors  Debtor 1  Debtor 2

**8. OPTIONAL FILER REFERENCE DATA**  
 Filed with: CA - Secretary of State 06F3060 F#102495  
A#180643

EXHIBIT A  
to  
UCC FINANCING STATEMENT  
between  
DEBTOR: MERVYN'S LLC  
and

SECURED PARTY: CONGRESS FINANCIAL CORPORATION (WESTERN), as AGENT

The collateral includes all of the following property and interests in property of Debtor, whether now owned or hereafter acquired or arising, and wherever located (collectively, the "Collateral"):

1. all rights of the Debtor to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card (i) all present and future rights of Debtor to payment from (A) any person (other than Debtor) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., Novus Services, Inc. and Monogram Credit Card Bank of Georgia (collectively, a "Credit Card Issuer"), (B) any servicing or processing agent or any factor or financial intermediary who services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of Debtor's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer (a "Credit Card Processor") or (C) any other third party arising from sales of goods or rendition of services to customers who have purchased such goods or services using a credit or debit card and (ii) all present and future rights of Debtor to payment from any Credit Card Issuer, Credit Card Processor or any other third party in connection with the sale or transfer of accounts arising pursuant to the sale of goods or rendition of services to customers who have purchased such goods or services using a credit card or a debit card, including, but not limited to, all amounts at any time due or to become due from any Credit Card Issuer or Credit Card Processor under any agreements now or hereafter entered into by Debtor with any Credit Card Issuer or any Credit Card Processor, or otherwise (all of the foregoing being referred to herein collectively as the "Accounts");

2. all general intangibles, including, without limitation: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright applications, copyright registrations, trademarks, servicemarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing and all applications, registrations and recordings relating to any of the foregoing as may be filed in the United States Copyright Office, the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country or jurisdiction, together with all rights and privileges arising under

821920003



applicable law with respect to Debtor's use of any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or servicemark, or the license of any trademark or servicemark); customer and other lists in whatever form maintained; trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registration; source codes, object code, executable codes, data, databases and other physical manifestations or embodiments of any of the foregoing; software and contract rights relating to computer software programs, in whatever form created or maintained;

3. all goods, including, without limitation, all now owned and hereafter existing or acquired (a) goods, wherever located, which (i) are leased by Debtor as lessor; (ii) are held by Debtor for sale or lease or to be furnished under a contract of service; (iii) are furnished by Debtor under a contract of service; or (iv) consist of raw materials, work in process, finished goods or materials used or consumed in its business and (b) equipment, wherever located, including machinery, data processing and computer equipment and computer hardware and software, whether owned or licensed and including embedded software, vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof;

4. all fixtures and real property, including leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located;

5. all chattel paper, including, without limitation, all tangible and electronic chattel paper;

6. all instrument, including, without limitation, all promissory notes;

7. all documents, all credit card sales drafts, credit card sales slips or charge slips or receipts and other forms of store receipts;

8. all deposit accounts;

9. all letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights;

10. all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of other Collateral, including (a) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the other Collateral; (b) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party; (c) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, other Collateral, including returned, repossessed and reclaimed goods; and (d) deposits by and property of account debtors or other persons securing the obligations of account debtors;

11. all investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and all monies, credit balances, deposits and other property of Debtor now or hereafter held or received by or in transit to Secured Party or its affiliates or at any other depository or other institution from or for the account of Debtor, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

12. all commercial tort claims;

13. to the extent not otherwise described above, (a) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Accounts; (b) all payment intangibles of Debtor; (c) letters of credit, indemnities, guarantees, security or other deposits and proceeds thereof issued payable to Debtor or otherwise in favor of or delivered to Debtor in connection with any Account; (d) all other accounts, contract rights, chattel paper, instruments, notes, general intangibles and other forms of obligations owing to Debtor, whether from the sale and lease of goods or other property, licensing of any property (including Intellectual Property or other general intangibles), rendition of services or from loans or advances by Debtor to or for the benefit of any third person (including loans or advances to any affiliates or subsidiaries of Debtor) or otherwise associated with any Accounts, inventory or general intangibles of Debtor (including, without limitation, choses in action, causes of action, tax refunds, tax refund claims, any funds which may become payable to Debtor in connection with the termination of any employee benefit plan and any other amounts payable to Debtor from any employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which Debtor is beneficiary);

14. all books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to any of the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of Debtor with respect to the foregoing maintained with or by any other person); and

15. all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

021920003

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Business Mail Address)

**AmeriSearch**  
 10024734  
 1232 Q Street  
 Sacramento, CA 95814

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. INITIAL FINANCING STATEMENT FILE #

04-1003578381 09/02/2004

15. THIS FINANCING STATEMENT AMENDMENT IS to be filed (for record) (or recorded) in the UCC - SECURED PARTY RECORDS.

2.  **TERMINATION:** Cancellations of the Financing Statement (identified above) is terminated with respect to security interest(s) of the Secured Party authorizing this Continuation Statement.

3.  **CONTINUATION:** Extension of the Financing Statement (identified above) with respect to security interest(s) of the Secured Party on the filing of this Continuation Statement is requested for the additional period provided by applicable law.

4.  **ASSIGNMENT (full or partial):** Give name of assignee in item 7a or 7b and address of assignee in item 7c and give name of assignor in item 8.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

**CHANGE name and/or address:** Please enter the details of the change in response to questions 6a and 6b or 7a and 7b.

**DELETE Name:** Give Name of Name to be deleted in item 6a or 7a.

**ADD Name:** Complete item 7a or 7b, and item 8a or 7c, and submit them to the Filing Office.

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME  
 MERVYN'S LLC

OR 6b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME  
 MERVYN'S LLC

OR 7b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7c. MAILING ADDRESS  
 22301 Foothill Boulevard

CITY  
 Hayward

STATE POSTAL CODE  
 CA 94541

COUNTRY

7d. SECRETARY/DIRECTOR  
 NAME AND/OR ORGANIZATION  
 DIRECTOR

7e. TYPE OF ORGANIZATION  
 LLC

7f. JURISDICTION OF ORGANIZATION  
 California

7g. ORGANIZATIONAL ID # if any  
 C0200424010002

NONE

8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.

Describe collateral  deleted or  added, or give other  related collateral description, or describe collateral  assigned.

9. **NAME of SECURED PARTY of RECORD AUTHORIZING THIS AMENDMENT** (name of assignee, if this is an Assignment, if this is an Amendment authorized by a Debtor which does not delete or add the underlying Debtor, or if this is a Termination authorized by a Debtor, check here)  OR name of CRESTOR authorizing this Amendment

9a. ORGANIZATION'S NAME  
 CONGRESS FINANCIAL CORPORATION (WESTERN), AS AGENT

OR 9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

10. **OPTIONAL FILER REFERENCE DATA**

Filed with: CA - Secretary of State; Debtor: Mervyn's LLC

06F3104

F8105177  
 A#183833

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 05/22/02)

MDA 144604-00

04-10063244

09/28/2004 15:37



FILED

CALIFORNIA  
 SECRETARY OF STATE



Filing NO: 200413115423  
 Filing Date: 2004/09/02  
 Filing Time: 3:14 PM  
 State of Minnesota  
 Processing Office: Secretary of State  
 Filed by: patje01

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional) **ACM 3206923**

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**RETURN TO:  
 U.S. CORPORATE SERVICES  
 P.O. BOX 65607  
 ST. PAUL, MN 55165-0607  
 (651) 227-7575**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - (insert only debt debtor name (1a or 1b) - do not abbreviate or combine names)**

1c. ORGANIZATION'S NAME  
**MERVYN'S BRANDS, LLC**

OR

1d. MAILING ADDRESS  
**22301 Foothill Boulevard**

1e. TYPE OF ORGANIZATION  
**LLC**

1f. JURISDICTION OF ORGANIZATION  
**Minnesota**

1g. ORGANIZATIONAL ID# (if any)  
**1021705-2**

1h. ORGANIZATION'S TYPE (if any)  
 NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - (insert only debt debtor name (2a or 2b) - do not abbreviate or combine names)**

2a. ORGANIZATION'S NAME

OR

2b. MAILING ADDRESS

2c. TYPE OF ORGANIZATION

2d. JURISDICTION OF ORGANIZATION

2e. ORGANIZATIONAL ID# (if any)  
 NONE

**3. SECURED PARTY'S NAME (or NAME & TOTAL ASSIGNEE of ASSIGNOR S/P) - (insert only one secured party name (3a or 3b))**

3a. ORGANIZATION'S NAME  
**CONGRESS FINANCIAL CORPORATION (WESTERN), AS AGENT**

OR

3b. MAILING ADDRESS  
**251 South Lake Avenue**

3c. TYPE OF ORGANIZATION

3d. JURISDICTION OF ORGANIZATION

3e. ORGANIZATIONAL ID# (if any)  
 NONE

4. This FINANCING STATEMENT covers the following collateral:

All now existing or hereafter arising or acquired property and assets of the Debtor, including, without limitation, all accounts, general intangibles, chattel paper, documents, instruments, letters of credit, letter-of-credit rights, investment property, software, supporting obligations, deposit accounts, inventory, equipment and other goods, fixtures and all products and proceeds of all of the foregoing and including all of the types and items of property described on Exhibit A hereto.

5. ALTERNATIVE DESIGNATION (if applicable): LESSOR/LESSOR | CONSIGNEE/CONSIGNEOR | BAKER/BAKER | SELLER/BUYER | AG. LIEN | NON-UNCLASSIFIED

6. This FINANCING STATEMENT is to be filed for record (or recorded) in the REAL ESTATE RECORDS. Attach subdivision:  YES  NO  YES  NO

7. CHECK TO REQUEST SEARCH REPORT (if on Debtor's)  YES  NO

8. OPTIONAL FILER REFERENCE DATA  
 Filed with: MN - Secretary of State

FF#102496  
 AP#180644

**EXHIBIT A**  
to  
**UCC FINANCING STATEMENT**  
between  
**DEBTOR: MERVYN'S BRANDS, LLC**  
and  
**SECURED PARTY: CONGRESS FINANCIAL CORPORATION (WESTERN), as AGENT**

The collateral includes all of the following property and interests in property of Debtor, whether now owned or hereafter acquired or arising, and wherever located (collectively, the "Collateral"):

1. all rights of the Debtor to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card (i) all present and future rights of Debtor to payment from (A) any person (other than Debtor) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., Novus Services, Inc. and Monogram Credit Card Bank of Georgia (collectively, a "Credit Card Issuer"), (B) any servicing or processing agent or any factor or financial intermediary who services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of Debtor's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer (a "Credit Card Processor") or (C) any other third party arising from sales of goods or rendition of services to customers who have purchased such goods or services using a credit or debit card and (ii) all present and future rights of Debtor to payment from any Credit Card Issuer, Credit Card Processor or any other third party in connection with the sale or transfer of accounts arising pursuant to the sale of goods or rendition of services to customers who have purchased such goods or services using a credit card or a debit card, including, but not limited to, all amounts at any time due or to become due from any Credit Card Issuer or Credit Card Processor under any agreements now or hereafter entered into by Debtor with any Credit Card Issuer or any Credit Card Processor, or otherwise (all of the foregoing being referred to herein collectively as the "Accounts");

2. all general intangibles, including, without limitation: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright applications, copyright registrations, trademarks, servicemarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing and all applications, registrations and recordings relating to any of the foregoing as may be filed in the United States Copyright Office, the United States Patent and Trademark Office or in any

similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country or jurisdiction, together with all rights and privileges arising under applicable law with respect to Debtor's use of any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or servicemark, or the license of any trademark or servicemark); customer and other lists in whatever form maintained; trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registration; source codes, object code, executable codes, data, databases and other physical manifestations or embodiments of any of the foregoing; software and contract rights relating to computer software programs, in whatever form created or maintained;

3. all goods, including, without limitation, all now owned and hereafter existing or acquired (a) goods, wherever located, which (i) are leased by Debtor as lessor; (ii) are held by Debtor for sale or lease or to be furnished under a contract of service; (iii) are furnished by Debtor under a contract of service; or (iv) consist of raw materials, work in process, finished goods or materials used or consumed in its business and (b) equipment, wherever located, including machinery, data processing and computer equipment and computer hardware and software, whether owned or licensed and including embedded software, vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof;

4. all fixtures and real property, including leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located;

5. all chattel paper, including, without limitation, all tangible and electronic chattel paper;

6. all instrument, including, without limitation, all promissory notes;

7. all documents, all credit card sales drafts, credit card sales slips or charge slips or receipts and other forms of store receipts;

8. all deposit accounts;

9. all letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights;

10. all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of other Collateral, including (a) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the other Collateral; (b) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party; (c) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, other Collateral, including returned, repossessed and

reclaimed goods; and (d) deposits by and property of account debtors or other persons securing the obligations of account debtors;

11. all investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts) and all monies, credit balances, deposits and other property of Debtor now or hereafter held or received by or in transit to Secured Party or its affiliates or at any other depository or other institution from or for the account of Debtor, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

12. all commercial tort claims;

13. to the extent not otherwise described above, (a) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Accounts; (b) all payment intangibles of Debtor; (c) letters of credit, indemnities, guarantees, security or other deposits and proceeds thereof issued payable to Debtor or otherwise in favor of or delivered to Debtor in connection with any Account; (d) all other accounts, contract rights, chattel paper, instruments, notes, general intangibles and other forms of obligations owing to Debtor, whether from the sale and lease of goods or other property, licensing of any property (including Intellectual Property or other general intangibles), rendition of services or from loans or advances by Debtor to or for the benefit of any third person (including loans or advances to any affiliates or subsidiaries of such Debtor) or otherwise associated with any Accounts, inventory or general intangibles of Debtor (including, without limitation, choses in action, causes of action, tax refunds, tax refund claims, any funds which may become payable to Debtor in connection with the termination of any employee benefit plan and any other amounts payable to Debtor from any employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which Debtor is beneficiary);

14. all books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to any of the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of Debtor with respect to the foregoing maintained with or by any other person); and

15. all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.



## Minnesota Central Filing System

UCC Filing Acknowledgement

September 2, 2004  
Page 1 of 1

DA US CORPORATE SERVICES  
380 JACKSON STR #418  
SAINT PAUL MN 55101

The Minnesota Central Filing System has received and filed your document. The information below reflects the data that was indexed in our system. Please review the information for accuracy. If you find a potential error, please notify the appropriate filing office.

Client Account Number: 32186

Batch Number: 1029620

Filing Type: UCC Financing Stmt

Original Filing Number: 200413115423

Filed Date: 09/02/2004

Filed Time: 3:14 p.m.

Lapse Date: 9/2/2009

Party Type

Party Name and Address

Debtor

MERVYN'S BRANDS LLC  
HAYWARD CA

Secured Party

CONGRESS FINANCIAL CORPORATION WESTERN AS  
AGENT  
PASADENA CA

Filing by the Minnesota Central Filing System is not conclusive proof that all conditions for securing priority have been met. Ensuring that accurate information is on the document to be filed is the responsibility of the filing party. If the filing is challenged, the filing office does not guarantee that the filing is legally sufficient to secure priority under UCC Article 9 and expressly disclaims any liability for failure of the filing party to secure priority resulting from the information contained in the filed document, or the lack of information on the filed document.

User ID: patje01

County ID: 88



Online Services now available! You can now file your UCC documents online. Visit our website!



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**RETURN TO: 312903  
U.S. CORPORATE SERVICES  
P.O. BOX 65607  
ST. PAUL, MN 55165-0607  
(651) 227-7575**

Filing NO: 20041341255  
 Filing Date: 2004/09/28  
 Filing Time: 5:00 PM  
 State of Minnesota  
 Processing Office: Secretary of State  
 Filed by: fisje01

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #  
200413115423 9/2/2004

1b. THIS FINANCING STATEMENT AMENDMENT IS TO BE FILED (for record) OR RECORDED IN THE REAL ESTATE RECORDS

2.  TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3.  CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4.  ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 8.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects  Debtor or  Secured Party of record. Check only ONE of these two boxes.  
 Also check ONE of the following three boxes AND provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Please refer to the detailed instructions regarding changing the name/address of record.  DELETE name: Give record name to be deleted in item 6a or 6b.  ADD: See: Complete item 7a or 7b, and also item 7c; also complete items 7d-7f (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME  
MERVYN'S BRANDS, LLC

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME  
MERVYN'S BRANDS, LLC

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS  
22301 Foothill Boulevard

CITY: Hayward STATE: CA POSTAL CODE: 94541 COUNTRY:

7d. DEBTOR INSTRUCTIONS:  ADDL INFO RE: ORGANIZATION DEBTOR

7e. TYPE OF ORGANIZATION: LLC

7f. JURISDICTION OF ORGANIZATION: Minnesota

7g. ORGANIZATIONAL ID N. if any: 1021705-2  NONE

8. AMENDMENT (COLLATERAL CHANGE): check only ONE box.  
 Describe collateral  deleted or  added, or give entire  revised collateral description, or describe collateral  assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here  and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME  
CONGRESS FINANCIAL CORPORATION (WESTERN), AS AGENT

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILER REFERENCE DATA  
 Filed with: MN - Secretary of State; Debtor: Mervyn's Brands, LLC **06F3104** F#103532 A#181942



## Minnesota Central Filing System

UCC Amendment Acknowledgement

September 29, 2004  
Page 1 of 1

DA US CORPORATE SERVICES  
380 JACKSON STR #418  
SAINT PAUL MN 55101

The Minnesota Central Filing System has received and filed your document. The information below reflects the data that was indexed in our system. Please review the information for accuracy. If you find a potential error, please notify the appropriate filing office.

Client Account Number: 32186

Document Number: 10574180003

Amendment Type: Amend Debtor - Change

Amendment Number: 20041341255

Filing Type: UCC Financing Stmt

Original Filing Number: 200413115423

File Date: 09/28/2004

File Time: 5:00 p.m.

Lapse Date: 09/02/2009

**Party Type**

**Party Name and Address**

Debtor

**MERVYN'S BRANDS LLC  
HAYWARD CA**

Secured Party

**CONGRESS FINANCIAL CORPORATION WESTERN AS  
AGENT  
PASADENA CA**

Filing by the Minnesota Central Filing System is not conclusive proof that all conditions for securing priority have been met. Ensuring that accurate information is on the document to be filed is the responsibility of the filing party. If the filing is challenged, the filing office does not guarantee that the filing is legally sufficient to secure priority under UCC Article 9 and expressly disclaims any liability for failure of the filing party to secure priority resulting from the information contained in the filed document, or the lack of information on the filed document.

User ID: fisje01

County ID: 88



Online Services now available! You can now file your UCC documents online. Visit our website!

[www.online.sos.state.mn.us](http://www.online.sos.state.mn.us)

(651) 296-2803

TTY (800) 627-3529

INTERCREDITOR AGREEMENT

September 2, 2004

Monogram Credit Card Bank of Georgia  
7840 Roswell Road  
Building 100, Suite 200  
Atlanta, Georgia 30350

Congress Financial Corporation (Western), as Agent  
251 South Lake Avenue  
Suite 900  
Pasadena, California 91101

Re: Mervyn's LLC  
Mervyn's Holdings LLC and  
Mervyn's Brands, LLC

Ladies and Gentlemen:

Mervyn's, a California corporation (and together with its successor in interest, Mervyn's LLC, a California limited liability company, the "Company"), Target Corporation ("Target"), Target National Bank ("TNB") and Target Receivables Corporation ("TRC", together with the Company, Target, TNB, collectively, the "Sellers") have entered into a purchase and sale agreement pursuant to which the Sellers agreed to sell to Monogram Credit Card Bank of Georgia ("Monogram") all of Sellers' rights, title and interests in and to the private label credit card accounts and related receivables arising from credit card accounts established or owned by TNB or by Target as a Mervyn's account, pursuant to which certain authorized persons may finance the purchase of goods or services from Mervyn's and its affiliates (excluding any credit card or charge account established or owned by TNB or Target as a Marshall Field's account or a Target Account), as set forth in the Portfolio Purchase Agreement, dated as of July 29, 2004, by and among Sellers and Monogram (as amended, supplemented and/or restated from time to time, the "Purchase Agreement"). Monogram is the owner of the Portfolio Assets (as such term is defined in Exhibit A, attached hereto).

The Company has simultaneously entered into a credit card program to accept credit cards issued by Monogram bearing the name and symbol of the Company as set forth in the Private Label Consumer Credit Card Program Agreement, dated as of July 29, 2004, by and among Mervyn's Holdings LLC ("Holdings"), the Company, Mervyn's Brands, Inc., a Minnesota corporation (and together with its successor in interest, Mervyn's Brands, LLC, a Minnesota limited liability company, "Brands") and Monogram (as amended, supplemented and/or restated from time to time, the "Plan Agreement", and together with the Purchase Agreement, collectively, the "Monogram Agreements"). Pursuant to the Plan Agreement, Monogram extends credit directly to retail customers of the Company who use the credit cards issued by

Monogram to purchase merchandise from the Company. All transactions and borrowings in connection with the use of the credit cards issued by Monogram create the relationship of debtor and creditor between each retail customer using the credit card and Monogram. Monogram is the owner of all of the open-end revolving credit arrangements provided to retail customers of the Company pursuant to the Plan Agreement and all indebtedness of the retail customers of the Company arising pursuant to purchases of merchandise from the Company using the credit card issued by Monogram. Monogram is the owner of the Monogram Property (as such term is defined in Exhibit B, attached hereto).

The Company has no "rights" (as that term is defined in the New York Uniform Commercial Code (the "UCC")) in any of the Portfolio Assets or the Monogram Property except as set forth in the Purchase Agreement or the Plan Agreement. As a precaution, and in addition to Monogram's ownership interest in the Monogram Property, the Company has granted Monogram a security interest in any rights that the Company may be determined to have in the Portfolio Assets and the Monogram Property, notwithstanding the contrary intent of the parties.

The Company and Brands have also entered into financing arrangements with Congress Financial Corporation (Western), in its capacity as agent pursuant to the Revolving Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lenders (in such capacity, "Revolving Loan Agent") and the financial institutions which are parties to the Revolving Loan Agreement as lenders (each individually, a "Revolving Loan Lender" and collectively, "Revolving Loan Lenders") pursuant to which Revolving Loan Agent and Revolving Loan Lenders may from time to time make loans and advances and provide other financial accommodations to the Company secured by, all of the assets and properties of the Company and Brands including all of the their accounts, inventory, and intellectual property identified on Exhibit C, attached hereto (collectively, the "Collateral"), as set forth in the Loan Agreement, dated of even date herewith, by and among Revolving Loan Agent, Revolving Loan Lenders, the Company and Brands, (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Revolving Loan Agreement") and other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto, including, but not limited to, this Intercreditor Agreement, as each may now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

Accordingly, in consideration of the foregoing, the parties hereto agree as follows:

1. Revolving Loan Agent agrees that (a) the security interest granted by the Company to Revolving Loan Agent will not attach to the Monogram Property or the Portfolio Assets even if it is determined, contrary to the intent of the parties, that the Company has rights in the Monogram Property or the Portfolio Assets (except to the extent returned merchandise may be deemed to constitute proceeds of any Monogram Property), and (b) it will not challenge the characterization of the Monogram credit card program set forth in the second paragraph of this letter.

2. Revolving Loan Agent and Monogram each agree that it shall not challenge the validity, perfection or priority of the security interests and liens of the other in the assets and

properties of the Company, provided, that, each of Monogram and Revolving Loan Agent may enforce the terms of this Intercreditor Agreement.

3. Notwithstanding anything to the contrary contained in the Plan Agreement or any prior instructions to Monogram, unless and until Monogram receives written instructions from Revolving Loan Agent to the contrary, effective as of the date Monogram executes this letter, Monogram shall remit all amounts payable by Monogram to the Company under the Plan Agreement only to the following account, or such other single bank account which Revolving Loan Agent may hereafter specify to Monogram in writing for such purpose (such account being referred to herein as the "Concentration Account"):

Wachovia Bank, National Association  
ABA No. 053 000 219  
Account No. 2000025633900  
For credit to Congress Financial Corporation (Western), as Agent  
Re: Mervyn's LLC

4. In the event Monogram receives any other written instructions from Revolving Loan Agent directing that amounts payable by Monogram to the Company be remitted only to another single bank account, Monogram is hereby irrevocably authorized and directed to follow, and shall follow, such instructions (without inquiry as to Revolving Loan Agent's right and authority to give such instructions). Monogram will not honor any instructions for the payment of such amounts due from Monogram to the Company, other than those approved in writing by Revolving Loan Agent.

5. The Company agrees that Monogram will be fully protected in acting on any order or direction of Revolving Loan Agent without making any inquiry whatsoever as to Revolving Loan Agent's right or authority to give such order or direction or as to the application of payments made pursuant hereto. The Company agrees to indemnify Monogram and hold Monogram harmless against any and all claims, demands and causes of action which may arise in connection with the instructions in this Intercreditor Agreement, other than from claims, demands and causes of action resulting from the gross negligence or wilful misconduct of Monogram.

6. The parties hereto agree as follows:

(a) Monogram acknowledges receipt of this notice of Revolving Loan Agent's security interests in the assets described on Exhibit C and, subject to the provisions of Section 6(c) below, does not object to the security interests of Revolving Loan Agent on behalf of itself and Revolving Loan Lenders in the amounts payable by Monogram to the Company and the other assets described on Exhibit C, including the security interests of Revolving Loan Agent on behalf of itself and Revolving Loan Lenders in any returned merchandise to the extent constituting proceeds of the collateral granted by the Company to Monogram or otherwise and any indebtedness of a retail customer of the Company under an Account which is charged back to the Company by Monogram under the terms of the Plan Agreement;

(b) Monogram does not have a security interest in any assets and properties of the Company other than the Monogram Property and the Portfolio Assets (to the extent that the Company is determined to have rights in the Monogram Property or the Portfolio Assets, notwithstanding the contrary intent of Monogram and the Company);

(c) Monogram does not have any interest in, and will not assert or claim any interest in, amounts sent by Monogram or the Company to Revolving Loan Agent or otherwise received by Revolving Loan Agent in respect of the obligations of the Company to Revolving Loan Agent or any funds at any time held or received in the Concentration Account; provided, that, the foregoing shall not be construed to limit or impair the rights of Monogram to setoff or to deduct amounts owing by the Company to Monogram prior to sending such amounts to the Company or to Revolving Loan Agent. The right of setoff referred to in the immediately preceding sentence shall also include any right to setoff, recoup, net or adjust obligations whether, in each case, such right arises by contract or under applicable law as any such right may have been modified, if at all, by any agreement between Monogram and the Company;

(d) As of the date of this Intercreditor Agreement, Monogram does not have actual knowledge of any material event of default under the Monogram Agreements and such arrangements are in full force and effect; and

(e) Until such time as Revolving Loan Agent notifies Monogram in writing that Revolving Loan Agent has terminated its interest in the payment instructions in this letter, at the same time that Monogram sends any written notice of a default, termination or non renewal of the Monogram Agreements (or any other agreement related to such arrangements) to the Company, or any written notice of Monogram's intention to cease or suspend payments to the Company, Monogram will use its best efforts to send a copy of such notice to Congress Financial Corporation (Western), 251 South Lake Avenue, Suite 900, Pasadena, California 91101, Attention: Portfolio Manager - Mervyn's; provided, that, Monogram shall have no legal liability to Revolving Loan Agent or to any other person (including the Company) for any loss or damage as a result of any failure to provide such copy.

7. Until such time as Monogram notifies Revolving Loan Agent in writing that Monogram has terminated its arrangements with the Company, at the same time Revolving Loan Agent sends any written notice to the Company of a default, termination or non renewal under the agreements of the Company with Revolving Loan Agent, Revolving Loan Agent will use its best efforts to send a copy of such notice to Monogram at 7840 Roswell Road, Building 100, Suite 200, Atlanta, Georgia 30350, provided, that, Revolving Loan Agent shall have no legal liability to Monogram or to any other person (including the Company) for any loss or damage as a result of failure to provide such copy.

8. Revolving Loan Agent is relying upon this Intercreditor Agreement in providing financing to the Company and Monogram is relying upon this Intercreditor Agreement in continuing to provide the credit card program to the Company, and this Intercreditor Agreement will be binding upon the parties hereto and their respective successors and assigns and inure to the benefit of Revolving Loan Agent and Monogram and their respective successors and assigns. This Intercreditor Agreement cannot be changed, modified or terminated, except by a written agreement signed by all of the parties hereto.

9. The Intercreditor Agreement may be executed in any number of counterparts; but all of such counterparts shall constitute one and the same agreement. In making proof of this Intercreditor Agreement, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Please acknowledge your receipt of, and agreement to, the foregoing by signing in the space provided below.

Very truly yours,

MERVYN'S LLC

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

Title: \_\_\_\_\_

MERVYN'S HOLDINGS LLC

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

Title: \_\_\_\_\_

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

ACKNOWLEDGED AND AGREED:

MONOGRAM CREDIT CARD BANK OF GEORGIA

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

Title: \_\_\_\_\_

CONGRESS FINANCIAL CORPORATION (WESTERN), as Agent

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

Title: \_\_\_\_\_



Please acknowledge your receipt of, and agreement to, the foregoing by signing in the space provided below.

Very truly yours,

MERVYN'S LLC

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

Title: \_\_\_\_\_

MERVYN'S HOLDINGS LLC

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

Title: \_\_\_\_\_

MERVYN'S BRANDS LLC

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

Title: \_\_\_\_\_

ACKNOWLEDGED AND AGREED:

MONOGRAM CREDIT CARD BANK OF GEORGIA

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

Title: President and CEO

CONGRESS FINANCIAL CORPORATION (WESTERN), as Agent

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

Title: \_\_\_\_\_

Please acknowledge your receipt of, and agreement to, the foregoing by signing in the space provided below.

Very truly yours,

MERVYN'S LLC

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

Title: \_\_\_\_\_

MERVYN'S HOLDINGS LLC

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

Title: \_\_\_\_\_

MERVYN'S BRANDS, LLC

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

Title: \_\_\_\_\_

ACKNOWLEDGED AND AGREED:

MONOGRAM CREDIT CARD BANK OF GEORGIA

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

Title: \_\_\_\_\_

CONGRESS FINANCIAL CORPORATION (WESTERN), as Agent

By: *Henry J. P.*

Title: SR. VICE PRESIDENT

EXHIBIT A  
TO  
INTERCREDITOR AGREEMENT

Portfolio Assets

"Portfolio Assets" shall mean all of the Company's right, title and interest, if any, now existing or hereafter arising in all:

1. the Accounts;
2. the Receivables as of the Effective Date;
3. all outstanding Credit Cards;
4. all of Sellers' right, title and interest in and to the Scoring Models; and
5. the Account Information.

Definitions

Capitalized terms in this Exhibit A are defined as set forth below (such definitions being equally applicable to both singular and plural forms of such terms):

"Account" shall mean a credit card account established or owned by TNB or by Target as a Mervyn's account, pursuant to which certain authorized persons may finance the purchase of goods or services from the Company and its affiliates. "Account" does not include any credit card or charge account established or owned by TNB or Target as a Marshall Field's account or a Target account.

"Account Information" shall mean (a) the Final Cut-Off File (as defined in Section 3(c)(1) of the Purchase Agreement); and (b) certain information relating to the Accounts which is included on the information systems operated by or on behalf of TNB or Target, and used by TNB or Target in conducting the Company's credit card business, as listed on Exhibit A to the Purchase Agreement.

"Cardholder" means any person who (a) has at any time entered into a Cardholder Agreement and has been issued a Credit Card; or (b) is authorized to use a Credit Card by a person who has been issued a Credit Card.

"Cardholder Agreement" means the credit card agreement between TNB or Target and a person for whom an Account has been established and to whom a Credit Card has been issued.

"Credit Card" shall mean any credit card issued with respect to an Account. "Credit Card" does not include any credit card issued by TNB or Target for accounts other than the Accounts.

"Effective Time" shall mean 11:59 p.m. Minneapolis time on the first Saturday immediately preceding the closing date.

"Receivables" shall mean, on any date, all amounts owing from Cardholders in respect of their Accounts (including any amounts owing for the purchase of goods and services, late payment fees, finance charges, returned payment fees, and any other interest, charge, fee or expense of every nature, kind and description whatsoever, accrued, posted, imposed on or incurred with respect to the Accounts), together with any collateral security therefor.

"Scoring Models" means the custom underwriting scorecard and the custom behavioral scorecard developed on behalf of TNB solely with respect to the Accounts.

EXHIBIT B  
TO  
INTERCREDITOR AGREEMENT

Monogram Property

"Monogram Property" shall mean all of the Company's right, title and interest, if any, now existing or hereafter arising in all:

1. Accounts, Account Documentation and Indebtedness;
2. all deposits, credit balances and reserves on Monogram's books relating to any such Accounts or the Program (including the Marketing Fund), and
3. all proceeds of any of the foregoing; provided, that, the term "Monogram Property" shall not include (a) any amounts at any time deposited in or received in the blocked accounts established by the Company under the terms of its arrangements with Revolving Loan Agent (or its successors and assigns and including any, lender or group of lenders who refinance or replace the financing arrangements provided by Revolving Loan Agent and Revolving Loan Lenders to the Company) or otherwise received or held by Revolving Loan Agent (or its successors and assigns and including any lender or group of lenders who refinance or replace the financing arrangements provided by Revolving Loan Agent and Revolving Loan Lenders to the Company) in respect of the indebtedness of the Company to Revolving Loan Agent and Revolving Loan Lenders, or (b) any present and future rights of the Company to payment and any amounts at any time payable to the Company by Monogram whether pursuant to the Plan Agreement or otherwise..

Definitions

Capitalized terms in this Exhibit B are defined as set forth below (such definitions being equally applicable to both singular and plural forms of such terms):

"Account" means (a) any account acquired by Monogram pursuant to the Plan Agreement and (b) the legal relationship established by and between a cardholder and Monogram pursuant to a Cardholder Agreement, together with all Indebtedness owing thereunder from time to time and any current or future guaranties, security or other credit support therefor.

"Account Documentation" means any and all Account information, credit applications, Cardholder Agreements, Charge Transaction Data, charge slips, credit slips, payments, credit information and documents or forms of any type and in any media relating to the Program, excluding (a) materials used for advertising or solicitations and (b) register tapes.

"Cardholder Agreement" means the open-end revolving credit agreement, in either tangible or electronic form, between Monogram and each cardholder pursuant to which such cardholder and its authorized user(s), if any, may make purchases on credit provided by Monogram.

"Charge Transaction Data" means Account and cardholder and/or authorized user identification and transaction information transmitted by the Company to Monogram with regard to a charge or a credit to an Account.

"Indebtedness" means any and all amounts owing from time to time by a cardholder with respect to an Account whether or not billed, including, without limitation, any unpaid balance, finance charges (inclusive of finance charges subject to possible reversals due to unexpired credit-based promotions), late charges, and NSF fees.

"Marketing Fund" means the fund established, funded and maintained by Monogram pursuant to Section 5.2 of the Plan Agreement for purposes of funding the marketing initiatives of the parities in connection with the Program.

"Program" means the consumer private-label credit card program established by Monogram pursuant to the Plan Agreement and made available to qualified customers of the Company to make purchases of goods and services from the Company.

EXHIBIT C  
TO  
INTERCREDITOR AGREEMENT

Collateral of Revolving Loan Lenders

Revolving Loan Agent, on behalf of itself and Revolving Loan Lenders, has a security interest in all of the following (collectively, the "Collateral"):

1. all rights of the Company and Brands (each a "Debtor" and collectively, "Debtors") to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card (i) all present and future rights of each Debtor to payment from (A) any person (other than the Company) who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., Novus Services, Inc. and Monogram (collectively, a "Credit Card Issuer"), (B) any servicing or processing agent or any factor or financial intermediary who services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of Debtors' sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer (a "Credit Card Processor") or (C) any other third party arising from sales of goods or rendition of services to customers who have purchased such goods or services using a credit or debit card and (ii) all present and future rights of each Debtor to payment from any Credit Card Issuer, Credit Card Processor or any other third party in connection with the sale or transfer of accounts arising pursuant to the sale of goods or rendition of services to customers who have purchased such goods or services using a credit card or a debit card, including, but not limited to, all amounts at any time due or to become due from any Credit Card Issuer or Credit Card Processor under any agreements now or hereafter entered into by either Debtor with any Credit Card Issuer or any Credit Card Processor, or otherwise (all of the foregoing being referred to herein collectively as the "Accounts");

2. all general intangibles, including, without limitation: patents, patent rights, patent applications, copyrights, works which are the subject matter of copyrights, copyright applications, copyright registrations, trademarks, servicemarks, trade names, trade styles, trademark and service mark applications, and licenses and rights to use any of the foregoing and all applications, registrations and recordings relating to any of the foregoing as may be filed in the United States Copyright Office, the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country or jurisdiction, together with all rights and privileges arising under applicable law with respect to each Debtor's use of any of the foregoing; all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets,

formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or servicemark, or the license of any trademark or servicemark); customer and other lists in whatever form maintained; trade secret rights, copyright rights, rights in works of authorship, domain names and domain name registration; source codes, object code, executable codes, data, databases and other physical manifestations or embodiments of any of the foregoing; software and contract rights relating to computer software programs, in whatever form created or maintained;

3. all goods, including, without limitation, all now owned and hereafter existing or acquired (a) goods, wherever located, which (i) are leased by either Debtor as lessor; (ii) are held by either Debtor for sale or lease or to be furnished under a contract of service; (iii) are furnished by either Debtor under a contract of services; or (iv) consist of raw materials, work in process, finished goods or materials used or consumed in its business and (b) equipment, wherever located, including machinery, data processing and computer equipment and computer hardware and software, whether owned or licensed and including embedded software, vehicles, tools, furniture, fixtures, all attachments, accessions and property now or hereafter affixed thereto or used in connection therewith, and substitutions and replacements thereof;

4. all fixtures and real property, including leasehold interests, together with all buildings, structures, and other improvements located thereon and all licenses, easements and appurtenances relating thereto, wherever located;

5. all chattel paper, including, without limitation, all tangible and electronic chattel paper;

6. all instrument, including, without limitation, all promissory notes;

7. all documents, all credit card sales drafts, credit card sales slips or charge slips or receipts and other forms of store receipts;

8. all deposit accounts;

9. all letters of credit, banker's acceptances and similar instruments and including all letter-of-credit rights;

10. all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of other Collateral, including (a) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the other Collateral; (b) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party; (c) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, other Collateral, including returned, repossessed and reclaimed goods; and (d) deposits by and property of account debtors or other persons securing the obligations of account debtors;

11. all investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity



accounts) and all monies, credit balances, deposits and other property of either Debtor now or hereafter held or received by or in transit to Secured Party or its affiliates or at any other depository or other institution from or for the account of such Debtor, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

12. all commercial tort claims;

13. to the extent not otherwise described above, (a) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with any Accounts; (b) all payment intangibles of each Debtor; (c) letters of credit, indemnities, guarantees, security or other deposits and proceeds thereof issued payable to each Debtor or otherwise in favor of or delivered to each Debtor in connection with any Account; (d) all other accounts, contract rights, chattel paper, instruments, notes, general intangibles and other forms of obligations owing to each Debtor, whether from the sale and lease of goods or other property, licensing of any property (including Intellectual Property or other general intangibles), rendition of services or from loans or advances by each Debtor to or for the benefit of any third person (including loans or advances to any affiliates or subsidiaries of such Debtor) or otherwise associated with any Accounts, inventory or general intangibles of each Debtor (including, without limitation, choses in action, causes of action, tax refunds, tax refund claims, any funds which may become payable to each Debtor in connection with the termination of any employee benefit plan and any other amounts payable to each Debtor from any employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, casualty or any similar types of insurance and any proceeds thereof and proceeds of insurance covering the lives of employees on which each Debtor is beneficiary);

14. all books of account of every kind or nature, purchase and sale agreements, invoices, ledger cards, bills of lading and other shipping evidence, statements, correspondence, memoranda, credit files and other data relating to any of the Collateral or any account debtor, together with the tapes, disks, diskettes and other data and software storage media and devices, file cabinets or containers in or on which the foregoing are stored (including any rights of each Debtor with respect to the foregoing maintained with or by any other person); and

15. all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (“Intercreditor Agreement”) dated as of November 27, 2007 is by and among Wachovia Capital Finance Corporation (Western), as successor to Congress Financial Corporation (Western), a California corporation, in its capacity as agent pursuant to the Senior Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions from time to time party thereto as lenders (in such capacity, “Senior Creditor Agent” as hereinafter further defined), the financial institutions from time to time party to the Senior Loan Agreement as lenders (“Lenders” as hereinafter further defined), SCSF Mervyn’s (US), LLC, a Delaware limited liability company, in its capacity as collateral agent pursuant to the Note Purchase Agreement (as hereinafter defined) acting for and on behalf of Investors (“Junior Creditor Agent” as hereinafter further defined) and each of SCSF Mervyn’s (US), LLC, a Delaware limited liability company and SCSF Mervyn’s (Offshore), Inc., a Delaware corporation, in its individual capacity as an Investor.

W I T N E S S E T H:

WHEREAS, Junior Creditor Agent and Investors have entered or may enter into financing arrangements with Mervyn’s LLC, a California limited liability company (“Mervyn’s”) and Mervyn’s Brands, LLC, a Minnesota limited liability company (“Brands” and together with Mervyn’s, individually each, a “Debtor” and collectively, “Debtors” as hereinafter further defined) and certain of its affiliates pursuant to which Investors have made or may make loans and have provided or may provide other financial accommodations to or for the benefit of Debtors, which loans are secured by certain assets and properties of Debtors;

WHEREAS, Senior Creditor Agent and Lenders have entered into financing arrangements with Debtors pursuant to which Lenders (or Senior Creditor Agent on behalf of Lenders) have made loans and provided other financial accommodations to for the benefit of Debtors secured by all or substantially all of the assets and properties of Debtors; and

WHEREAS, Creditors desire to enter into this Intercreditor Agreement to (i) establish the relative priority of the security interests of each Creditor in the assets and properties of Debtors, (ii) provide for the orderly sharing among Creditors, in accordance with such priorities, of proceeds of such assets and properties upon any foreclosure thereon or other disposition thereof, and (iii) agree upon the terms of the subordination of the obligations of Debtors to Junior Creditor Agent and related matters.

NOW, THEREFORE, in consideration of the mutual benefits accruing to Creditors hereunder and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. DEFINITIONS

As used above and in this Intercreditor Agreement, the following terms shall have the meanings ascribed to them below, and capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Senior Loan Agreement:

1.1. “Agreements” shall mean, collectively, the Senior Creditor Agreements and the Junior Creditor Agreements.

1.2. “Collateral” shall mean all of the property and interests in property, real or personal, tangible or intangible, now owned or hereafter acquired by Debtors in or upon which Senior Creditor Agent or Junior Creditor Agent at any time has a Lien, including without limitation, all proceeds of all of the foregoing property and interests in property.

1.3. “Creditors” shall mean, collectively, Senior Creditor Agent, Lenders, Junior Creditor Agent and their respective successors and assigns.

1.4. “Debtors” shall mean Mervyn’s LLC, a California limited liability company and Mervyn’s Brands, LLC, a Minnesota limited liability company, and their respective successors and assigns, including, without limitation, a receiver, trustee or debtor-in-possession on behalf of any such person or on behalf of any such successor or assign.

1.5. “Insolvency Proceeding” shall mean, as to any Person, any of the following: (a) any case or proceeding with respect to such Person under the U.S. Bankruptcy Code, any other Federal or State bankruptcy, insolvency, reorganization or other law affecting creditors’ rights generally or any other or similar proceedings of any other jurisdiction or otherwise seeking to adjudicate it bankrupt or insolvent or seeking any stay, reorganization, arrangement, composition or readjustment of the obligations and indebtedness of such Person or (b) any proceeding seeking the appointment of any receiver, administrative receiver, receiver and manager, examiner, judicial custodian, trustee, liquidator, official manager, administrator or similar official for any such Person or any material part of its properties or (c) any proceedings for liquidation, dissolution or other winding up of the business of such Person or (d) any assignment for the benefit of creditors or any marshaling of assets of such Person.

1.6. “Investors” shall mean SCSF Mervyn’s (US), LLC, a Delaware limited liability company (in its individual capacity and not as an agent) and SCSF Mervyn’s (Offshore), Inc., a Delaware corporation, and any other holder of any Subordinated Note, and their respective successors and assigns.

1.7. “Junior Creditor Agent” shall mean SCSF Mervyn’s (US), LLC, a Delaware limited liability company, in its capacity as agent on behalf of Inventors pursuant to the Note Purchase Agreement (and not in its individual capacity), and any successor or replacement agent for and on behalf of Investors under the Note Purchase Agreement.

1.8. “Junior Creditor Agreements” shall mean, collectively, (i) the Junior Security Agreement, (ii) the Subordinated Notes, (iii) the Note Purchase Agreement, and (iv) all agreements, documents and instruments at any time executed and/or delivered to, with or in favor of Junior Creditor Agent or any Investor in connection therewith or related thereto, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.9. “Junior Debt” shall mean all obligations, liabilities and indebtedness of every kind, nature and description owing by any Debtor to Junior Creditor Agent and Investors, including principal, interest, charges, fees, premiums, indemnities and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, arising under the Junior Creditor

Agreements, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Junior Creditor Agreements or after the commencement of any case with respect to any Debtor under the U.S. Bankruptcy Code or any similar statute (and including, without limitation, any principal, interest, fees, costs, expenses and other amounts, whether or not such amounts are allowable in whole or in part, in any such case or similar proceeding), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and whether arising directly or howsoever acquired by Junior Creditor Agent and Investors.

1.10. “Junior Security Agreement” shall mean the Security Agreement, dated as of the date hereof, by and among Junior Creditor Agent and Debtors, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.11. “Lenders” shall mean Wachovia Capital Finance Corporation (Western), as successor to Congress Financial Corporation (Western), a California corporation, in its individual capacity (and not as an agent) and any other party to the Senior Loan Agreement or any of the other Senior Creditor Agreements as a lender, and their respective successors and assigns.

1.12. “Lien” shall mean any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance (including, but not limited to, easements, rights of way and the like), lien (statutory or other), security agreement or transfer intended as security, including without limitation, any conditional sale or other title retention agreement, the interest of a lessor under a capital lease or any financing lease having substantially the same economic effect as any of the foregoing.

1.13. “Note Purchase Agreement” shall mean the Note Purchase Agreement, dated as of the date hereof, by and among Junior Creditor Agent, Investors and Debtors, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced.

1.14. “Obligors” shall mean, collectively, any Person (other than Debtors) liable on or in respect of the Senior Debt, and its successors and assigns, including, without limitation, a receiver, trustee or debtor in possession on behalf of such Person or on behalf of such successor or assign.

1.15. “Person” or “person” shall mean any individual, sole proprietorship, partnership, corporation (including, without imitation, any corporation which elects subchapter S status under the Internal Revenue Code of 1986, as amended), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock company, trust, joint venture, or other entity or any government or any agency or instrumentality or political subdivision thereof.

1.16. “Senior Creditor Agent” shall mean Wachovia Capital Finance Corporation (Western), as successor to Congress Financial Corporation (Western), a California corporation, in its capacity as agent on behalf of Lenders pursuant to the Senior Loan Agreement (and not in its individual capacity), and any successor or replacement agent for and on behalf of Lenders under the Senior Loan Agreement (and including any other lender or group of lenders that at any time refinances, replaces or succeeds to all or any portion of the Senior Debt or is otherwise party to the Senior Creditor Agreements).

1.17. "Senior Creditor Agreements" shall mean, collectively, the Senior Loan Agreement and all agreements, documents and instruments at any time executed and/or delivered by any Debtor or any other person to, with or in favor of Senior Creditor Agent or any Lender in connection therewith or related thereto, as all of the foregoing now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated, refinanced, replaced or restructured (in whole or in part and including any agreements with, to or in favor of any other lender or group of lenders that at any time refinances, replaces or succeeds to all or any portion of the Senior Debt).

1.18. "Senior Debt" shall mean any and all obligations, liabilities and indebtedness of every kind, nature and description owing by any Debtor or any Obligor to Senior Creditor Agent or any Lender and/or its affiliates or participants, including principal, interest, charges, fees, premiums, indemnities and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether arising under Senior Creditor Agreements or otherwise, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Senior Creditor Agreements or after the commencement of any case with respect to any Debtor or any Obligor under the U.S. Bankruptcy Code or any state insolvency law or similar statute (and including, without limitation, any principal, interest, fees, costs, expenses and other amounts, which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in any such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

1.19. "Senior Loan Agreement" shall mean the Loan and Security Agreement, dated September 2, 2004, by and among Agent, Lenders and Debtors, as amended by Amendment No. 1 to Loan and Security Agreement, dated October 25, 2004 by and among Agent, Lenders and Debtors, Amendment No. 2 to Loan and Security Agreement, dated December 22, 2005, by and among Agent, Lenders and Debtors, Amendment No. 3 to Loan and Security Agreement, dated June 8, 2006, by and among Agent, Lenders and Debtors, Amendment No. 4 to Loan and Security Agreement, dated March 14, 2007, by and among Agent, Lenders and Debtors and Amendment No. 5 to Loan and Security agreement, dated on or about the date hereof, by and among Agent, Lenders and Debtors and the other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto, as the same may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.20. "Subordinated Notes" shall mean the Subordinated Promissory Note, dated as of the date hereof and each subsequent issue date, issued by Mervyn's payable to Investors, and any other Subordinated Promissory Note issued by Mervyn's pursuant to the Note Purchase Agreement, in the aggregate original principal amount of \$50,000,000, as the same may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

1.21. "Subordinated Reorganization Securities" shall have the meaning set forth in Section 3.3(a) hereof.

1.22. All terms defined in the Uniform Commercial Code as in effect in the State of New York, unless otherwise defined herein, shall have the meanings set forth therein. All references to any term in the plural shall include the singular and all references to any term in the singular shall include the plural.

## 2. SECURITY INTERESTS; PRIORITIES; REMEDIES

### 2.1. Acknowledgement of Liens.

(a) Junior Creditor Agent hereby acknowledges that Senior Creditor Agent, on behalf of itself and Lenders, has been granted a first priority Lien on the Collateral to secure the Senior Debt.

(b) Senior Creditor Agent and Lenders hereby acknowledge that Junior Creditor Agent, on behalf of itself and Investors, has been granted a second priority Lien upon the Collateral to secure the Junior Debt.

(c) Junior Creditor Agent hereby represents, warrants and covenants that it does not and will not hold, acquire or claim any Lien on any assets or properties of any Debtor or any Obligor other than to the extent the Junior Creditor Agent has been granted a lien under the Junior Creditor Agreements.

2.2. Priority of Liens. Notwithstanding the order or time of attachment, or the order, time or manner of perfection, or the order or time of filing or recordation of any document or instrument, or other method of perfecting a security interest in favor of each Creditor in any Collateral, and notwithstanding any conflicting terms or conditions which may be contained in any of the Agreements, the Liens upon the Collateral of Senior Creditor Agent, on behalf of itself and Lenders, have and shall have priority over the Liens upon the Collateral of Junior Creditor Agent, and such Liens of Junior Creditor Agent are and shall be, in all respects, subject and subordinate to the Liens of Senior Creditor Agent therein to the full extent of the Senior Debt. The proceeds of any sale, distribution or other realization upon all or any Collateral shall be applied in the following order or priorities:

(a) first, to the final payment and satisfaction in full in immediately available funds of all of the Senior Debt in such order and manner as Senior Creditor Agent may elect (and including to hold as cash collateral for any Senior Debt which is contingent in an amount not in excess of 105% of the amount of such contingent Senior Debt); and

(b) second, to the final payment and satisfaction in full in immediately available funds of all of the Junior Debt in such order and manner as Junior Creditor Agent may elect.

Any proceeds of Collateral received by Senior Creditor Agent or any Lender which are to be applied to the Junior Debt in accordance with the terms hereof shall be remitted by Senior Creditor Agent or such Lender to Junior Creditor Agent. Notwithstanding any instruction, notice or claim to the contrary at any time received by Senior Creditor Agent or Lenders, Senior Creditor Agent and Lenders shall have no obligation, liability or responsibility with respect to the distribution, delivery or remittance of any proceeds of Collateral to Junior Creditor Agent, except as provided in the immediately preceding sentence.

2.3. Priorities Unaffected by Action or Inaction. The lien priorities provided in Section 2.2 shall not be altered or otherwise affected by any amendment, modification, supplement, extension, renewal, restatement or refinancing of either the Senior Debt or the Junior Debt, nor by any action or inaction which any Creditor may take or fail to take in respect of the Collateral.

2.4. Rights of Third Parties; No Contest of Lien. Each Creditor shall be solely responsible for perfecting and maintaining the perfection of its Lien in and to each item constituting the Collateral in which such Creditor has been granted a Lien. The foregoing provisions of this Agreement are intended solely to govern the respective lien priorities as between the Creditors and shall not impose on Senior Creditor Agent or Lenders any obligations in respect of the disposition of proceeds of foreclosure on any Collateral which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law. Junior Creditor Agent agrees that it will not contest the validity, perfection, priority or enforceability of the Liens upon the Collateral of Senior Creditor Agent and Lenders and Senior Creditor Agent and each Lender agrees that it will not contest the validity, perfection or enforceability of the Liens upon the Collateral of Junior Creditor Agent and Investors. As among Senior Creditor Agent, Lenders and Junior Creditor Agent, the terms of this Intercreditor Agreement shall govern even if part or all of the Senior Debt or the Liens securing payment and performance thereof are not perfected or are avoided, disallowed, set aside or otherwise invalidated in any judicial proceeding or otherwise.

2.5. Right to Enforce Agreement. Senior Creditor Agent shall have the exclusive right to manage, perform and enforce the terms of the Senior Creditor Agreements with respect to the Collateral, to exercise and enforce all privileges and rights thereunder according to its discretion and the exercise of its business judgment, including, without limitation, the exclusive right to take or retake control or possession of such Collateral and to hold, prepare for sale, process, sell, lease, dispose of, or liquidate such Collateral. Junior Creditor Agent and Investors shall not have any right to direct Senior Creditor Agent to exercise any right, remedy or power with respect to the Collateral and Junior Creditor Agent and Investors consent to the exercise by Senior Creditor Agent of any such right, remedy or power. Junior Creditor Agent and Investors shall not institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against Senior Creditor Agent or Lenders seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to, and Senior Creditor Agent and Lenders shall not be liable for, any action taken or omitted to be taken by Senior Creditor Agent with respect to the Collateral.

2.6. Bankruptcy Voting Rights. Junior Creditor Agent and Investors shall be entitled to vote their claims in any Insolvency Proceeding so long as Junior Creditor Agent and Investors do not (a) challenge any liens of Senior Creditor Agent, (b) challenge or dispute the validity or priority of any Senior Debt, and (c) vote their claims in any manner which would be inconsistent with the provisions of this Intercreditor Agreement.

2.7. Sale and Release of Collateral. Notwithstanding anything to the contrary contained in any of the Agreements, only Senior Creditor Agent shall have the right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of Collateral. Junior Creditor Agent and Investors shall (a) be deemed to have automatically and without further action released and terminated any Liens it may have on the Collateral to the extent such Collateral is sold or otherwise disposed of either by Senior Creditor Agent or any agent of Senior Creditor Agent, or Debtors with the consent of Senior Creditor Agent, (b) be deemed to have authorized Senior Creditor Agent to file UCC amendments and terminations covering the Collateral so sold or otherwise disposed of as to UCC financing statements between each Debtor and Junior Creditor Agent to evidence such release and termination, (c) promptly upon the request of Senior Creditor Agent execute and deliver such other release documents and confirmations of the authorization to file UCC amendments and terminations provided for herein, in each case as Senior Creditor

Agent may require in connection with such sale or other disposition by Senior Creditor Agent or Senior Creditor Agent's agents, or Debtors with the consent of Senior Creditor Agent to evidence and effectuate such termination and release and (d) be deemed to have consented under the Junior Creditor Agreements to such sale or other disposition, provided, that, any such release or UCC amendment or termination by Junior Creditor Agent shall not extend to or otherwise affect any of the rights, if any, of Junior Creditor Agent and Investors to the proceeds from any such sale or other disposition of Collateral. In the event that for any reason Junior Creditor Agent shall fail to immediately execute and deliver to Senior Creditor Agent any such release documents, Senior Creditor Agent is hereby irrevocably authorized to execute and deliver such release documents on behalf of Junior Creditor Agent as its attorney-in-fact.

2.8. Limitation or Remedies. Notwithstanding any rights or remedies available to a Creditor under any of the Agreements, applicable law or otherwise, Junior Creditor Agent and Investors shall not, directly or indirectly, (a) seek to collect from any Debtor (including, without limitation, from or by way of any Collateral) any of the Junior Debt or exercise any of their rights or remedies upon a default or event of default by any Debtor under the Junior Creditor Agreements or otherwise, or (b) seek to foreclose or realize upon (judicially or non-judicially) its Lien on any Collateral or assert any claims or interests therein (including, without limitation, by setoff or notification of account debtor), or (c) commence any action or proceeding against any Debtor or its properties under the U.S. Bankruptcy Code or any state insolvency law or similar present or future statute, law or regulation or any proceedings for voluntary liquidation, dissolution or other winding up of any Debtor's business, or the appointment of any trustee, receiver or liquidator for any Debtor or any part of its properties or any assignment for the benefit of creditors or any marshalling of assets of any Debtor, or (d) take any other action against any Debtor or any Collateral. The foregoing shall not in any way limit or impair the right of Junior Creditor Agent or any Investor from bidding for and purchasing any Collateral at any private or judicial foreclosure upon such Collateral initiated by Senior Creditor Agent.

### 3. SUBORDINATION OF JUNIOR DEBT

3.1. Subordination. Except as specifically set forth in Section 3.2 below, Junior Creditor Agent and Investors hereby subordinate their right to payment and satisfaction of the Junior Debt and the payment thereof, directly or indirectly, by any means whatsoever, is deferred, to the indefeasible payment and satisfaction in full of all Senior Debt.

3.2. Permitted Payments. Senior Creditor Agent and Lenders hereby agree that, notwithstanding anything to the contrary contained in Section 3.1, Debtors may make or issue and Junior Creditor Agent and Investors may receive and retain (a) regularly scheduled non-cash payments of interest in respect of the Junior Debt in accordance with the terms of the Subordinated Notes as in effect on the date hereof, in the form of additional Junior Debt having the same terms as the existing indebtedness under Subordinated Notes, (b) on and after the first anniversary of the date hereof, payment of all accrued and unpaid interest, including any interest and interest thereon in respect of the Junior Debt paid pursuant to clause (a), in each case, together with interest thereon compounded quarterly, and thereafter, regularly scheduled cash interest payments in respect of the Junior Debt in accordance with the terms of the Subordinated Notes as in effect on the date hereof, provided, that, as to any such payments pursuant to clause (b) herein, no Default or Event of Default (as such terms as defined in the Senior Loan Agreement) shall exist or have occurred and be continuing, (c) on and after the first anniversary of the date hereof, cash payments of any and all principal amounts under the Subordinated Notes



as in effect on the date hereof; provided, that, as to any such payments pursuant to this clause (c): (i) no Default or Event of Default (as such terms as defined in the Senior Loan Agreement) shall exist or have occurred and be continuing and (ii) as of the date of any such payment and after giving effect thereto, aggregate Excess Availability (as defined in the Senior Loan Agreement) shall equal or exceed the lesser of (A) \$50,000,000 or (B) the Minimum Amount (as defined in the Senior Loan Agreement) and (d) any Subordinated Reorganization Securities received by Junior Creditor Agent or any Investor in an Insolvency Proceeding of any Debtor. Without limitation upon the foregoing, no Debtor shall have the right at any time to repay the obligations under the Subordinated Notes in whole or in part with proceeds of any equity contribution or subordinated loan proceeds subject to the terms of this Intercreditor Agreement on the same basis as the Junior Debt, received by any Debtor pursuant to and in accordance with the terms of the Loan Agreement.

### 3.3. Distributions.

(a) In the event of any distribution, division, or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of any Debtor or the proceeds thereof to the creditors of any Debtor or readjustment of the obligations and indebtedness of any Debtor, whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors, marshalling of assets of any Debtor or any other action or proceeding involving the readjustment of all or any part of the indebtedness or other obligations of any Debtor or the application of the assets of any Debtor to the payment or liquidation thereof, or upon the dissolution or other winding up of any Debtor's business, or upon the sale of all or substantially all of any Debtor's assets, then, and in any such event, (i) Senior Creditor Agent and Lenders shall first receive indefeasible payment in full in cash of all of the Senior Debt prior to the payment of all or any part of the Junior Debt (other than a payment to Junior Creditor Agent and Investors of securities issued by any Debtor which are subordinate and junior to the Senior Debt at least to the same extent that the Junior Debt is subordinated to the Senior Debt (such securities being referred to herein as "Subordinated Reorganization Securities")), and (ii) unless and until Senior Creditor Agent and Lenders shall have received indefeasible payment in full in cash of all of the Senior Debt, Senior Creditor Agent and Lenders shall be entitled to receive any payment or distribution of any kind or character, whether in cash, securities or other property, which shall be payable or deliverable in respect of any or all of the Junior Debt (other than the Subordinated Reorganization Securities).

(b) In order to enable Senior Creditor Agent (on behalf of itself and Lenders) to enforce its rights under Section 3.3(a) above, Senior Creditor Agent is hereby irrevocably authorized and empowered (in its own name or in the name of Junior Creditor Agent or any Investor or otherwise), but shall have no obligation to, enforce claims comprising any of the Junior Debt by proof of debt, proof of claim, suit or otherwise and take generally any action which Junior Creditor Agent or any Investor might otherwise be entitled to take, as Senior Creditor Agent may deem necessary or advisable for the enforcement of its rights or interests hereunder, except that Senior Creditor Agent shall not file any proof of claim on behalf of Junior Creditor Agent or any Investor so long as Junior Creditor Agent or such Investor has properly filed such proof of claim at least ten (10) days prior to the last date for which such proof of claim may be filed.

(c) To the extent necessary for Senior Creditor Agent and Lenders to realize the benefits of the subordination of the Junior Debt provided for herein (including the right to

receive any payment and distributions which might otherwise be payable or deliverable in respect of the Junior Debt in any proceeding described in Section 3.3(a) or otherwise), Junior Creditor Agent and Investors shall execute and deliver to Senior Creditor Agent such instruments or documents (together with such assignments or endorsements as Senior Creditor Agent shall deem necessary), as may be requested by Senior Creditor Agent.

3.4. Payments Received by Junior Creditor Agent. Except for payments received by Junior Creditor Agent and Investors as provided in Section 3.2 above, should any payment or distribution or security or instrument or proceeds thereof be received by Junior Creditor Agent or any Investor in respect of the Junior Debt, Junior Creditor Agent or such Investor shall receive and hold the same in trust, as trustee, for the benefit of Senior Creditor Agent and Lenders, segregated from other funds and property of Junior Creditor Agent or such Investor and shall forthwith deliver the same to Senior Creditor Agent (together with any endorsement or assignment of Junior Creditor Agent or such Investor where necessary), for application to any of the Senior Debt. In the event of the failure of Junior Creditor Agent or such Investor to make any such endorsement or assignment to Senior Creditor Agent, Senior Creditor Agent, or any of its officers or employees, are hereby irrevocably authorized on behalf of Junior Creditor Agent to make the same at any time prior to the indefeasible payment in full in cash of all the Senior Debt.

3.5. Instrument Legend and Notation. Any instrument at any time evidencing the Junior Debt, or any portion thereof, shall be permanently marked on its face with a legend conspicuously indicating that payment thereof is subordinate in right of payment to the Senior Debt and subject to the terms and conditions of this Intercreditor Agreement, and after being so marked true and correct copies thereof shall be delivered to Senior Creditor Agent. In the event any legend or endorsement is omitted, Senior Creditor Agent or any of its officers or employees, are hereby irrevocably authorized on behalf of Junior Creditor Agent and Investors to make the same. No specific legend, further assignment or endorsement or delivery of notes, guarantees or instruments shall be necessary to subject any Junior Debt to the subordination thereof contained in this Agreement.

#### 4. COVENANTS, REPRESENTATIONS AND WARRANTIES

4.1. Additional Covenants. Junior Creditor Agent, Investors and Debtors agree in favor of Senior Creditor Agent and Lenders:

(a) except as specifically set forth in Section 3.2 above, no Debtor shall, directly or indirectly, make and Junior Creditor Agent and Investors shall not, directly or indirectly, accept or receive any payment of principal or interest or any prepayment or non-mandatory payment or any payment pursuant to acceleration or claims of breach or any payment to acquire Junior Debt or otherwise in respect of any Junior Debt;

(b) Junior Creditor Agent, Investors and Debtors shall not amend, modify, alter or change in any material respect the terms of any of the Junior Creditor Agreements or any other arrangements related to the Junior Debt in a manner adverse to the Senior Creditor Agent or Lenders, without the prior written consent of Senior Creditor Agent; provided, however, that Junior Creditor Agent, Investors and Debtors may amend the Junior Creditor Agreements to (i) the increase the rate of interest due under the Subordinated Notes by no more than two (2%) percent above the rate of interest provided for therein as of the date hereof or (ii) extend the term of the Subordinated Notes;

(c) Junior Creditor Agent shall not sell, assign, pledge, encumber or otherwise dispose of any of the Junior Debt, liens securing Junior Debt and guarantees, if any or subordinate any of the Junior Debt to any indebtedness of Debtors other than the Senior Debt, except, that, Junior Creditor Agent may sell, assign, pledge, encumber or otherwise dispose of the Junior Debt (and the liens securing the same) in whole or in part to any shareholder of any Investor, so long as Senior Creditor Agent shall have received from such person a written acknowledgment of receipt of a copy of this Intercreditor Agreement together with the written agreement of such person, in form and substance reasonably satisfactory to Senior Creditor Agent, to be bound by the terms and conditions of this Intercreditor Agreement;

(d) Junior Creditor Agent and Debtors shall, at any time or times upon the reasonable request of Senior Creditor Agent, promptly furnish to Senior Creditor Agent a statement of the outstanding Junior Debt; and

(e) Junior Creditor Agent and Debtors shall execute and deliver to Senior Creditor Agent such additional agreements, documents and instruments and take such further actions as may be necessary or reasonably desirable in the opinion of Senior Creditor Agent to effectuate the provisions and purposes of this Intercreditor Agreement.

4.2. Additional Representations and Warranties. Junior Creditor Agent, Investors and Debtors represent and warrant to Senior Creditor Agent that:

(a) as of the date hereof, the total outstanding principal amount of the Junior Debt is \$30,000,000;

(b) as of the date hereof, no default or event of default, or event which with notice or passage of time or both would constitute an event of default exists or has occurred under the Junior Creditor Agreements;

(c) Junior Creditor Agent and Investors are the exclusive legal and beneficial owners of all of the Junior Debt;

(d) none of the Junior Debt is subject to any lien, security interest, financing statements, subordination, assignment or other claim, except for the subordination in favor of Senior Creditor Agent and the Liens expressly contemplated in Section 2.1 hereof; and

(e) this Intercreditor Agreement constitutes the legal, valid and binding obligations of Junior Creditor Agent and Investors, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar laws limiting creditors' rights generally and by general equitable principles

4.3. Waivers. Notice of acceptance hereof, the making of loans, advances and extensions of credit or other financial accommodations to, and the incurring of any expenses by or in respect of, Debtors by Senior Creditor Agent and Lenders, and presentment, demand, protest, notice of protest, notice of nonpayment or default and all other notices to which Junior Creditor Agent, Lenders and Debtors are or may be entitled are hereby waived (except as expressly provided for herein or as to Debtors, in the Senior Creditor Agreements). Junior Creditor Agent and Investors also waive notice of, and hereby consent to, (a) any amendment, modification, supplement, renewal, restatement or extensions of time of payment of or increase

or decrease in the amount of any of the Senior Debt or to the Senior Creditor Agreements or any Collateral, (b) the taking, exchange, surrender and releasing of Collateral or guarantees now or at any time held by or available to Senior Creditor Agent or any Lender for the Senior Debt or any other person at any time liable for or in respect of the Senior Debt, (c) the exercise of, or refraining from the exercise of, any rights against Debtors or any other obligor or any Collateral, (d) the settlement, compromise or release of, or the waiver of any default with respect to, any of the Senior Debt, and/or (e) Senior Creditor Agent's election, in any proceeding instituted under the U.S. Bankruptcy Code, of the application of Section 1111(b)(2) of the U.S. Bankruptcy Code. Any of the foregoing shall not, in any manner, affect the terms hereof or impair the obligations of Junior Creditor Agent and Investors hereunder. All of the Senior Debt shall be deemed to have been made or incurred in reliance upon this Intercreditor Agreement.

4.4. Subrogation; Marshalling. Junior Creditor Agent and Lenders shall not be subrogated to, or be entitled to, any assignment of any Senior Debt or of any Collateral or guarantees or evidence of any thereof until all of the Senior Debt is indefeasibly paid and satisfied in full in immediately available funds. Junior Creditor Agent and Lenders hereby waive any and all rights to have any Collateral or any part thereof granted to Senior Creditor Agent marshalled upon any foreclosure or other disposition of such Collateral by Senior Creditor Agent or Debtors.

4.5. No Offset. In the event Junior Creditor Agent or any Investor at any time incurs any obligation to pay money to any Debtor, so long as any Senior Debt is outstanding Junior Creditor Agent and Investors hereby irrevocably agrees that it shall pay such obligation in cash in accordance with the terms of the contract governing such obligation and shall not deduct from or setoff against any amounts owed by Junior Creditor Agent or any Investor to any Debtor in connection with any such transaction any amounts Junior Creditor Agent or such Investor claims are due to it with respect to the Junior Debt.

## 5. MISCELLANEOUS

5.1. Amendments. Any waiver, permit, consent or approval by any Creditor of or under any provision, condition or covenant to this Intercreditor Agreement must be in writing and shall be effective only to the extent it is set forth in writing and as to the specific facts or circumstances covered thereby. Any amendment of this Intercreditor Agreement must be in writing and signed by each of the parties to be bound thereby.

### 5.2. Successors and Assigns.

(a) This Intercreditor Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of each of Creditors and its respective successors, participants and assigns.

(b) Senior Creditor Agent reserves the right to grant participations in, or otherwise sell, assign, transfer or negotiate all or any part of, or any interest in, the Senior Debt and the Collateral securing same; provided, that, Junior Creditor Agent and Investors shall not be obligated to give any notices to or otherwise in any manner deal directly with any participant in the Senior Debt and no participant shall be entitled to any rights or benefits under this Intercreditor Agreement except through Senior Creditor Agent and Lenders. In connection with any participation or other transfer or assignment, Senior Creditor Agent and Lenders (i) may

disclose to such assignee, participant or other transferee or assignee all documents and information which Senior Creditor Agent and Lenders now or hereafter may have relating to the Senior Debt or the Collateral and (ii) shall disclose to such participant or other transferee or assignee the existence and terms and conditions of this Intercreditor Agreement.

(c) Junior Creditor Agent and Investors reserve the right to grant participations in, or otherwise sell, assign, transfer or negotiate all or any part of, or any interest in, the Junior Debt and the Collateral securing same in accordance with Section 4.1(c) hereof; provided, that, Senior Creditor Agent shall not be obligated to give any notices to or otherwise in any manner deal directly with any participant in the Junior Debt and no participant shall be entitled to any rights or benefits under this Intercreditor Agreement except through Junior Creditor Agent. In connection with any participation or other transfer or assignment by Junior Creditor Agent or any Investor, Junior Creditor Agent or such Investor (i) may disclose to such assignee, participant or other transferee or assignee all documents and information which Junior Creditor Agent or such Investor now or hereafter may have relating to the Junior Debt or the Collateral and (ii) shall disclose to such participant or other transferee or assignee the existence and terms and conditions of this Intercreditor Agreement.

(d) In connection with any assignment or transfer of any or all of the Senior Debt, or any or all rights of Senior Creditor Agent in the property of Debtors (other than pursuant to a participation), Junior Creditor Agent and Investors agree to execute and deliver an agreement containing terms substantially identical to those contained herein in favor of any such assignee or transferee and, in addition, will execute and deliver an agreement containing terms substantially identical to those contained herein in favor of any third person who refinances or succeeds to or replaces any or all of Senior Creditor Agent's and Lenders' financing of Debtors, whether such successor financing or replacement occurs by transfer, assignment, "takeout" or any other means or vehicle.

5.3. Insolvency. This Intercreditor Agreement shall be applicable both before and after the filing of any petition by or against any Debtor under the U.S. Bankruptcy Code and all converted or succeeding cases in respect thereof, and all references herein to Debtors shall be deemed to apply to a trustee for any Debtor and any Debtor as debtor-in-possession. The relative rights of Senior Creditor Agent, Lenders, Junior Creditor Agent and Investors to repayment of the Senior Debt and the Junior Debt, respectively, and in or to any distributions from or in respect of Debtors or any Collateral or proceeds of Collateral, shall continue after the filing thereof on the same basis as prior to the date of the petition, subject to any court order approving the financing of, or use of cash collateral by, any Debtor as debtor-in-possession.

5.4. Bankruptcy Financing. If any Debtor shall become subject to a proceeding under the U.S. Bankruptcy Code and if Senior Creditor Agent and Lenders desire to permit the use of cash collateral or to provide financing to Debtors under either Section 363 or Section 364 of the U.S. Bankruptcy Code, Junior Creditor Agent and Investors agree as follows: (a) adequate notice to Junior Creditor Agent and Investors shall have been provided for such financing or use of cash collateral if Junior Creditor Agent and Investors receive notice two (2) business days prior to the entry of the order approving such financing or use of cash collateral and (b) no objection will be raised by Junior Creditor Agent and Investors to any such financing or use of cash collateral on the ground of a failure to provide "adequate protection" for Junior Creditor Agent's and Investors' junior Liens on the Collateral or any other grounds, provided Junior Creditor Agent and Investors retain a Lien on the post-petition Collateral with the same priority

as existed prior to the commencement of the proceeding under the U.S. Bankruptcy Code. For purposes of this Section, notice of a proposed financing or use of cash collateral shall be deemed given when given, in the manner prescribed by Section 5.5 hereof, to Junior Creditor Agent and Investors.

5.5. Notices. All notices, requests and demands to or upon the respective parties hereto shall be in writing and shall be deemed duly given, made or received: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if mailed by certified mail, return receipt requested, five (5) days after mailing to the parties at their addresses set forth below (or to such other addresses as the parties may designate in accordance with the provisions of this Section):

To Senior Creditor Agent:  
or any Lender

Wachovia Capital Finance Corporation  
(Western)  
251 South Lake Avenue, Suite 900  
Pasadena, California 91101  
Attention: Portfolio Manager  
Telephone No.: 626-304-4900  
Telecopy No.: 626-304-4949

with a copy to:

Otterbourg, Steindler, Houston & Rosen, P.C.  
230 Park Avenue  
New York, New York 10169  
Attention: Valerie S. Mason, Esq.  
Telephone No.: (212) 661-9100  
Telecopy No.: (212) 682-6104

To Junior Creditor Agent or any  
Investor:

SCSF Mervyn's (US), LLC  
c/o Sun Capital Partners, Inc.  
5200 Town Center Circle, Suite 470  
Boca Raton, Florida 33486  
Attention: Christopher Thomas, Jason Leach  
and C. Deryl Couch, Esq.  
Telephone No.: 561-394-0550  
Telecopy No.: 561-394-0540

with a copy to:

Kirkland & Ellis LLP  
Aon Center  
200 East Randolph Drive  
Chicago, Illinois 60601  
Attention: Douglas C. Gessner, P.C.  
Telephone No.: 312-861-2000  
Telecopy No.: 312-861-2200

Any Creditor may change the address(es) to which all notices, requests and other communications are to be sent by giving written notice of such address change to the other Creditors in conformity with this Section 5.5, but such change shall not be effective until notice of such change has been received by the other Creditors.

5.6. Counterparts. This Intercreditor Agreement may be executed in any number of counterparts, each of which shall be an original with the same force and effect as if the signatures thereto and hereto were upon the same instrument. This Intercreditor Agreement may be delivered by telecopier with the same force and effect if it were a manually executed and delivered counterpart.

5.7. Governing Law. The validity, interpretation and enforcement of this Intercreditor Agreement and any dispute arising out of the relationship among the parties hereto, whether in contract, tort, equity or otherwise shall be governed by the internal laws of the State of New York, without regard to principles of conflicts of law, but excluding any rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of New York.

5.8. Consent to Jurisdiction; Waiver of Jury Trial. Each of the parties hereto hereby irrevocably consents to the non-exclusive jurisdiction of Supreme Court of the State of New York for New York County and the United States District Court for the Southern District of New York, whichever Senior Creditor Agent may elect, and waives trial by jury in any action or proceeding with respect to this Intercreditor Agreement.

5.9. Complete Agreement. This written Intercreditor Agreement is intended by the parties as a final expression of their agreement and is intended as a complete statement of the terms and conditions of their agreement.

5.10. No Third Parties Benefitted. Except as expressly provided in Section 5.2, this Intercreditor Agreement is solely for the benefit of the Creditors and their respective successors, participants and assigns, and no other person shall have any right, benefit, priority or interest under, or because of the existence of, this Intercreditor Agreement.

5.11. Disclosures; Non-Reliance. Each Creditor has the means to, and shall in the future remain, fully informed as to the financial condition and other affairs of Debtors and no Creditor shall have any obligation or duty to disclose any such information to any other Creditor. Except as expressly set forth in this Intercreditor Agreement, the parties hereto have not otherwise made to each other nor do they hereby make to each other any warranties, express or implied, nor do they assume any liability to each other with respect to: (a) the enforceability, validity, value or collectability of any of the Junior Debt or Senior Debt or any guarantee or security which may have been granted to any of them in connection therewith, (b) Debtors' title to or right to transfer any of the Collateral, or (c) any other matter except as expressly set forth in this Intercreditor Agreement.

5.12. Term. This Intercreditor Agreement is a continuing agreement and shall remain in full force and effect until the indefeasible satisfaction in full of all Senior Debt and the termination of the financing arrangements between Senior Creditor Agent, Lenders and Debtors.

5.13. Each Agent as Bailee.

(a) With respect to any Collateral that can be perfected by the possession or control of such Collateral or any deposit or securities account in which such Collateral is held, if such Collateral or any such account is in fact in the possession or under the control of Senior Creditor Agent, Junior Creditor Agent or of agents or bailees of Senior Creditor Agent or Junior Creditor Agent (such Collateral and accounts being referred to herein as the “Pledged Collateral”), then Senior Creditor Agent or Junior Creditor Agent, as the case may be, agrees to hold such Pledged Collateral as bailee and agent for and on behalf of the other solely for the purpose of perfecting the security interest granted to the other in such Pledged Collateral pursuant to the Senior Creditor Agreements or Junior Security Agreement, as applicable, subject to the terms and conditions of this Section 5.13.

(b) Until the indefeasible payment and satisfaction in full of all Obligations under the Senior Creditor Agreements (as defined therein) and the termination of the Senior Creditor Agreements in accordance with their terms (“Discharge of First Lien Obligations”), Senior Creditor Agent shall be entitled to deal with the Pledged Collateral in accordance with the terms of the Senior Creditor Agreements as if the Liens of Junior Creditor Agent and Investors under the Junior Creditor Agreements did not exist. The rights of the Junior Creditor Agent and Investors shall at all times be subject to the terms of this Agreement and to Senior Creditor Agent’s rights under the Senior Creditor Agreements.

(c) Neither party hereto shall have any obligation whatsoever to the other or any other Person to assure that the Pledged Collateral is genuine or owned by a Debtor or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.13. The duties or responsibilities of each party hereto under this Section 5.13 shall be limited solely to holding the Pledged Collateral as bailee and agent for and on behalf of the other for purposes of perfecting the Lien held by the other.

(d) Neither party hereto shall have by reason of the Senior Creditor Agreements, the Junior Creditor Agreements or this Agreement or any other document a fiduciary relationship in respect of the other or any other Person and shall not have any liability to the other or any other Person in connection with its holding the Pledged Collateral.

(e) Upon the Discharge of First Lien Obligations, to the extent permitted under applicable law, upon the request of Junior Creditor Agent, Senior Creditor Agent shall, without recourse or warranty, transfer the possession and control of the Pledged Collateral, if any, then in its possession or control to Junior Creditor Agent, except in the event and to the extent (i) Senior Creditor Agent or any other Lender has retained or otherwise acquired such Collateral in full or partial satisfaction of any of the Obligations under the Senior Creditor Agreements, (ii) such Collateral is sold or otherwise disposed of by Senior Creditor Agent or any Lender or (iii) it is otherwise required by any order of any court or other governmental authority or applicable law or would result in the risk of liability of Senior Creditor Agent or any Lender to any third party. The foregoing provision shall not impose on Senior Creditor Agent or any Lender any obligations which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law. In connection with any transfer described in this Section 5.13 to Junior Creditor Agent, Senior Creditor Agent agrees to take reasonable actions in its power (with all reasonable costs and expenses in connection therewith to be for the account of the Junior Creditor Agent and




to be paid by Debtors) as shall be reasonably requested by Junior Creditor Agent to permit Junior Creditor Agent to obtain a first priority security interest in the Pledged Collateral.

5.14. Waiver and Amendments to Negative Covenants. Upon any waiver, amendment, consent or other modification by Senior Creditor Agent or Lenders of any of the provisions of the Senior Loan Agreement with respect to covenants and/or representations and warranties thereunder, Junior Creditor Agent and Investors shall be deemed, automatically and without any further action, to have waived, amended, consented to or otherwise modified any similar or corresponding provisions of the Junior Creditor Agreements. Debtors hereby consents to the terms of this Section 5.14.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

SCSF MERVYN'S (US), LLC,  
as Junior Creditor Agent and an Investor

By: 

Title: RODGER R. KROUSE  
PRESIDENT

WACHOVIA CAPITAL FINANCE  
CORPORATION (WESTERN), as Senior Creditor  
Agent

By: 

Title: DIRECTOR

Each of the undersigned hereby acknowledges and agrees to the foregoing terms and provisions. By their signature below, each the undersigned agrees that it will, together with its successors and assigns, be bound by the provisions hereof.

Each of the undersigned agrees that any Creditor holding Collateral does so as bailee (under the Uniform Commercial Code) for the others and is hereby authorized to and may turn over to such other Creditors, upon request therefor, any such Collateral, after all obligations and indebtedness of the undersigned to the bailee Creditor have been fully paid and performed.

Each of the undersigned acknowledges and agrees that: (i) although it may sign this Intercreditor Agreement it is not a party hereto and does not and will not receive any right, benefit, priority or interest under or because of the existence of the foregoing Intercreditor Agreement, (ii) in the event of a breach by any of the undersigned, Junior Creditor Agent or any Investor of any of the terms and provisions contained in the foregoing Intercreditor Agreement, such a breach shall constitute an "Event of Default" as defined in and under the Senior Creditor Agreements and (iii) it will execute and deliver such additional documents and take such additional action as may be necessary or desirable in the opinion of any Creditor to effectuate the provisions and purposes of the foregoing Intercreditor Agreement.

DEBTORS

MERVYN'S LLC

By: Clark Ku

Title: SVP/CFO

MERVYN'S BRANDS, LLC

By: Clark Ku

Title: SVP/CFO

**DEPOSIT ACCOUNT CONTROL AGREEMENT**  
**(With Future Notification)**

This DEPOSIT ACCOUNT CONTROL AGREEMENT ("Agreement") is made and entered into as of this 2nd day of September 2004 by and among WACHOVIA BANK, NATIONAL ASSOCIATION as depository bank (the "Bank"), MERVYN'S LLC (the "Company"), and CONGRESS FINANCIAL CORPORATION (WESTERN), in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the parties thereto as lenders (in such capacity, together with its successors and assigns, "Agent").

**Statement of Facts**

The Bank acknowledges that, as of the date hereof, it maintains in the name of the Company the deposit accounts identified on **Exhibit A** attached hereto and made a part hereof (each an "Account" and, collectively, the "Accounts"). One or more of the Accounts may be served by one or more lockboxes operated by the Bank, which lockboxes (if any) also are listed on **Exhibit A** (each a "Lockbox" and, collectively, the "Lockboxes"). Both the Accounts and the Lockboxes are governed by the terms and conditions of the Company's signature card and the commercial deposit account agreement published by the Bank from time to time, and may also be governed by a wholesale lockbox service description between the Bank and the Company (collectively, the "Deposit Agreement").

The Company hereby informs the Bank that the Company has entered or is about to enter into financing arrangements with Agent and the parties to the Loan Agreement as lenders (collectively, together with their respective successors and assigns, "Lenders") pursuant to which the Company may from time to time have certain indebtedness or other obligations to Agent and Lenders as set forth in the Loan and Security Agreement by and among Agent, Lenders, the Company and certain affiliates of the Company (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"). The Company has granted to the Agent a security interest in, among other things, the following (collectively, the "Account Collateral"): (a) the Accounts, (b) the Lockboxes and (c) the Items Collateral. The term "Items Collateral" as used herein shall mean, collectively, all checks, drafts, instruments, cash and other items at any time received in any Lockbox or for deposit in any Account (subject to specific Lockbox instructions in effect for processing items received in the Lockboxes), and all wire transfers of funds, automated clearing house ("ACH") entries, credits from a merchant card transaction and other electronic funds transfers or other funds deposited in, credited to, or held for deposit in or credit to, any Account.

The parties desire to enter into this Agreement in order to set forth their relative rights and duties with respect to the Account Collateral. In consideration of the mutual covenants herein as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Control of the Accounts**

(a) The Statement of Facts is true and correct and incorporated herein by reference. Each party to this Agreement hereby confirms that (i) each Account is a "deposit account", (ii)

this Agreement shall constitute an "authenticated record", and (iii) the arrangements established under this Agreement shall constitute "control" of each Account, as each of those terms is defined in Article 9 of the Uniform Commercial Code as adopted in the State in which the respective Account identified on **Exhibit A** is located (hereinafter referred to as the "Applicable UCC").

(b) The Company represents and warrants to the Agent that Exhibit A contains a complete and accurate list of all Accounts and Lockboxes maintained by the Company with the Bank and subject to this Agreement. The Company covenants for the benefit of the Agent that the Company shall not open or maintain any deposit account with the Bank other than the Accounts listed on Exhibit A. Nothing in this Agreement shall be deemed to impose upon the Bank any duty to monitor or otherwise assure the Company's compliance with this Section 1(b).

(c) The Company authorizes and directs the Bank to comply, and the Bank agrees to comply, with instructions given by the Agent in accordance with this Agreement directing the disposition of funds from time to time in any Account or as to any other matters relating to any Account or any of the other Account Collateral without further consent by the Company. The Bank shall be entitled to rely and act upon any instructions received by the Bank from the Agent, even if such instructions shall be contrary to any instructions received by the Bank from the Company. The Agent's right to give instructions to the Bank regarding any Account Collateral shall include the right to give "stop payment orders" to the Bank for any items that may be presented to the Bank against any Account, and the Company also authorizes the Bank to follow such instructions by the Agent even if it results in the dishonor of items presented against any Account.

(d) The Agent authorizes and directs the Bank to also act upon the instructions of the Company concerning the Lockbox and the Accounts including, but not limited to, instructions to: (i) direct the disposition of funds in the Accounts (including, but not limited to, dispositions to or for the benefit of the Company and/or the Bank), (ii) withdraw any amount(s) from any Account(s), or (iii) draw upon or otherwise exercise any authority or powers with respect to the Lockboxes, the Accounts and all other Account Collateral, until the implementation by the Bank of the unilateral written instruction from the Agent to the Bank substantially in the form of **Exhibit B** attached hereto and made a part hereof (the "Notice") in accordance with the provisions of Section 7 of this Agreement. The Agent authorizes and instructs the Bank that, upon the implementation of the Notice by the Bank and thereafter, the Bank shall (subject to specific Lockbox instructions for processing items received in the Lockboxes) deposit all Items Collateral received in a Lockbox to the Account listed opposite such Lockbox on **Exhibit A**, and credit to such Account with all other Items Collateral received directly by the Bank for credit to an Account. Furthermore, upon the effectiveness of the Notice upon the Company and implementation of the Notice by the Bank as provided in Section 7, all collected and available funds in an Account shall only be withdrawn or transferred based on instructions originated by the Agent in accordance with this Agreement. Such instructions shall be honored and followed by the Bank without further consent of or notice to the Company.

(e) All defenses of the Bank under the Deposit Agreement, Federal Reserve Regulations and Operating Circulars, clearing house rules and applicable law (including, without limitation, the Applicable UCC) as to the collection and payment of items shall also be applicable to and enforceable against the Agent. Each of the Company and the Agent hereby

authorizes and instructs the Bank to supply the Company's or the Agent's endorsement, as appropriate, to any Items Collateral that the Bank shall receive and deposit for collection to any Account.

2. **Statements and Other Information** The Bank will send to the Agent (in a manner consistent with the Bank's standard practices) at the Agent's address specified below, copies of all correspondence, notices, account statements and other information (but not canceled checks) which the Bank shall be required to send to the Company under the Deposit Agreement. The Bank also agrees to provide to each of the Company and the Agent (as a service under this Agreement and/or the Deposit Agreement) copies of account statements and other deposit account information, including account balances, by telephone and by computer communication, to the extent practicable and as shall have been requested by the Company or by the Agent. The Company shall be deemed at all times to have consented to the Bank's release of such deposit account information to the Agent. The Bank's liability for failure to comply with this Section 2 shall not exceed the cost of providing such information.

3. **Setoff; Returned Items and Charges**

(a) The Company and the Bank have not entered into, and will not enter into during the term of this Agreement, any agreement with any person other than the Agent by which the Bank will be obligated to comply with instructions from such other person (other than the Company) as to the disposition of funds in an Account or of Items Collateral received in a Lockbox.

(b) The Bank will not exercise any security interest (except for the security interest provided in Section 4-210, "Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds", of the Applicable UCC), lien, right of setoff, deduction, recoupment or banker's lien or any other interest in or against any Account or any other Account Collateral, and the Bank hereby subordinates to the Agent any such security interest (except for such security interest provided in Section 4-210, "Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds", of such Applicable UCC), lien or right which it may have against any Account or any of the other Account Collateral. Notwithstanding the provisions of the preceding sentence, the Agent and the Company agree that the Bank at any time may, and is expressly permitted by this Agreement to, set off and charge against any Account (regardless of any agreement of the Company to compensate the Bank by means of balances in such Account) any or all of the following as permitted under the Deposit Agreement (collectively, the "Permitted Debits"): (i) the face amount of each Returned Item (hereinafter defined), (ii) all usual and customary service charges, (iii) account maintenance fees, (iv) transfer fees, (v) out-of-pocket fees and expenses (including attorneys' reasonable fees) incurred by the Bank, including those incurred in connection with the negotiation, administration or enforcement of this Agreement, (vi) adjustments or corrections of posting or encoding errors, and (vii) any other items normally chargeable by the Bank to or against a deposit account or customer, whether any of the Permitted Debits shall have been incurred before or after the date of this Agreement. As used in this Agreement, "Returned Item" shall mean any (i) Items Collateral deposited into or credited to an Account either before or after the date of this Agreement and returned unpaid or otherwise uncollected or subject to an adjustment entry, whether for insufficient funds or for any other reason, and without regard to the timeliness of such return or adjustment or the occurrence or timeliness of any other party's notice of

nonpayment or adjustment; (ii) Items Collateral subject to a claim against the Bank for breach of transfer, presentment, encoding, retention or other warranty under Federal Reserve Regulations or Operating Circulars, clearing house rules or applicable law (including, without limitation, Articles 3, 4 and 4A of the Applicable UCC); and (iii) credit to an Account from a merchant card transaction against which a contractual demand for chargeback has been made.

(c) If (i) there were insufficient funds in any of the Account(s) such that the Bank shall be unable to set off and charge any Permitted Debits against such Account(s), or (ii) the Bank in good faith shall believe that any legal process or applicable law prohibits such setoffs and charges against any Account, or (iii) the Account(s) shall have been closed, then (A) the Bank may charge such Permitted Debits to and set off against any other Account, and/or (B) at any time after the Bank shall have received the Notice, the Bank may demand that the Agent pay, and the Agent shall pay, to the Bank within five (5) business days of written notice of demand by the Bank the full amount of such Permitted Debits; provided, however, as to those Permitted Debits that are service charges, fees or expenses, or adjustments or corrections, the Agent shall only be required to pay to the Bank those service charges, fees and expenses attributable to any Account which shall have been incurred, or such adjustments or corrections of posting or encoding errors which shall have occurred, in connection with any Account on or after the date of this Agreement and on or before the date of termination of this Agreement.

(d) The Company shall reimburse the Agent for any moneys that the Agent shall have paid to the Bank for any Permitted Debits under this Section 3 or for any costs, expenses and attorneys' reasonable fees incurred under Section 6 below, and the Agent may, at its option, charge any loan account of the Company any such amounts. Nothing in this paragraph shall limit any liabilities or obligations of the Company and/or the Agent to the Bank under this Agreement.

#### 4. Exculpation of Bank

(a) At all times the Bank shall be entitled to rely conclusively upon any communication it receives from the Agent in connection with this Agreement or which the Bank believes in good faith to be a communication received by it from the Agent in connection with this Agreement, and the Bank shall have no obligation to investigate or verify the authenticity or correctness of any such communication. The Bank shall have no liability to the Company or the Agent for honoring or following any instruction the Bank shall receive from (or in good faith shall believe to be from) the Agent in accordance with this Agreement (including with regard to any Lockbox, Account or other Account Collateral and the transfer of any funds to or on the instruction of the Agent), and honoring or following any instruction the Bank shall receive from (or in good faith shall believe to be from) the Company in accordance with this Agreement (including with regard to any Lockbox, Account or other Account Collateral and the transfer of any funds to or on the instruction of the Company) prior to the implementation of the Notice by the Bank.

(b) The Bank shall only be responsible for the loss that a court having jurisdiction over the Accounts shall have determined had been incurred by the Company or the Agent and had been caused by the Bank's breach of this Agreement or gross negligence or willful misconduct. The Bank shall have no liability to any party for failure of, or delay in, its performance under this Agreement as a result of any act of God, war or terrorism, fire, other

catastrophe or force majeure, electrical or computer or telecommunications failure, any event beyond the control of the Bank, or fraud committed by any third party. Nothing in this Agreement shall create any agency, fiduciary, joint venture or partnership relationship between the Bank and the Company or the Agent. Except as shall be specifically required under this Agreement or the Deposit Agreement or applicable law, the Bank shall have no duty whatsoever to the Agent or the Company in connection with the subject matter of this Agreement.

**5. Indemnification**

(a) The Company hereby indemnifies the Bank and holds it harmless against, and shall reimburse the Bank for, any loss, damage or expense (including attorneys' reasonable fees and expenses, court costs and other expenses) including, but not limited to, (i) unpaid charges, fees, and Returned Items for which the Company and/or the Agent originally received credit or remittance by the Bank, and (ii) any loss, damage or expense the Bank shall incur as a result of (A) entering into or acting pursuant to this Agreement, (B) honoring and following any instruction the Bank may receive from (or in good faith shall believe to be from) the Agent or the Company under this Agreement, or (C) to the extent required by this Agreement, not honoring or following any instructions it shall receive from (or in good faith shall believe to be from) the Company in accordance with this Agreement. The Company shall not be responsible for any loss, damage, or expense that a court having jurisdiction shall have determined had been caused by the Bank's breach of this Agreement or gross negligence or willful misconduct.

(b) Without limiting in any way the Agent's obligation to pay or reimburse the Bank as otherwise specified in this Agreement, the Agent hereby indemnifies the Bank and holds it harmless against any loss, damage or expense (including attorneys' reasonable fees and expenses, court costs and other expenses) which loss, damage or expense the Bank shall incur as a result of honoring or following any instruction it shall receive from (or in good faith shall believe to be from) the Agent under this Agreement or, to the extent required by this Agreement, not honoring or following any instruction the Bank shall receive from (or in good faith shall believe to be from) the Company on accordance with this Agreement, except for any loss, damage, or expense that a court having jurisdiction shall have determined had been caused by the Bank's breach of this Agreement or gross negligence or willful misconduct.

(c) In no event shall any party hereto be liable to any other party under this Agreement for lost profits or special, indirect, exemplary, consequential or punitive damages, even if such party shall have been advised of the possibility of such damages.

**6. Third Party Claims; Insolvency of Company**

(a) In the event any third party shall assert an adverse claim by legal process against any Account or any sums on deposit therein, any Lockbox or other Account Collateral, whether such claim shall arise by tax lien, execution of judgment, statutory attachment, garnishment, levy, the claim of a trustee in bankruptcy or debtor-in-possession, or other judicial or regulatory order or process (each, a "Claim"), the Bank may, in addition to other remedies it may possess under the Deposit Agreement, this Agreement or at law or in equity: (i) suspend disbursements from such Account without any liability until the Bank shall have received an appropriate court order or other assurances acceptable to the Bank in its sole discretion establishing that funds may continue to be disbursed according to instructions then applicable to such Account, and/or



(ii) interplead all such funds in such Account into the registry of the appropriate court located in the State in which such Account is located as identified in **Exhibit A**. The Company shall pay promptly all of the Bank's costs, expenses and attorneys' reasonable fees incurred in connection with such Claim. If the Company shall fail to promptly remit such amounts to the Bank, the Bank may demand that the Agent pay, and the Agent shall pay, such amounts to the Bank within five (5) business days of Agent's receipt of the Bank's written notice of demand therefor.

(b) If a bankruptcy or insolvency proceeding shall have been commenced by or against the Company, the Bank shall be entitled, without any liability, to refuse to permit deposits to, or withdrawals and/or transfers from, the Accounts until the Bank shall have received an appropriate court order or other assurances acceptable to the Bank in its sole discretion establishing that continued deposits to, or withdrawals and/or transfers from, the Accounts are authorized and shall not violate any law, regulation, or order of any court.

**7. Notice and Communications** All communications given by any party to another as required or provided under this Agreement shall be in writing, issued by or directed to the respective designated officer (the "Designated Officer") set forth below, and delivered to each recipient party at its respective address (or at such other address and to or by such other Designated Officer as such party may designate in writing to the other parties in accordance with this Section 7) either by U.S. Mail, receipted delivery service or via telecopier facsimile transmission. Any communication hereunder to the Bank which is an instruction (including the Notice) made by (or in good faith believed by the Bank to be by) the Company or the Agent, as the case may be, shall be deemed to have been received by the Bank when actually received by the Bank's Designated Officer, and shall be deemed to have been implemented by the Bank by the close of the Bank's business on the banking day that shall be two (2) banking days (exclusive of the date on which such instruction was actually received) after receipt by the Bank's Designated Officer. The Company and the Agent agree that: (a) in the event that the Agent shall deliver the Notice to the Bank, the Agent also shall deliver contemporaneously a copy of the Notice to the Company, (b) the Notice shall be deemed effective as to the Company upon receipt of same by the Company's Designated Officer, and (c) after the Company's receipt of copy of the Notice, none of the officers, agents or other representatives of the Company or its affiliates shall have any authority to, and shall not attempt to, direct the disposition of funds in any Account, withdraw any amount from any Account, or draw upon or otherwise exercise any authority or power with respect to any Lockbox, any Account or any Account Collateral.

Address for Agent: Congress Financial Corporation (Western), as Agent  
225 South Lake Avenue  
Suite 1000  
Pasadena, California 91101  
Attn.: Portfolio Manager - Mervyn's, LLC  
Fax: 626-304-4969

Address for  
Depository Bank: Wachovia Bank, National Association  
Mail Code NC 0722  
401 South Tryon Street  
Charlotte, North Carolina 28288  
Attn: Mr. Greg Ledford, SVP Risk Mgmt  
Fax: 704. 374. 4224

with copy to: Wachovia Bank, National Association  
350 E. Las Olas Blvd. 18<sup>th</sup> Floor  
Fort Lauderdale, Fl. 33301  
Attn.: Debbie Gilchrist, Designated Officer  
Fax: 954-765-3801

Address for Mervyn's, LLC  
Company: 22301 Foothill Boulevard  
Hayward, California 94541  
Attn.: Leticia DeLapaz  
Fax: 510-727-3638

**8. Termination**

(a) This Agreement may be terminated by the Agent at any time upon receipt by the Bank of the Agent's written notice of termination. This Agreement may be terminated by the Company only with the express prior written consent of the Agent and, in that case, the Agent and the Company shall jointly notify the Bank of such termination. This Agreement may be terminated by the Company at any time after the Agent ceases to have a security interest in all of the Account Collateral, provided no such termination by the Company shall be effective unless the Bank shall have received written notice from the Agent confirming that such security interest no longer exists.

(b) This Agreement may be terminated by the Bank at any time on not less than thirty (30) days' prior written notice to each of the Company and the Agent. The Agent acknowledges that the Bank shall not be liable for the closure of any Lockbox or any Account by the Company or the remittance of any funds therein directly to, or on the instructions of, the Company prior to the implementation of the Notice by the Bank. The Company shall notify the Agent promptly of the Company's closure of any Lockbox or any Account.

(c) The Bank's rights to demand and receive reimbursement from the Company under Sections 3 and 6 of this Agreement and the Company's indemnification of the Bank under Section 5 of this Agreement shall survive termination of this Agreement. In addition, the Bank's rights to demand reimbursement from the Agent under Section 3 of this Agreement shall survive termination of this Agreement for a period of sixty (60) days after the date of termination of this Agreement. The Bank's right to demand reimbursement from the Agent under Section 6 of this Agreement shall survive termination of this Agreement for a period of one hundred eighty (180) days after the date of termination of this Agreement. The Bank's right to demand the Agent's indemnification of the Bank under Section 5 of this Agreement shall survive termination of this Agreement for a period of one hundred eighty (180) days after the date of termination of this Agreement.

(d) Upon termination of this Agreement, all funds remaining in the Accounts and all other Account Collateral received by the Bank shall be forwarded by the Bank directly to the Company, unless the Bank shall have received written instruction from the Agent prior to

termination of this Agreement directing the Bank to send such funds and other Account Collateral to the Agent or another depository institution approved in writing by the Agent and the Company.

**9. Miscellaneous**

(a) The Company shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank and the Agent. The Agent shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank. The Bank shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Agent and the Company, except that the Bank may transfer its rights and obligations under this Agreement to any direct or indirect depository subsidiary of Wachovia Corporation or, in the event of a merger or acquisition of the Bank, to the Bank's successor depository institution.

(b) This Agreement shall be governed by the laws of the State in which the Account(s) is/are located as identified in **Exhibit A** (without giving effect to its conflicts of law rules), which State shall also be the jurisdiction of the Bank within the meaning of Section 9-304 of the Applicable UCC. The Bank will not amend the Deposit Agreement to the effect that secured transactions in connection with any Account(s) shall be governed by the law of a jurisdiction other than the State in which such Account is located as identified on **Exhibit A**.

(c) This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same Agreement. Delivery of an executed signature page counterpart to this Agreement via telecopier facsimile transmission shall be effective as if it were delivery of a manually delivered, original, executed counterpart thereof. This Agreement shall only be modified or amended by written agreement of all of the parties hereto evidencing such modification or amendment.

(d) To the extent that any conflict may exist between the provisions of any other agreement between the Company and the Bank and this Agreement, then this Agreement shall control. It is understood and agreed that nothing in this Agreement shall give the Agent any benefit or legal or equitable right, remedy or claim under the Deposit Agreement.

**[THE REMAINING SPACE ON THIS PAGE IS LEFT BLANK INTENTIONALLY.]**

10. Waiver of Jury Trial EXCEPT AS MAY BE PROHIBITED BY APPLICABLE LAW, EACH OF THE AGENT, THE BANK AND THE COMPANY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) OF ANY TYPE IN WHICH THE AGENT, THE BANK OR THE COMPANY SHALL BE A PARTY AS TO ALL MATTERS ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

IN WITNESS WHEREOF, each of the parties by its respective duly authorized officer has executed and delivered this Agreement as of the day and year written above.

**BANK:** WACHOVIA BANK, NATIONAL ASSOCIATION

By: Deborah Gilchrist

Name: Deborah Gilchrist

Title: Senior Vice President

**COMPANY:** MERVYN'S L.L.C.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AGENT:** CONGRESS FINANCIAL CORPORATION (WESTERN),  
AS AGENT

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

10. Waiver of Jury Trial EXCEPT AS MAY BE PROHIBITED BY APPLICABLE LAW, EACH OF THE AGENT, THE BANK AND THE COMPANY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) OF ANY TYPE IN WHICH THE AGENT, THE BANK OR THE COMPANY SHALL BE A PARTY AS TO ALL MATTERS ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

IN WITNESS WHEREOF, each of the parties by its respective duly authorized officer has executed and delivered this Agreement as of the day and year written above.

**BANK:** WACHOVIA BANK, NATIONAL ASSOCIATION

By: Deborah Gilchrist

Name: Deborah Gilchrist

Title: Senior Vice President

**COMPANY:** MERVYN'S L.L.C.

By: Michael Kalb

Name: MICHAEL KALB

Title: Vice-President

**AGENT:** CONGRESS FINANCIAL CORPORATION (WESTERN),  
AS AGENT

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

10. Waiver of Jury Trial EXCEPT AS MAY BE PROHIBITED BY APPLICABLE LAW, EACH OF THE AGENT, THE BANK AND THE COMPANY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) OF ANY TYPE IN WHICH THE AGENT, THE BANK OR THE COMPANY SHALL BE A PARTY AS TO ALL MATTERS ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

IN WITNESS WHEREOF, each of the parties by its respective duly authorized officer has executed and delivered this Agreement as of the day and year written above.

BANK: WACHOVIA BANK, NATIONAL ASSOCIATION

By: Deborah Gilchrist

Name: Deborah Gilchrist

Title: Senior Vice President

COMPANY: MERVYN'S L.L.C.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AGENT: CONGRESS FINANCIAL CORPORATION (WESTERN),  
AS AGENT

By: Tiffany Diff

Name: TIFFANY DIFF

Title: Sr. Vice President **Sr. Vice President**

**EXHIBIT A**  
**ACCOUNTS OF COMPANY**

Account Number	Related Lockbox Number, if any,	Account Name	State Where Account is Located
2000025633900		Mervyn's LLC Concentration Account	Florida
2000025633942		Mervyn's LLC Wire account	Florida
2000025633955		Mervyn's LLC Imports account	Florida

**EXHIBIT B**

**WACHOVIA BANK, NATIONAL ASSOCIATION**

\_\_\_\_\_, 200\_

\_\_\_\_\_  
\_\_\_\_\_

**NOTICE PURSUANT TO DEPOSIT ACCOUNT CONTROL AGREEMENT**

Ladies and Gentlemen:

We hereby notify you that, (i) pursuant to the Deposit Account Control Agreement among \_\_\_\_\_ (the "Company") you and us, dated as of \_\_\_\_\_, 2004 (the "Agreement"), a photocopy of which is attached hereto, we are exercising our rights (subject to your rights set forth in the Agreement) to have all available funds now or hereafter existing in the account(s) number(s) \_\_\_\_\_ (the "Account(s)") maintained by you remitted to us each business day to: \_\_\_\_\_ or pursuant to our instructions in accordance with the terms of the Agreement, and (ii) none of the officers, agents or other representatives of the Company or any of its affiliates shall at any time hereafter have any authority to direct the disposition of funds in any Account, or to draw upon or otherwise exercise any authority or power with respect to any Lockbox, any Account and any Account Collateral related thereto.

Terms used but not defined herein shall have the meanings given them in the Agreement.

We appreciate your cooperation in this matter.

Very truly yours,

**CONGRESS FINANCIAL  
CORPORATION (WESTERN),  
as Agent**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attachment

cc: The Company

WachDACC/wfn/BPB/1103



[02/15/05]

AMENDMENT NO. 1  
TO  
DEPOSIT ACCOUNT CONTROL AGREEMENT

THIS AMENDMENT NO. 1 TO DEPOSIT ACCOUNT CONTROL AGREEMENT (this "Amendment No. 1"), is made and entered into as of this 18 day of February 2005 by and among WACHOVIA BANK, NATIONAL ASSOCIATION as depositary bank (the "Bank"), MERVYNS LLC (the "Company"), and CONGRESS FINANCIAL CORPORATION (WESTERN), in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the parties thereto as lenders (in such capacity, together with its successor and assigns, "Agent").

W I T N E S S E T H:

WHEREAS, Agent and the financial institutions which are parties to the Loan Agreement as lenders (individually, each a "Lender" and collectively, "Lenders") have entered or are about to enter into financing arrangements pursuant to which Agent and Lenders have made and may make loans and advances to the Company, as set forth in the Loan and Security Agreement, dated September 2, 2004, by and among the Company, Mervyn's Brands, LLC, Agent, and Lenders (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), and other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto, together with this letter agreement;

WHEREAS, the Company granted Agent a lien and security interest in the deposit accounts of the Company described in Exhibit A annexed hereto (the "Existing Deposit Accounts") to secure payment of the Obligations of the Company to Agent and/or any Lender as set forth in the Loan Agreement and the Company, Agent and Bank agreed certain arrangements to establish control in favor of Agent with respect to the Existing Deposit Accounts as set forth in the Deposit Account Control Agreement, dated September 2, 2004, by and among Bank, the Company and Agent (as the same may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced, the "Deposit Account Control Agreement");

WHEREAS, the Company has opened an additional deposit account described in Exhibit B annexed hereto (the "New Deposit Account"); and

WHEREAS, the Company, Bank and Agent want to confirm that the New Deposit Account is subject to the Deposit Account Control Agreement in favor of Agent.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, parties hereby agrees as follows:

1. Definitions.

(a) For purposes of this Amendment No. 1, unless otherwise defined herein, those terms used herein, including, but not limited to, those terms used or defined in the recitals above, shall have the respective meanings given to such terms in the Deposit Account Control Agreement.

(b) All references in the Deposit Account Control Agreement and this Amendment No. 1 to the term "Accounts" shall mean and be deemed to include, collectively, the Existing Deposit Accounts and the New Deposit Account.

2. Amendments to Exhibit A. Without limiting the "Account Collateral" described in the Deposit Account Control Agreement, Exhibit A to the Deposit Account Control Agreement is hereby further amended to include, in addition and not by way of limitation, the New Deposit Account described in Exhibit B attached hereto.

3. Effect of this Amendment No. 1. Except as expressly modified pursuant hereto, no other changes or modifications to the Deposit Account Control Agreement are intended or implied, and in all other respects, the Deposit Account Control Agreement is hereby specifically ratified, restated and confirmed by the parties hereto as of the effective date hereof. To the extent of conflict between the terms of this Amendment No. 1 and the Deposit Account Control Agreement, the terms of this Amendment No. 1 shall control. The Deposit Account Control Agreement and this Amendment No. 1 shall be read as one agreement.

4. Further Assurances. The parties hereto shall execute and deliver such additional documents and take such additional actions as may be necessary to effectuate the provisions and purposes of this Amendment No. 1.

5. Governing Law. The rights and obligations hereunder of each of the parties hereto shall be governed by and interpreted and determined in accordance with the laws and decisions of the State of Florida but excluding any principles of conflicts of law or other rule of law that would cause the application of the law of any jurisdiction other than the laws of the State of Florida.

6. Binding Effect. This Amendment No. 1 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

7. Counterparts. This Amendment No. 1 may be executed in any number of counterparts, but all of such counterparts shall together constitute but one and the same agreement. In making proof of this Amendment No. 1, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties thereto. Delivery of an executed counterpart of this Amendment No. 1 by telefacsimile shall have the same force and effect as delivery of an original executed counterpart of this Amendment No. 1. Any party delivering an executed counterpart of this Amendment No. 1 by telefacsimile also shall deliver an original executed counterpart of this Amendment No. 1, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Amendment No. 1 as to such party or any other party.

IN WITNESS WHEREOF, the undersigned have executed this Amendment No. 1 as of the day and year first above written.

**BANK:** WACHOVIA BANK, NATIONAL ASSOCIATION

By: Deborah Gilchrist

Name: Deborah Gilchrist

Title: SVP

**COMPANY:** MERVYN'S LLC

By: F. Clay Creasey

Name: F. Clay Creasey

Title: SVP Finance & CFO

**AGENT:** CONGRESS FINANCIAL CORPORATION  
(WESTERN), AS AGENT

By: Gary Whitaker

Name: Gary Whitaker

Title: VP

EXHIBIT A  
TO  
AMENDMENT NO. 1

Existing Deposit Accounts

<b>Account Number</b>	<b>Related Lockbox Number, if any,</b>	<b>Account Name</b>	<b>State Where Account is Located</b>
2000025633900		Mervyn's LLC Concentration Account	Florida
2000025633942		Mervyn's LLC Wire account	Florida
2000025633955		Mervyn's LLC Imports account	Florida

EXHIBIT B  
TO  
AMENDMENT NO. 1

New Deposit Account

<b>Account Number</b>	<b>Related Lockbox Number, if any,</b>	<b>Account Name</b>	<b>State Where Account is Located</b>
2000025631698		Mervyn's LLC interest bearing account	Florida

DEPOSIT ACCOUNT CONTROL AGREEMENT

THIS DEPOSIT ACCOUNT CONTROL AGREEMENT ("Agreement") is dated as of April 29, 2005 by and among US Bank National Association (together with its successors and assigns, "Bank"), Mervyn's LLC (together with its successors and assigns, the "Company") and Congress Financial Corporation (Western), in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the parties thereto as lenders (in such capacity, together with its successors and assigns, "Agent").

W I T N E S S E T H

WHEREAS, Bank maintains or will maintain for the use of the Company the deposit account listed on Schedule 1 hereto as the collection account (the "Collection Account") and in addition, Bank maintains the other deposit accounts used by or on behalf of the Company listed on Schedule 1 hereto (the "Operating Accounts", and together with the Collection Account and any other deposit accounts at any time established or maintained at Bank by or for the benefit of the Company or to which any funds of the Company are at any time remitted or deposited, but excluding deposit accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments, being collectively, the "Deposit Accounts", and individually, each a "Deposit Account");

WHEREAS, the Company has entered into financing arrangements with Agent and the parties to the Loan Agreement as lenders (collectively, together with their respective successors and assigns, "Lenders") pursuant to which the Company may from time to time have certain indebtedness or other obligations to Agent and Lenders as set forth in the Loan and Security Agreement by and among Agent, Lenders, the Company and certain of its affiliates (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement");

WHEREAS, such indebtedness and other obligations of the Company to Agent and Lenders are secured by, among other things, all right, title and interest of the Company in and to the following, whether now or hereafter existing or arising (collectively, the "Deposit Account Collateral"): (a) the Deposit Accounts, (b) all checks, money orders, drafts, instruments, electronic funds transfers and other items and forms of remittances and all funds and other amounts at any time paid, deposited or credited (whether for collection, provisionally or otherwise), held or otherwise in the possession or under the control of, or in transit to, Bank or any agent or custodian thereof for credit to or to be deposited in any Deposit Account, (c) all funds and cash balances or other amounts in or attributable to any Deposit Account, and (d) any and all proceeds of any of the foregoing;

WHEREAS, in connection with such financing arrangements, Agent and Lenders require that Bank and the Company enter into this Agreement to establish certain rights and benefits with respect to the Deposit Accounts;

NOW, THEREFORE, in order for the Company to comply with the requirements of Agent and Lenders under their financing arrangements with the Company, the Company, Bank and Agent agree as follows:

1. Deposit Account Collateral. Bank hereby represents, warrants and covenants with and to Agent and Lenders that: (a) Bank has established and will maintain the Deposit Accounts and has identified the Company as the sole owner of the Deposit Accounts, subject to the rights of Agent therein as provided herein; (b) the records of Bank do not reflect, and it has not received any notice of, any assignment or pledge of, or security interest in the Deposit Accounts or any of the other Deposit Account Collateral (other than the pledge and security interest of Agent referred to herein), or any notice of any adverse claim with respect to any of the same; (c) Bank has not entered and will not enter into any agreement with any person other than Agent by which it is obligated for any reason to comply with instructions from such other person as to the disposition of funds in or from the Deposit Accounts or with respect to any other dealings with any of the Deposit Account Collateral; (d) Bank will not agree that any person other than the Company or Agent is the Bank's customer with respect to any Deposit Account; (e) Schedule 1 is a correct and complete list of the Deposit Accounts as of the date hereof and each of them constitutes a "deposit account" as such term is defined in the UCC; (f) effective as of the date of this Agreement the title of the Collection Account shall be changed to "Mervyn's LLC--Congress Financial Corporation (Western) as Agent Blocked Account"; (g) Bank acknowledges that it holds and will hold possession of the Deposit Account Collateral consisting of instruments and money as bailee for Agent and for the benefit of Agent; and (h) Bank is hereby irrevocably authorized and instructed to change the designation of the customer on any Deposit Account to Agent upon the request of Agent and Bank shall so change the customer promptly upon such request by Agent.

2. Control.

(a) Notwithstanding any other term or provision of this Agreement or any other agreement between Bank and the Company or otherwise, Bank is hereby irrevocably authorized and directed to, and Bank agrees that it will, comply with instructions originated by Agent directing the disposition of funds from time to time in any Deposit Account or as to any other matters relating to any Deposit Account or any of the other Deposit Account Collateral without further consent by the Company (which instructions may include the giving of stop payment orders for any items being presented to a Deposit Account for payment).

(b) Effective upon the receipt by Bank of written notice from Agent that Agent is exercising exclusive control over any Deposit Account (each such notice being referred to as a "Notice of Exclusive Control"), Bank shall not permit the Company or any of its affiliates to withdraw any amounts from, to draw upon or otherwise exercise any authority or powers with respect to the Deposit Account and all Deposit Account Collateral related thereto specified in any such Notice of Exclusive Control and Bank shall not at any time honor, any instructions with respect to the such Deposit Account and Deposit Account Collateral, other than those approved in writing by Agent. Until the receipt by Bank of a Notice of Exclusive Control, the Company shall be entitled to present items drawn on and otherwise to withdraw or direct the disposition of funds from the Deposit Accounts.

3. Remittance of Funds. Unless and until Bank shall receive written instruction from Agent to the contrary, effective as of the date of this Agreement, all checks, money orders, drafts, instruments, electronic funds transfers and other items and forms of remittances received for deposit in the Collection Account shall be deposited only in the Collection Account on the date received. On and after the date of the receipt by Bank of a Notice of Exclusive Control as to any Deposit Account, all available funds in such Deposit Account shall automatically and without further direction on each business day be remitted, at the Company's cost and expense, by federal funds wire transfer solely to Wachovia Bank, National Association, ABA No. 053 000 219, for credit to Congress Financial Corporation (Western), Account No. 2000025633900, re: Mervyn's, or to such other account as Agent may specify.

4. Indemnity; Bank's Responsibility. The Company agrees to indemnify, defend and hold harmless Bank against any loss, liability or expense (including reasonable fees and disbursements of counsel) incurred in connection with this Agreement, including any action taken by Bank pursuant to the instructions of Agent, except to the extent due to the gross negligence or wilful misconduct of Bank or breach of any of the provisions hereof. The Company confirms and agrees that neither Bank nor Agent or Lenders shall have any liability to the Company for wrongful dishonor of any items as a result of any instructions of Agent. Bank shall have no duty to inquire or determine whether the obligations of the Company to Agent or Lenders are in default or whether Agent is entitled to give any such instructions and Bank is fully entitled to rely upon such instructions from Agent (even if such instructions are contrary or inconsistent with any instructions or demands given by the Company).

5. Statements, Confirmations and Notices of Adverse Claims. At such time or times as Agent may request, Bank will promptly report to Agent the amounts received in and held in the Deposit Accounts and will furnish to Agent any copies of bank statements, deposit tickets, deposited items, debit and credit advices and other records maintained by Bank under the terms of its arrangements with the Company (as in effect on the date hereof). Agent will reimburse Bank for its reasonable expenses in providing such items to Agent. Upon receipt of notice of any lien, encumbrance or adverse claim against any Deposit Account Collateral, Bank will promptly notify Agent and the Company thereof.

6. Subordination of Bank's Security Interest; Setoff Rights.

(a) In the event that at any time Bank has a security interest in or lien upon any of the Deposit Account Collateral, such security interest and lien of Bank shall be subject and subordinate to the security interest and lien of Agent therein. Bank shall not for any reason charge, debit, deduct or offset, or exercise any security interest or lien rights, against any checks, automated clearinghouse transfers or other form of remittances received in the Lockbox or any amounts at any time deposited in or credited to any Deposit Account, except that Bank may setoff against funds in the Deposit Accounts for all amounts due to Bank in respect of its customary fees and expenses for routine operation of the Deposit Accounts that are unpaid and outstanding, the amount of any checks, automated clearinghouse transfers or other form of remittance that have been credited to any Deposit Account and subsequently returned unpaid and any overdrafts arising as a result thereof.

(b) In the event that the funds in the Deposit Accounts are insufficient to reimburse Bank, on and after the receipt by Bank of a Notice of Exclusive Control from Agent with respect to a



Deposit Account, Agent shall reimburse Bank for the face amount of any checks, automated clearinghouse transfers or other forms of remittances that were deposited in such Deposit Account or such fees and expenses, in each case to the extent that: (i) in the case of a check, automated clearinghouse transfer or other form of remittance returned unpaid, Agent received final payment in respect thereof and Agent has received notice from Bank of the failure of the Company to pay Bank prior to the date that is ninety (90) days after such check, automated clearinghouse transfer or other form of remittance is deposited with Bank and (ii) in the case of such fees and expenses, Agent has received written demand from Bank for payment for such fees and expenses prior to the date that is sixty (60) days after the date such fees were due and payable to Bank. The Company shall reimburse Agent for any amounts paid by Agent to Bank under this Section 6 or otherwise under this Agreement promptly upon demand by Agent (without inquiry as to, and regardless of, any dispute between the Company and Bank). Such amounts shall be paid to Agent by Company (or at Agent's option, Agent may charge any loan account of the Company or its affiliates maintained by Agent) without offset, defense or counterclaim.

7. Termination. This Agreement cannot be changed, modified or terminated except that this Agreement may be terminated either: (a) by Bank upon thirty (30) days prior written notice to the Company and Agent and (b) upon written notice by Agent to Bank of the termination of the financing arrangements of Agent and Lenders with the Company or its affiliates. In the event that for any reason this Agreement shall be terminated other than pursuant to the written notice by Agent to Bank of the termination of the financing arrangements of Agent with the Company, Bank will immediately transfer any funds in the Collection Account to the account of Agent specified in Section 3 hereof, the Collection Account will be closed and Bank will forward any mail received in the Deposit Accounts after such termination to Agent or to such address as Agent may designate to Bank in writing for such purpose.

8. Notices. All notices hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices to any party shall be given to its address set forth below (or to such other address as any party may designate by notice in accordance with this Section).

9. Customer Agreement. This Agreement supplements any other agreements between the Company and Bank with respect to the Deposit Accounts. In the event of any inconsistency between this Agreement and the terms of such other agreements of the Company or its affiliates with Bank, the terms of this Agreement control.

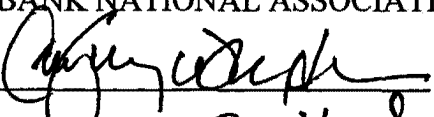
10. Governing Law. This Agreement shall be governed by the laws of the State of New York. Notwithstanding anything to the contrary contained in any other agreement among any of the parties hereto, for purposes of the UCC, the State of New York shall be deemed to be the Bank's jurisdiction within the meaning of Section 9-304 of the UCC. All references to the "UCC" herein shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall have the same force and effect as the delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of any such agreement by telefacsimile shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

12. Successors and Assigns. Agent and Lenders are relying upon this Agreement in providing financing to the Company and this Agreement shall be binding upon the Company and Bank and their respective successors and assigns and inure to the benefit of Agent and Lenders and their respective successors and assigns.

US BANK NATIONAL ASSOCIATION

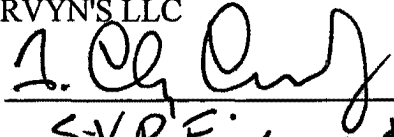
By:   
Title: Sr. Vice President

Address for Notices:

~~US Bank National Association~~  
~~9633 Lyndale Avenue South~~  
~~EP-MN-CCS~~  
~~Bloomington, Minnesota 55420~~  
Attention: Gregory L. Dryden  
Telecopy: 314-418-3859

U.S. Bank  
One U.S. Bank Plaza  
SL-MO-T12M  
St. Louis, MO 63101

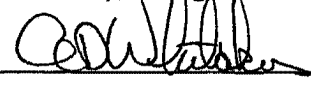
MERVYN'S LLC

By:   
Title: SVP Finance & CFO

Address for Notices:

22301 Foothill Boulevard  
Hayward, California 94541  
Attention: CFO  
Telecopy No.: 510-727-3638

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent

By:   
Title: VP

Address for Notices:

251 South Lake Avenue  
Suite 900  
Pasadena, California 91101  
Attn.: Portfolio Manager - Mervyn's, LLC  
Fax: 626-304-4969

SCHEDULE 1  
TO  
DEPOSIT ACCOUNT CONTROL AGREEMENT

Collection Account:

1-539-1000-7787	Concentration Account
1-264-0003-7597	Disbursement - Manual Checks
1-500-8068-2720	Disbursement - Accounts Payable
1-539-1000-7795	Depository - Stores (from sub accounts)

DEPOSIT ACCOUNT CONTROL AGREEMENT

THIS DEPOSIT ACCOUNT CONTROL AGREEMENT ("Agreement") is dated as of April 29, 2005 by and among Hibernia Bank, National Association (together with its successors and assigns, "Bank"), Mervyn's LLC (together with its successors and assigns, the "Company") and Congress Financial Corporation (Western), in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the parties thereto as lenders (in such capacity, together with its successors and assigns, "Agent").

W I T N E S S E T H

WHEREAS, Bank maintains or will maintain for the use of the Company the deposit account listed on Schedule 1 hereto as the collection account (the "Collection Account", and together with any other deposit accounts at any time established or maintained at Bank by or for the benefit of the Company or to which any funds of the Company are at any time remitted or deposited, but excluding deposit accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments, being collectively, the "Deposit Accounts", and individually, each a "Deposit Account");

WHEREAS, the Company has entered into financing arrangements with Agent and the parties to the Loan Agreement as lenders (collectively, together with their respective successors and assigns, "Lenders") pursuant to which the Company may from time to time have certain indebtedness or other obligations to Agent and Lenders as set forth in the Loan and Security Agreement by and among Agent, Lenders, the Company and certain of its affiliates (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement");

WHEREAS, such indebtedness and other obligations of the Company to Agent and Lenders are secured by, among other things, all right, title and interest of the Company in and to the following, whether now or hereafter existing or arising (collectively, the "Deposit Account Collateral"): (a) the Deposit Accounts, (b) all checks, money orders, drafts, instruments, electronic funds transfers and other items and forms of remittances and all funds and other amounts at any time paid, deposited or credited (whether for collection, provisionally or otherwise), held or otherwise in the possession or under the control of, or in transit to, Bank or any agent or custodian thereof for credit to or to be deposited in any Deposit Account, (c) all funds and cash balances or other amounts in or attributable to any Deposit Account, and (d) any and all proceeds of any of the foregoing;

WHEREAS, in connection with such financing arrangements, Agent and Lenders require that Bank and the Company enter into this Agreement to establish certain rights and benefits with respect to the Deposit Accounts;

NOW, THEREFORE, in order for the Company to comply with the requirements of Agent and Lenders under their financing arrangements with the Company, the Company, Bank and Agent agree as follows:

1. Deposit Account Collateral. Bank hereby represents, warrants and covenants with and to Agent and Lenders that: (a) Bank has established and will maintain the Deposit Accounts and has identified the Company as the sole owner of the Deposit Accounts, subject to the rights of Agent therein as provided herein; (b) the records of Bank do not reflect, and it has not received any notice of, any assignment or pledge of, or security interest in the Deposit Accounts or any of the other Deposit Account Collateral (other than the pledge and security interest of Agent referred to herein), or any notice of any adverse claim with respect to any of the same; (c) Bank has not entered and will not enter into any agreement with any person other than Agent by which it is obligated for any reason to comply with instructions from such other person as to the disposition of funds in or from the Deposit Accounts or with respect to any other dealings with any of the Deposit Account Collateral; (d) Bank will not agree that any person other than the Company or Agent is the Bank's customer with respect to any Deposit Account; (e) Schedule 1 is a correct and complete list of the Deposit Accounts as of the date hereof and each of them constitutes a "deposit account" as such term is defined in the UCC; (f) effective as of the date of this Agreement the title of the Collection Account shall be changed to "Mervyn's LLC--Congress Financial Corporation (Western) as Agent Blocked Account"; (g) Bank acknowledges that it holds and will hold possession of the Deposit Account Collateral consisting of instruments and money as bailee for Agent and for the benefit of Agent; and (h) Bank is hereby irrevocably authorized and instructed to change the designation of the customer on any Deposit Account to Agent upon the request of Agent and Bank shall so change the customer promptly upon such request by Agent.

2. Control.

(a) Notwithstanding any other term or provision of this Agreement or any other agreement between Bank and the Company or otherwise, Bank is hereby irrevocably authorized and directed to, and Bank agrees that it will, comply with instructions originated by Agent directing the disposition of funds from time to time in any Deposit Account or as to any other matters relating to any Deposit Account or any of the other Deposit Account Collateral without further consent by the Company (which instructions may include the giving of stop payment orders for any items being presented to a Deposit Account for payment).

(b) Effective upon the receipt by Bank of written notice from Agent that Agent is exercising exclusive control over any Deposit Account (each such notice being referred to as a "Notice of Exclusive Control"), Bank shall not permit the Company or any of its affiliates to withdraw any amounts from, to draw upon or otherwise exercise any authority or powers with respect to the Deposit Account and all Deposit Account Collateral related thereto specified in any such Notice of Exclusive Control and Bank shall not at any time honor, any instructions with respect to the such Deposit Account and Deposit Account Collateral, other than those approved in writing by Agent. Until the receipt by Bank of a Notice of Exclusive Control, the Company

shall be entitled to present items drawn on and otherwise to withdraw or direct the disposition of funds from the Deposit Accounts.

3. Remittance of Funds. Unless and until Bank shall receive written instruction from Agent to the contrary, effective as of the date of this Agreement, all checks, money orders, drafts, instruments, electronic funds transfers and other items and forms of remittances received for deposit in the Collection Account shall be deposited only in the Collection Account on the date received. On and after the date of the receipt by Bank of a Notice of Exclusive Control as to any Deposit Account, all available funds in such Deposit Account shall automatically and without further direction on each business day be remitted, at the Company's cost and expense, by federal funds wire transfer solely to Wachovia Bank, National Association, ABA No. 053 000 219, for credit to Congress Financial Corporation (Western), Account No. 2000025633900, re: Mervyn's, or to such other account as Agent may specify.

4. Indemnity; Bank's Responsibility. The Company agrees to indemnify, defend and hold harmless Bank against any loss, liability or expense (including reasonable fees and disbursements of counsel) incurred in connection with this Agreement, including any action taken by Bank pursuant to the instructions of Agent, except to the extent due to the gross negligence or wilful misconduct of Bank or breach of any of the provisions hereof. The Company confirms and agrees that neither Bank nor Agent or Lenders shall have any liability to the Company for wrongful dishonor of any items as a result of any instructions of Agent. Bank shall have no duty to inquire or determine whether the obligations of the Company to Agent or Lenders are in default or whether Agent is entitled to give any such instructions and Bank is fully entitled to rely upon such instructions from Agent (even if such instructions are contrary or inconsistent with any instructions or demands given by the Company).

5. Statements, Confirmations and Notices of Adverse Claims. At such time or times as Agent may request, Bank will promptly report to Agent the amounts received in and held in the Deposit Accounts and will furnish to Agent any copies of bank statements, deposit tickets, deposited items, debit and credit advices and other records maintained by Bank under the terms of its arrangements with the Company (as in effect on the date hereof). Agent will reimburse Bank for its reasonable expenses in providing such items to Agent. Upon receipt of notice of any lien, encumbrance or adverse claim against any Deposit Account Collateral, Bank will promptly notify Agent and the Company thereof.

6. Subordination of Bank's Security Interest; Setoff Rights.

(a) In the event that at any time Bank has a security interest in or lien upon any of the Deposit Account Collateral, such security interest and lien of Bank shall be subject and subordinate to the security interest and lien of Agent therein. Bank shall not for any reason charge, debit, deduct or offset, or exercise any security interest or lien rights, against any checks, automated clearinghouse transfers or other form of remittances received in the Lockbox or any amounts at any time deposited in or credited to any Deposit Account, except that Bank may setoff against funds in the Deposit Accounts for all amounts due to Bank in respect of its customary fees and expenses for routine operation of the Deposit Accounts that are unpaid and

outstanding, the amount of any checks, automated clearinghouse transfers or other form of remittance that have been credited to any Deposit Account and subsequently returned unpaid and any overdrafts arising as a result thereof.

(b) In the event that the funds in the Deposit Accounts are insufficient to reimburse Bank, on and after the receipt by Bank of a Notice of Exclusive Control from Agent with respect to a Deposit Account, Agent shall reimburse Bank for the face amount of any checks, automated clearinghouse transfers or other forms of remittances that were deposited in such Deposit Account or such fees and expenses, in each case to the extent that: (i) in the case of a check, automated clearinghouse transfer or other form of remittance returned unpaid, Agent received final payment in respect thereof and Agent has received notice from Bank of the failure of the Company to pay Bank prior to the date that is ninety (90) days after such check, automated clearinghouse transfer or other form of remittance is deposited with Bank and (ii) in the case of such fees and expenses, Agent has received written demand from Bank for payment for such fees and expenses prior to the date that is sixty (60) days after the date such fees were due and payable to Bank. The Company shall reimburse Agent for any amounts paid by Agent to Bank under this Section 6 or otherwise under this Agreement promptly upon demand by Agent (without inquiry as to, and regardless of, any dispute between the Company and Bank). Such amounts shall be paid to Agent by Company (or at Agent's option, Agent may charge any loan account of the Company or its affiliates maintained by Agent) without offset, defense or counterclaim.

7. Termination. This Agreement cannot be changed, modified or terminated except that this Agreement may be terminated either: (a) by Bank upon thirty (30) days prior written notice to the Company and Agent and (b) upon written notice by Agent to Bank of the termination of the financing arrangements of Agent and Lenders with the Company or its affiliates. In the event that for any reason this Agreement shall be terminated other than pursuant to the written notice by Agent to Bank of the termination of the financing arrangements of Agent with the Company, Bank will immediately transfer any funds in the Collection Account to the account of Agent specified in Section 3 hereof, the Collection Account will be closed and Bank will forward any mail received in the Deposit Accounts after such termination to Agent or to such address as Agent may designate to Bank in writing for such purpose.

8. Notices. All notices hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices to any party shall be given to its address set forth below (or to such other address as any party may designate by notice in accordance with this Section).

9. Customer Agreement. This Agreement supplements any other agreements between the Company and Bank with respect to the Deposit Accounts. In the event of any inconsistency between this Agreement and the terms of such other agreements of the Company or its affiliates with Bank, the terms of this Agreement control.



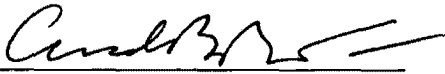
10. Governing Law. This Agreement shall be governed by the laws of the State of New York. Notwithstanding anything to the contrary contained in any other agreement among any of the parties hereto, for purposes of the UCC, the State of New York shall be deemed to be the Bank's jurisdiction within the meaning of Section 9-304 of the UCC. All references to the "UCC" herein shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall have the same force and effect as the delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of any such agreement by telefacsimile shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

12. Successors and Assigns. Agent and Lenders are relying upon this Agreement in providing financing to the Company and this Agreement shall be binding upon the Company and Bank and their respective successors and assigns and inure to the benefit of Agent and Lenders and their respective successors and assigns.

HIBERNIA NATIONAL BANK,  
NATIONAL BANKING  
ASSOCIATION

By: 

Title: VICE PRESIDENT

MERVYN'S LLC

By: 

Title: SVP Finance & CFO

Address for Notices:

Hibernia National Bank, National  
Banking Association  
P.O. Box 61540  
New Orleans, Louisiana 70161  
Attention: ANDREW BOOTH  
Telecopy: 504 533 5344

Address for Notices:

22301 Foothill Boulevard  
Hayward, California 94541  
Attention: Chief Financial Officer  
Telecopy No.: 510-727-3638

CONGRESS FINANCIAL  
CORPORATION (WESTERN), as  
Agent

By: 

Title: VP

Address for Notices:

251 South Lake Avenue  
Suite 900  
Pasadena, California 91101  
Attn.: Portfolio Manager - Mervyn's,  
LLC  
Fax: 626-304-4969

SCHEDULE 1  
TO  
DEPOSIT ACCOUNT CONTROL AGREEMENT

Collection Account No.:

812354337

Depository Bank - Stores

DEPOSIT ACCOUNT CONTROL AGREEMENT

THIS DEPOSIT ACCOUNT CONTROL AGREEMENT ("Agreement") is dated as of April 29, 2005 by and among Fifth Third Bank Central Ohio ("Bank"), Mervyns LLC (together with its successors and assigns, the "Company"), Congress Financial Corporation (Western), in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lender (in such capacity, together with its successors and assigns, "Agent").

W I T N E S S E T H

WHEREAS, Bank maintains or will maintain for the use of the Company the deposit accounts used by or on behalf of the Company listed on Schedule 1 hereto (excluding deposit accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments, being collectively, the "Deposit Accounts", and individually, each a "Deposit Account");

WHEREAS, the Company and certain of its affiliates have entered into financing arrangements with Agent and the financial institutions which are parties to the Loan Agreement as lenders (collectively, together with their respective successors and assigns, "Lenders"), pursuant to which the Company and certain of its affiliates may from time to time have certain indebtedness or other obligations to Agent and Lenders as set forth in the Loan and Security Agreement by and among Agent, Lenders, the Company and Mervyns Brands, LLC (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement");

WHEREAS, in connection with such financing arrangements, Agent and Lenders require that Bank and the Company enter into this Agreement to establish certain rights and benefits with respect to the Deposit Accounts;

NOW, THEREFORE, in order for the Company to comply with the requirements of Agent and Lenders under its financing arrangements with the Company, the Company, Bank and Agent agree as follows:

1. Deposit Account Collateral.

(a) The indebtedness and other obligations of the Company to Agent and Lenders are secured by, among other things, all right, title and interest of the Company in and to the following, whether now or hereafter existing or arising (collectively, the "Deposit Account Collateral"): (i) the Deposit Accounts, (ii) all checks, money orders, drafts, instruments, electronic funds transfers and other items and forms of remittances and all funds and other amounts at any time paid, deposited or credited (whether for collection, provisionally or otherwise), held or otherwise in the possession or under the control of, or in transit to, Bank or any agent or custodian thereof for credit to or to be deposited in any Deposit Account, (iii) all

funds and cash balances or other amounts in or attributable to any Deposit Account, and (iv) any and all proceeds of any of the foregoing.

(b) With respect to the Deposit Account Collateral, (i) Bank has established and will maintain the Deposit Accounts and has identified the Company as the sole owner of the Deposit Accounts, subject to the rights of Agent and Lenders therein as provided herein, (ii) the records of Bank do not reflect, and it has not received any notice of, any assignment of, or pledge or security interest in the Deposit Accounts or any of the other Deposit Account Collateral, other than the pledge and security interest of each Agent referred to herein and other than any pledge or security interest that will be terminated on or about the date hereof, (iii) Bank has not entered and will not enter into any agreement with any person other than Agent (on behalf of the Agent) by which it is obligated for any reason to comply with instructions from such other person as to the disposition of funds in or from the Deposit Accounts or with respect to any other dealings with any of the Deposit Account Collateral, other than any such agreement that is being terminated on or about the date hereof, (iv) Bank will not agree that any person other than the Company or Agent is the Bank's customer with respect to any Deposit Account, other than any such agreement with any other person that is being terminated as of the date hereof, (v) Schedule 1 is a correct and complete list of the Deposit Accounts as of the date hereof and each of them constitutes a "deposit account" as such term is defined in the UCC, (vi) Bank acknowledges that it holds and will hold possession of the Deposit Account Collateral as bailee for Agent and for the benefit of Agent and Lenders, and (vii) Bank is hereby irrevocably authorized and instructed to change the designation of the customer on any Deposit Account to Agent upon the request of Agent and Bank shall so change the customer promptly upon such request by Agent.

2. Control.

(a) Notwithstanding any other term or provision of this Agreement or any other agreement between Bank and the Company or otherwise, Bank is hereby irrevocably authorized and directed to, and Bank agrees that it will, comply with instructions originated by Agent directing the disposition of funds from time to time in any Deposit Account or as to any other matters relating to any Deposit Account or any of the other Deposit Account Collateral without further consent by the Company (which instructions may include the giving of stop payment orders for any items being presented to a Deposit Account for payment), without inquiry as to Agent's right or authority to give such instructions and Bank is fully entitled to rely upon such instructions from Agent (even if such instructions are contrary or inconsistent with any instructions or demands given by the Company).

(b) Effective upon the receipt by Bank of written notice substantially in the form of Exhibit A hereto provided to Bank by Agent stating that Agent is exercising exclusive control over the Deposit Accounts (such notice being referred to as a "Notice of Exclusive Control"), Bank shall not permit the Company or any of its affiliates to withdraw any amounts from, to draw upon or otherwise exercise any authority or powers with respect to the Deposit Accounts and all Deposit Account Collateral related thereto, and Bank shall not at any time honor, any instructions with respect to the Deposit Accounts, other than those approved in writing by Agent. The Company shall be entitled to present items drawn on and otherwise to withdraw or direct the disposition of funds from the Deposit Accounts (i) until the receipt by

Bank of a Notice of Exclusive Control or (ii) upon withdrawal by Agent of such Notice of Exclusive Control.

3. Indemnity. The Company agrees to indemnify, defend and hold harmless Bank against any loss, liability or expense (including reasonable fees and disbursements of counsel), incurred in connection with this Agreement or otherwise incurred at Company's direction or instructions, including, without limitation, any Returned Items (as defined in Section 6 below) or Charges (as defined in Section 6 below) and including any action taken by Bank pursuant to the instructions of Agent, except to the extent due to the gross negligence or willful misconduct of Bank. The Company confirms and agrees that neither Bank nor Agent or Lenders shall have any liability to the Company for wrongful dishonor of any items as a result of any instructions of Agent. Bank shall have no duty to inquire or determine whether the obligations of the Company to Agent are in default or whether Agent is entitled to give any such instructions.

4. Remittance of Funds. On and after the date of the receipt by Bank of a Notice of Exclusive Control as to any Deposit Account, all available funds in such Deposit Accounts shall automatically and without further direction each business day be remitted, at the Company's cost and expense, by federal funds wire transfer or other electronic funds transfer as Agent may specify solely to Wachovia Bank, National Association, Charlotte, North Carolina, ABA No. 053-000-219, for credit to Congress Financial Corporation, as Agent, Account No. 2000025633900, re: Mervyns LLC or such other account as Agent may specify in writing to Bank.

5. Statements, Confirmations and Notices of Adverse Claims. At such time or times as Agent may request, Bank will promptly report to Agent the amounts received for deposit in, and amounts held in, the Deposit Accounts and will furnish to Agent any copies of bank statements, deposit tickets, deposited items, debit and credit advices and other records maintained by Bank under the terms of its arrangements with the Company (as in effect on the date hereof). Agent (on behalf of Agent and Lenders) will reimburse Bank for its reasonable expenses in providing such items to Agent.

6. Subordination of Bank's Security Interest; Setoff Rights.

(a) The Company shall pay directly to Bank all of the customary fees and expenses in connection with the routine operation of the Deposit Accounts and the face amount of any checks, automated clearinghouse transfers or other forms of remittances deposited in any Deposit Account and returned unpaid. If the Company fails to pay any such fees and expenses or fails to reimburse Bank for any such check, automated clearinghouse transfer or other form of remittance that is returned unpaid, (i) Bank may set off such amounts against any funds held in any of the Deposit Accounts as set forth in Section 6 below and (ii) if the funds in the Deposit Accounts are insufficient to reimburse Bank for such amounts, Agent (on behalf of Agent and Lenders) shall reimburse Bank for the face amount of any checks, automated clearinghouse transfers or other forms of remittances that were deposited in such Deposit Account or such fees and expenses, in each case to the extent that: (A) the funds in the Deposit Accounts are insufficient, (B) in the case of a check, automated clearinghouse transfer or other form of remittance returned unpaid, Agent received final payment in respect thereof, and (C) Agent has received notice from Bank of the failure of the Company to pay Bank prior to the date that is the

earlier of: (1) ninety (90) days after such check, automated clearinghouse transfer or other form of remittance is deposited with Bank or such fees or expenses are due or (2) the date of the termination of the Loan Agreement.

(b) In the event that at any time Bank has a security interest in or lien upon any of the Deposit Account Collateral, such security interest and lien of Bank shall be subject and subordinate to the security interest and lien of each Agent therein. Bank shall not for any reason charge, debit, deduct or offset, or exercise any security interest or lien rights, against any checks, automated clearinghouse transfers or other form of remittances received for deposit in any Deposit Account or any amounts at any time deposited in or credited to any Deposit Account, except that Bank may set off against amounts in any Deposit Account: (i) returned or charged back items, (ii) reversals or cancellations of payment orders and other electronic fund transfers, (iii) overdrafts resulting from adjustments or corrections of previous credits or other postings (together with items described in clauses (i) and (ii), collectively, "Returned Items") or (iv) Bank's charges, fees and expenses with respect to the Deposit Accounts or the services provided in connection therewith or hereunder (collectively, "Charges")

7. Termination. This Agreement cannot be changed, modified or terminated, except that this Agreement shall be terminated: (a) immediately upon receipt by Bank at the addresses below of written notice substantially in the form of Exhibit B hereto from Agent expressly stating that either (i) Agent is terminating this Agreement or (ii) the Agent's security interests in the Deposit Accounts have terminated or (b) by Bank upon thirty (30) days' prior written notice to the Company and the Agent. In the event that for any reason this Agreement shall be terminated other than pursuant to the written notice by Agent to Bank of the termination of the Loan Agreement, Bank will immediately transfer any funds in the Deposit Accounts to the account of Agent specified in Section 4 hereof, the Deposit Accounts will be closed, and Bank will forward any mail received after such termination to Agent or to such address as Agent may designate to Bank in writing for such purpose, and Bank shall follow such other instructions as Agent may provide to it with respect to the Deposit Accounts and the Deposit Account Collateral.

8. Notices. All notices hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices to any party shall be given to its address(es) set forth below (or to such other address(es) as any party may designate by notice in accordance with this Section). Notwithstanding the foregoing, Bank shall only be deemed to have received any notice hereunder if it has acknowledged such receipt except that Bank agrees that upon receipt of any notice in accordance with this Section 8, it shall acknowledge receipt of such notice and the failure of Bank to do so shall not affect the effectiveness thereof hereunder.

9. Governing Law; Inconsistency. This Agreement shall be governed by the laws of the State of Ohio. Notwithstanding anything to the contrary contained in any other agreement among any of the parties hereto, for purposes of the UCC, the State of Ohio shall be deemed to be the Bank's jurisdiction within the meaning of Section 9-304 of the UCC. All references to the

"UCC" herein shall mean the Uniform Commercial Code as in effect on the date hereof in the State of Ohio. This Agreement supplements any other agreements between the Company and Bank with respect to the Deposit Accounts. In the event of any inconsistency between this Agreement and the terms of such other agreements of the Company or its affiliates with Bank, the terms of this letter agreement control.

10. Damages. In no event shall Bank have any liability to Customer or Agent for any consequential, special, punitive or indirect loss or damage whether or not any claims for such damages is based on tort or contract or Bank knew or should have know the likelihood of such in any circumstances.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this letter agreement by telefacsimile shall have the same force and effect as the delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of any such agreement by telefacsimile shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]



12. Agent and Lenders are relying upon this Agreement in providing, and continuing to provide, financing to the Company and this Agreement shall be binding upon the Company and Bank and their respective successors and assigns and inure to the benefit of each Agent and its successors and assigns.

FIFTH THIRD BANK, AN OHIO BANKING CORPORATION

By: Gary Losey

Title: Asst - Relationship Manager

MERVYN'S LLC

By: [Signature]

Title: SVP Finance and CFO

Address for Notices:

Fifth Third Bank  
5050 Kingsley Drive  
MD 1MOCBD  
Cincinnati, OH 45263  
Attn: Depositor Services

Address for Notices:

22301 Foothill Boulevard  
Hayward, California 94541  
Attention: \_\_\_\_\_  
Telecopy No.: \_\_\_\_\_

and

Fifth Third Bank, Central Ohio  
38 Fountain Square Plaza  
MD 10904  
Cincinnati, Ohio 45202  
Attention: \_\_\_\_\_  
Telecopy No.: \_\_\_\_\_

CONGRESS FINANCIAL CORPORATION  
(WESTERN), as Agent

By: [Signature]

Title: VP

Address for Notices:

251 South Lake Avenue  
Suite 900  
Pasadena, California 91101  
Attn.: Portfolio Manager - Mervyn's, LLC  
Fax: 626-304-4969

SCHEDULE 1  
TO  
DEPOSIT ACCOUNT CONTROL AGREEMENT

Deposit Accounts:

9990200082

Concentration Account - Stores

EXHIBIT A  
TO  
DEPOSIT ACCOUNT CONTROL AGREEMENT



---

FIFTH THIRD BANK OPERATIONS  
5050 KINGSLEY DRIVE, MD 1MOC2Q-3723  
CINCINNATI, OHIO 45263

ACCOUNT CONTROL AGREEMENT  
NOTICE OF EXCLUSIVE CONTROL

Fifth Third  
38 Fountain Square Plaza  
MD 109046  
Cincinnati, OH 45202

Re: Account Control Agreement ("Agreement") by and among Mervyn's LLC ("Customer"), Congress Financial Corporation (Western), as Agent ("Secured Party"), and Fifth Third Bank Central Ohio ("Bank"), dated \_\_\_\_\_, 2004, affecting Account Number \_\_\_\_\_ (the "Deposit Account").

Date: \_\_\_\_\_

To Whom It May Concern:

This letter serves as notice to Bank that Secured Party is hereby exercising exclusive control over the Deposit Account.

Secured Party hereby orders Bank to transfer funds from the Deposit Account to the following account held by Secured Party:

Please contact us at \_\_\_\_\_ (phone number) immediately with any questions.

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Secured Party

EXHIBIT B  
TO  
DEPOSIT ACCOUNT CONTROL AGREEMENT



---

FIFTH THIRD BANK OPERATIONS  
5050 KINGSLEY DRIVE, MD 1MOC2Q-3723  
CINCINNATI, OHIO 45263

**ACCOUNT CONTROL AGREEMENT**  
**NOTICE OF TERMINATION**

Fifth Third  
38 Fountain Square Plaza  
MD 109046  
Cincinnati, OH 45202

Re: Account Control Agreement ("Agreement") by and among Mervyn's LLC ("Customer"), Congress Financial Corporation (Western), as Agent ("Secured Party"), and Fifth Third Bank Central Ohio ("Bank"), dated \_\_\_\_\_, 2004, affecting Account Number \_\_\_\_\_ (the "Deposit Account").

Date: \_\_\_\_\_, 20\_\_

To Whom It May Concern:

This letter serves as notice to Bank in accordance with Section 7(a) of the Agreement that the [Secured Party is permanently terminating the Agreement] or [the security interests of the Agent (as defined in the Agreement) are terminated].

Please contact us at \_\_\_\_\_ (phone number) immediately with any questions.

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Secured Party

## DEPOSIT ACCOUNT CONTROL AGREEMENT

THIS DEPOSIT ACCOUNT CONTROL AGREEMENT ("Agreement") is dated ~~10/26/2005~~ <sup>10/26/2007</sup> by and among JPMorgan Chase Bank, N.A. (Successor by merger to Bank One, National Association) (together with its successors and assigns, "Bank"), Mervyn's LLC (together with its successors and assigns, the "Company") and Congress Financial Corporation (Western), in its capacity as agent pursuant to the Loan Agreement (as hereinafter defined) acting for and on behalf of the parties thereto as lenders (in such capacity, together with its successors and assigns, "Agent").

### W I T N E S S E T H

WHEREAS, Bank maintains or will maintain for the use of the Company the deposit accounts listed on Schedule 1 hereto as the collection account (collectively, the "Collection Account", and together with any other deposit accounts at any time established or maintained at Bank by or for the benefit of the Company or to which any funds of the Company are at any time remitted or deposited, but excluding deposit accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments, being collectively, the "Deposit Accounts", and individually, each a "Deposit Account");

WHEREAS, the Company has entered into financing arrangements with Agent and the parties to the Loan Agreement as lenders (collectively, together with their respective successors and assigns, "Lenders") pursuant to which the Company may from time to time have certain indebtedness or other obligations to Agent and Lenders as set forth in the Loan and Security Agreement by and among Agent, Lenders, the Company and certain of its affiliates (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement");

WHEREAS, such indebtedness and other obligations of the Company to Agent and Lenders are secured by, among other things, all right, title and interest of the Company in and to the following, whether now or hereafter existing or arising (collectively, the "Deposit Account Collateral"): (a) the Deposit Accounts, (b) all checks, money orders, drafts, instruments, electronic funds transfers and other items and forms of remittances and all funds and other amounts at any time paid, deposited or credited (whether for collection, provisionally or otherwise), held or otherwise in the possession or under the control of, or in transit to, Bank or any agent or custodian thereof for credit to or to be deposited in any Deposit Account, (c) all funds and cash balances or other amounts in or attributable to any Deposit Account, and (d) any and all proceeds of any of the foregoing;

WHEREAS, in connection with such financing arrangements, Agent and Lenders require that Bank and the Company enter into this Agreement to establish certain rights and benefits with respect to the Deposit Accounts;

NOW, THEREFORE, in order for the Company to comply with the requirements of Agent and Lenders under their financing arrangements with the Company, the Company, Bank and Agent agree as follows:

1. Deposit Account Collateral. Bank hereby represents, warrants and covenants with and to Agent and Lenders that: (a) Bank has established and will maintain the Deposit Accounts and has identified the Company as the sole owner of the Deposit Accounts, subject to the rights of Agent therein as provided herein; (b) the records of Bank do not reflect, and it has not received any notice of, any assignment or pledge of, or security interest in the Deposit Accounts or any of the other Deposit Account Collateral (other than the pledge and security interest of Agent referred to herein), or any notice of any adverse claim with respect to any of the same; (c) Bank has not entered and will not enter into any agreement with any person other than Agent by which it is obligated for any reason to comply with instructions from such other person as to the disposition of funds in or from the Deposit Accounts or with respect to any other dealings with any of the Deposit Account Collateral; (d) Bank will not agree that any person other than the Company or Agent is the Bank's customer with respect to the Deposit Accounts listed on Schedule 1; (e) Schedule 1 is a correct and complete list of the Deposit Accounts as of the date hereof and each of them constitutes a "deposit account" as such term is defined in the UCC; (f) effective as of the date of this Agreement the title of the Collection Account shall be changed to "Mervyn's LLC--Congress Financial Corporation (Western) as Agent Blocked Account"; (g) Bank acknowledges that it holds and will hold possession of the Deposit Account Collateral consisting of instruments and money as depository for Agent and for the benefit of Agent; and (h) Bank is hereby irrevocably authorized and instructed to change the designation of the customer on the Deposit Accounts listed on Schedule 1 to Agent upon the request of Agent and Bank shall so change the customer promptly upon such request by Agent.

2. Control.

(a) Notwithstanding any other term or provision of this Agreement or any other agreement between Bank and the Company or otherwise, Bank is hereby irrevocably authorized and directed to, and Bank agrees that it will, comply with instructions originated by Agent directing the disposition of funds from time to time in any Deposit Account or as to any other matters relating to any Deposit Account or any of the other Deposit Account Collateral without further consent by the Company (which instructions may include the giving of stop payment orders for any items being presented to a Deposit Account for payment).

(b) Effective upon the receipt by Bank of written notice from Agent that Agent is exercising exclusive control over any Deposit Account (each such notice being referred to as a "Notice of Exclusive Control"), Bank shall not permit the Company or any of its affiliates to withdraw any amounts from, to draw upon or otherwise exercise any authority or powers with respect to the Deposit Account and all Deposit Account Collateral related thereto specified in any such Notice of Exclusive Control and Bank shall not at any time honor, any instructions with respect to the such Deposit Account and Deposit Account Collateral, other than those approved in writing by Agent. Until the receipt by Bank of a Notice of Exclusive Control, the Company

shall be entitled to present items drawn on and otherwise to withdraw or direct the disposition of funds from the Deposit Accounts.

3. Remittance of Funds. Unless and until Bank shall receive written instruction from Agent to the contrary, effective as of the date of this Agreement, all checks, money orders, drafts, instruments, electronic funds transfers and other items and forms of remittances received for deposit in the Collection Account shall be deposited only in the Collection Account on the date received. On and after the date of the receipt by Bank of a Notice of Exclusive Control as to any Deposit Account, all available funds in such Deposit Account shall automatically and without further direction on each business day be remitted, at the Company's cost and expense, by federal funds wire transfer solely to Wachovia Bank, National Association, ABA No. 053 000 219, for credit to Congress Financial Corporation (Western), Account No. 2000025633900, re: Mervyn's, or to such other account as Agent may specify.

4. Indemnity; Bank's Responsibility. The Company agrees to indemnify, defend and hold harmless Bank against any loss, liability or expense (including reasonable fees and disbursements of counsel) incurred in connection with this Agreement, including any action taken by Bank pursuant to the instructions of Agent, except to the extent due to the gross negligence or willful misconduct of Bank or breach of any of the provisions hereof. The Company confirms and agrees that neither Bank nor Agent or Lenders shall have any liability to the Company for wrongful dishonor of any items as a result of any instructions of Agent. Bank shall have no duty to inquire or determine whether the obligations of the Company to Agent or Lenders are in default or whether Agent is entitled to give any such instructions and Bank is fully entitled to rely upon such instructions from Agent (even if such instructions are contrary or inconsistent with any instructions or demands given by the Company).

(a) Bank shall have only duties and responsibilities with respect to the matters set forth herein as is expressly set forth in writing herein and shall not be deemed to be an agent, bailee or fiduciary for any party hereto; (i) Bank shall be fully protected in acting or refraining from acting in good faith without investigation on any notice (including without limitation a Notice of Exclusive Control), instruction or request purportedly furnished to it by Company or Agent in accordance with the terms hereof, in which case the parties hereto agree that Bank has no duty to make any further inquiry whatsoever; (ii) it is hereby acknowledged and agreed that Bank has no knowledge of (and is not required to know) the terms and provisions of the separate agreements referred to in this Agreement or any other related documentation or whether any actions by the Agent, Company or any other person or entity are permitted or a breach thereunder or consistent or inconsistent therewith, (iii) Bank shall not be liable for losses or delays caused by force majeure, interruption or malfunction of computer, transmission or communications facilities, labor difficulties, court order or decree, the commencement of bankruptcy or other similar proceedings or other matters beyond Bank's reasonable control.

5. Statements, Confirmations and Notices of Adverse Claims. At such time or times as Agent may request, Bank will promptly report to Agent the amounts received in and held in the Deposit Accounts and will furnish to Agent any copies of bank statements, deposit tickets, deposited items, debit and credit advices and other records maintained by Bank under the terms of its arrangements with the Company (as in effect on the date hereof). Agent will reimburse Bank for its reasonable expenses

in providing such items to Agent. Upon receipt of notice of any lien, encumbrance or adverse claim against any Deposit Account Collateral, Bank will promptly notify Agent and the Company thereof.

6. Subordination of Bank's Security Interest; Setoff Rights.

(a) In the event that at any time Bank has a security interest in or lien upon any of the Deposit Account Collateral, such security interest and lien of Bank shall be subject and subordinate to the security interest and lien of Agent therein. Bank shall not for any reason charge, debit, deduct or offset, or exercise any security interest or lien rights, against any checks, automated clearinghouse transfers or other form of remittances received in the Lockbox or any amounts at any time deposited in or credited to any Deposit Account, except that Bank may setoff against funds in the Deposit Accounts for all amounts due to Bank in respect of its customary fees and expenses for routine operation of the Deposit Accounts that are unpaid and outstanding, the amount of any checks, automated clearinghouse transfers or other form of remittance that have been credited to any Deposit Account and subsequently returned unpaid and any overdrafts arising as a result thereof.

(b) In the event that the funds in the Deposit Accounts are insufficient to reimburse Bank, on and after the receipt by Bank of a Notice of Exclusive Control from Agent with respect to a Deposit Account, Agent shall reimburse Bank for the face amount of any checks, automated clearinghouse transfers or other forms of remittances that were deposited in such Deposit Account or such fees and expenses, in each case to the extent that: (i) in the case of a check, automated clearinghouse transfer or other form of remittance returned unpaid, Agent received final payment in respect thereof and Agent has received notice from Bank of the failure of the Company to pay Bank prior to the date that is ninety (90) days after such check, automated clearinghouse transfer or other form of remittance is deposited with Bank and (ii) in the case of such fees and expenses, Agent has received written demand from Bank for payment for such fees and expenses prior to the date that is sixty (60) days after the date such fees were due and payable to Bank. The Company shall reimburse Agent for any amounts paid by Agent to Bank under this Section 6 or otherwise under this Agreement promptly upon demand by Agent (without inquiry as to, and regardless of, any dispute between the Company and Bank). Such amounts shall be paid to Agent by Company (or at Agent's option, Agent may charge any loan account of the Company or its affiliates maintained by Agent) without offset, defense or counterclaim.

7. Termination. This Agreement cannot be changed, modified or terminated except that this Agreement may be terminated either: (a) by Bank upon thirty (30) days prior written notice to the Company and Agent and (b) upon written notice by Agent to Bank of the termination of the financing arrangements of Agent and Lenders with the Company or its affiliates. In the event that for any reason this Agreement shall be terminated other than pursuant to the written notice by Agent to Bank of the termination of the financing arrangements of Agent with the Company, Bank will immediately transfer any funds in the Collection Account to the account of Agent specified in Section 3 hereof, the Collection Account will be closed and Bank



will forward any mail received in the Deposit Accounts after such termination to Agent or to such address as Agent may designate to Bank in writing for such purpose.

8. Notices. All notices hereunder shall be in writing and deemed to have been given or made: if delivered in person, immediately upon delivery; if by telex, telegram or facsimile transmission, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by certified mail, return receipt requested, five (5) days after mailing. All notices to any party shall be given to its address set forth below (or to such other address as any party may designate by notice in accordance with this Section).

9. Customer Agreement. This Agreement supplements any other agreements between the Company and Bank with respect to the Deposit Accounts. In the event of any inconsistency between this Agreement and the terms of such other agreements of the Company or its affiliates with Bank, the terms of this Agreement control.

10. Governing Law. This Agreement shall be governed by the laws of the State of New York. Notwithstanding anything to the contrary contained in any other agreement among any of the parties hereto, for purposes of the UCC, the State of New York shall be deemed to be the Bank's jurisdiction within the meaning of Section 9-304 of the UCC. All references to the "UCC" herein shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall have the same force and effect as the delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of any such agreement by telefacsimile shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of such agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

12. Successors and Assigns. Agent and Lenders are relying upon this Agreement in providing financing to the Company and this Agreement shall be binding upon the Company and Bank and their respective successors and assigns and inure to the benefit of Agent and Lenders and their respective successors and assigns.

JPMorgan Chase Bank, N.A.

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

Title: \_\_\_\_\_

MERVYN'S LLC

By: 

Title: EVP Finance & CFO

Address for Notices:

JPMorgan Chase Bank, N.A.  
300 South Riverside, 10th Floor  
Mailcode, IL1-1625  
Chicago, IL 60606  
Attention: Cheryl M. Bell  
Telecopy: 312-954-2303\_\_\_\_\_

Address for Notices:

22301 Foothill Boulevard  
Hayward, California 94541  
Attention: Treasurer  
Telecopy No.: 510-727-3638

With a copy to:

1166 6<sup>th</sup> Avenue, 16<sup>th</sup> Floor  
Mailcode, 03352 - 16  
New York, NY 10036  
Attention: Scott B. Troy  
Telecopy: 212-899-1115

CONGRESS FINANCIAL  
CORPORATION (WESTERN), as  
Agent

By: 

Title: VP

Address for Notices:

251 South Lake Avenue  
Suite 900  
Pasadena, California 91101  
Attn.: Portfolio Manager - Mervyn's,  
LLC  
Fax: 626-304-4969

SCHEDULE 1  
TO  
DEPOSIT ACCOUNT CONTROL AGREEMENT

Collection Account No.:

21883818	Depository Account - Stores
623133055	Concentration Account - Stores

12. **Successors and Assigns.** Agent and Lenders are relying upon this Agreement in providing financing to the Company and this Agreement shall be binding upon the Company and Bank and their respective successors and assigns and inure to the benefit of Agent and Lenders and their respective successors and assigns.

JPMorgan Chase Bank, N.A.

By: *Cheryl M Bell*  
Title: *Treasury Mgmt Officer*

MERVYN'S LLC

By: *[Signature]*  
Title: *EVP Finance & CFO*

Address for Notices:

JPMorgan Chase Bank, N.A.  
300 South Riverside, 10th Floor  
Mailcode, IL1-1625  
Chicago, IL 60606  
Attention: Cheryl M. Bell  
Telecopy: 312-954-2303

Address for Notices:

22301 Foothill Boulevard  
Hayward, California 94541  
Attention: Treasurer  
Telecopy No.: 510-727-3638

With a copy to:

1166 6<sup>th</sup> Avenue, 16<sup>th</sup> Floor  
Mailcode, 03352 - 16  
New York, NY 10036  
Attention: Scott B. Troy  
Telecopy: 212-899-1115

CONGRESS FINANCIAL  
CORPORATION (WESTERN), as  
Agent

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

Title: \_\_\_\_\_

Address for Notices:

251 South Lake Avenue  
Suite 900  
Pasadena, California 91101  
Attn.: Portfolio Manager - Mervyn's,  
LLC  
Fax: 626-304-4969

410588.1

**mervyn's**  
**TREASURY DEPARTMENT**  
22901 Foothill Blvd. MS 4260,  
Hayward, CA 94541  
Fax: 510-727-3638

1072

# Fax

October 26, 2005

To: Cheryl M. Bell *Leticia De La Paz*

Fax: 312-954-2303

From: Leticia De La Paz *Cheryl Bell*

Phone: 510-727-3833

Re: Deposit Account Control Agreement

Urgent     For Review     Please Comment     Please Reply     Please Recycle

Cheryl,

Attached please find an executed copy of the Deposit Account Control Agreement between Bank One, Mervyns LLC and Congress Financial. Please execute and return to my attention at the address above. If you have any questions, please feel free to call.

Thanks

Leticia DeLaPaz,

## DEPOSIT ACCOUNT CONTROL AGREEMENT

---

This Agreement is entered into as of June 5, 2008 among Mervyn's LLC ("Company"), Wachovia Capital Finance Corporation (Western) ("Lender"), and Bank of America, N.A. ("Bank") with respect to the following:

A. Bank has agreed to establish and maintain for Company the deposit account numbers listed on Schedule I attached hereto (both individually and collectively the "Account").

B. Company has assigned to Lender a security interest in the Account and in checks and other payment instructions ("Checks") deposited in the Account.

C. Company, Lender and Bank are entering into this Agreement to evidence Lender's security interest in the Account and such Checks and to provide for the disposition of net proceeds of Checks deposited in the Account.

Accordingly, Company, Lender and Bank agree as follows:

1. (a) This Agreement evidences Lender's control over the Account. Notwithstanding anything to the contrary in the agreement between Bank and Company governing the Account, Bank will comply with instructions originated by Lender as set forth herein directing the disposition of funds in the Account without further consent of the Company.

(b) Company represents and warrants to Lender and Bank that it has not assigned or granted a security interest in the Account or any Check deposited in the Account, except to Lender.

(c) Company will not permit the Account to become subject to any other pledge, assignment, lien, charge or encumbrance of any kind, other than Lender's security interest referred to herein.

(d) The Account may receive merchant card deposits and chargebacks. Company acknowledges and agrees that during the Activation Period (defined below), chargebacks will be blocked from debiting the Account.

2. During the Activation Period (as defined below), Bank shall prevent Company from making any withdrawals from the Account. Prior to the Activation Period, Company may operate and transact business through the Account in its normal fashion, including making withdrawals from the Account, but covenants to Lender it will not close the Account. Bank shall have no liability in the event Company breaches this covenant to Lender.

A reasonable period of time following the commencement of the Activation Period, and continuing on each Business Day thereafter, Bank shall transfer all available balances in the Account to Lender at its account specified in the Notice (as defined below). The "Activation Period" means the period which commences within a reasonable period of time not to exceed thirteen Business Days after Bank's receipt of a written notice from Lender in the form of Exhibit A (the "Notice").

A "Business Day" is each day except Saturdays, Sundays and Bank holidays. Funds are not available if, in the reasonable determination of Bank, they are subject to a hold, dispute or legal process preventing their withdrawal.

Lender, Company and Bank acknowledge and agree that Account 1233110110 (the "Master Concentration Account") will be blocked within two Business Days following Bank's receipt of the Notice, and wire transfers to the Lender from the Master Concentration Account will begin within a reasonable period of time not to exceed five Business Days following Bank's receipt of the Notice. Notwithstanding the foregoing, prior to the commencement of the Activation Period Bank shall have no liability for any debits charged to the Master Concentration Account as a result of debit activity posted to any Account linked to the Master Concentration Account.

3. Bank agrees it shall not offset, charge, deduct or otherwise withdraw funds from the Account, except as permitted by Section 4, until it has been advised in writing by Lender that all of Company's obligations that are secured by the Checks and the Account are paid in full. Lender shall notify Bank promptly in writing upon payment in full of Company's obligations.

4. Bank is permitted to charge the Account:
- (a) for its fees and charges relating to the Account or associated with this Agreement; and
  - (b) in the event any Check deposited into the Account is returned unpaid for any reason or for any breach of warranty claim; and
  - (c) for any ACH credit entries that may have been originated by Company but that have not settled at the time of the commencement of the Activation Period, or for any entries, whether credit or debit, that are subsequently returned thereafter.
5. (a) If the balances in the Account are not sufficient to compensate Bank for any fees or charges due Bank in connection with the Account or this Agreement, Company agrees to pay Bank on demand the amount due Bank. Company will have breached this Agreement if it has not paid Bank, within five days after such demand, the amount due Bank.
- (b) If the balances in the Account are not sufficient to compensate Bank for any returned Check, Company agrees to pay Bank on demand the amount due Bank. If Company fails to so pay Bank immediately upon demand, Lender agrees to pay Bank within five days after Bank's demand to Lender to pay any amount received by Lender with respect to such returned Check. The failure to so pay Bank shall constitute a breach of this Agreement.
- (c) Company hereby authorizes Bank, without prior notice, from time to time to debit any other account Company may have with Bank for the amount or amounts due Bank under subsection 5(a) or 5(b).
6. In addition to the original Bank statement provided to Company, Bank will provide Lender with a duplicate of such statement.
7. (a) Bank will not be liable to Company or Lender for any expense, claim, loss, damage or cost ("Damages") arising out of or relating to its performance under this Agreement other than those Damages which result directly from its acts or omissions constituting negligence or intentional misconduct.
- (b) In no event will Bank be liable for any special, indirect, exemplary or consequential damages, including but not limited to lost profits.
- (c) Bank will be excused from failing to act or delay in acting, and no such failure or delay shall constitute a breach of this Agreement or otherwise give rise to any liability of Bank, if (i) such failure or delay is caused by circumstances beyond Bank's reasonable control, including but not limited to legal constraint, emergency conditions, action or inaction of governmental, civil or military authority, fire, strike, lockout or other labor dispute, war, riot, theft, flood, earthquake or other natural disaster, breakdown of public or private or common carrier communications or transmission facilities, equipment failure, or negligence or default of Company or Lender or (ii) such failure or delay resulted from Bank's reasonable belief that the action would have violated any guideline, rule or regulation of any governmental authority.
- (d) Bank shall have no duty to inquire or determine whether Company's obligations to Lender are in default or whether Lender is entitled to provide the Notice to Bank. Bank may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party.
- (e) Notwithstanding any of the other provisions in this Agreement, in the event of the commencement of a case pursuant to Title 11, United States Code, filed by or against Company, or in the event of the commencement of any similar case under then applicable federal or state law providing for the relief of debtors or the protection of creditors by or against Company, Bank may act as Bank deems necessary to comply with all applicable provisions of governing statutes and shall not be in violation of this Agreement as a result.
- (f) Bank shall be permitted to comply with any writ, levy order or other similar judicial or regulatory order or process concerning any Account or any Check and shall not be in violation of this Agreement for so doing.
8. (a) Company shall indemnify Bank against, and hold it harmless from, any and all liabilities, claims, costs, expenses and damages of any nature (including but not limited to allocated costs of staff counsel, other reasonable attorney's fees and any fees and expenses) in any way arising out of or relating to disputes or legal actions concerning Bank's provision of the services described in this Agreement. This section does not apply to any cost or damage

attributable to the gross negligence or intentional misconduct of Bank. Company's obligations under this section shall survive termination of this Agreement.

(b) Lender hereby agrees to indemnify, defend and hold harmless Bank against any loss, liability or expense (including but not limited to allocated costs of staff counsel, other reasonable attorney's fees and any fees and expenses) arising from Bank complying with any written instructions of Lender pursuant to this Agreement other than if related to Bank's gross negligence, bad faith, or willful misconduct. Lender's obligations under this section shall survive termination of this Agreement.

9. (a) Company shall pay to Bank, upon receipt of Bank's invoice, all costs, expenses and attorneys' fees (including allocated costs for in-house legal services) incurred by Bank in connection with the enforcement of this Agreement and any instrument or agreement required hereunder, including but not limited to any such costs, expenses and fees arising out of the resolution of any conflict, dispute, motion regarding entitlement to rights or rights of action, or other action to enforce Bank's rights in a case arising under Title 11, United States Code. Company agrees to pay Bank, upon receipt of Bank's invoice, all costs, expenses and attorneys' fees (including allocated costs for in-house legal services) incurred by Bank in the preparation and administration of this Agreement (including any amendments hereto or instruments or agreements required hereunder).

(b) Lender shall pay to Bank, upon receipt of Bank's invoice, all costs, expenses and attorneys' fees (including allocated costs for in-house legal services) incurred by Bank in connection with the enforcement against Lender of this Agreement and any instrument or agreement required hereunder to the extent that Bank is the prevailing party in such enforcement action.

10. Termination and Assignment of this Agreement shall be as follows:

(a) Lender may terminate this Agreement by providing notice to Company and Bank that all of Company's obligations which are secured by Checks and the Account are paid in full. Lender may also terminate or it may assign this Agreement upon 30 days' prior written notice to Company and Bank. Bank may terminate this Agreement upon 30 days' prior written notice to Company and Lender. Company may not terminate this Agreement except with the written consent of Lender and upon prior written notice to Bank.

(b) Notwithstanding subsection 10(a), Bank may terminate this Agreement at any time by written notice to Company and Lender if either Company or Lender breaches any of the terms of this Agreement, or any other agreement with Bank.

11. (a) Each party represents and warrants to the other parties that (i) this Agreement constitutes its duly authorized, legal, valid, binding and enforceable obligation; (ii) the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereunder will not (A) constitute or result in a breach of its certificate or articles of incorporation, by-laws or partnership agreement, as applicable, or the provisions of any material contract to which it is a party or by which it is bound or (B) result in the violation of any law, regulation, judgment, decree or governmental order applicable to it; and (iii) all approvals and authorizations required to permit the execution, delivery, performance and consummation of this Agreement and the transactions contemplated hereunder have been obtained.

(b) The parties each agree that it shall be deemed to make and renew each representation and warranty in subsection 11(a) on and as of each day on which Company uses the services set forth in this Agreement.

12. (a) This Agreement may be amended only by a writing signed by Company, Lender and Bank; except that Bank's charges are subject to change by Bank upon 30 days' prior written notice to Company.

(b) This Agreement may be executed in counterparts; all such counterparts shall constitute but one and the same agreement.

(c) This Agreement controls in the event of any conflict between this Agreement and any other document or written or oral statement. This Agreement supersedes all prior understandings, writings, proposals, representations and communications, oral or written, of any party relating to the subject matter hereof.

(d) This Agreement shall be interpreted in accordance with New York law without reference to that state's principles of conflicts of law.




13. Any written notice or other written communication to be given under this Agreement shall be addressed to each party at its address set forth on the signature page of this Agreement or to such other address as a party may specify in writing. Except as otherwise expressly provided herein, any such notice shall be effective upon receipt.

14. Nothing contained in the Agreement shall create any agency, fiduciary, joint venture or partnership relationship between Bank and Company or Lender. Company and Lender agree that nothing contained in this Agreement, nor any course of dealing among the parties to this Agreement, shall constitute a commitment or other obligation on the part of Bank to extend credit to Company or Lender.

*The remainder of this page is intentionally left blank.*


In Witness Whereof, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

**Mervyn's LLC**

\_\_\_\_\_  
("COMPANY")  
By:   
(Signature)  
Name: Rodger Meads  
(Print or Type)  
Title: Vice President, Treasurer  
(Print or Type)

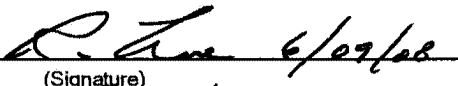
Address for Notices:  
  
Mervyns  
22301 Foothill Blvd  
Hayward, CA 94541  
Attn: Treasurer  
Facsimile: 510-727-5445

**Wachovia Capital Finance Corporation (Western)**

\_\_\_\_\_  
("LENDER")  
By:   
(Signature)  
Name: Gary Whitaker  
(Print or Type)  
Title: Director  
(Print or Type)

Address for Notices:  
  
Wachovia Capital Finance Corporation  
251 South Lake Ave.; Suite 900  
Pasadena, CA 91101  
Attn: Portfolio Manager

**Bank of America, N.A.**

\_\_\_\_\_  
("BANK")  
By:   
(Signature)  
Name: Rick Lane  
(Print or Type)  
Title: Vice President  
(Print or Type)

Address for Notices:  
  
Bank of America, N. A.  
Blocked Account Support  
800-5th Avenue  
Mail Code: WA1-501-08-21  
Seattle, WA 98104  
Facsimile: 866-355-7792

and  
  
Susan Oberto, VP  
Bank of America, N. A.  
Blocked Account Support  
800-5th Avenue  
Mail Code: WA1-501-08-21  
Seattle, WA 98104  
Facsimile: 866-355-7792

**EXHIBIT A**  
**DEPOSIT ACCOUNT CONTROL AGREEMENT**

Letterhead of Lender

To: Bank of America, N.A.  
Address

Re: **Name of Company**  
Account No. \_\_\_\_\_

Ladies and Gentlemen:

Reference is made to the Deposit Account Control Agreement dated \_\_\_\_\_ (the "Agreement") among Company Name, us and you regarding the above-described account (the "Account"). In accordance with Section 2 of the Agreement, we hereby give you notice of our exercise of control of the Account and we hereby instruct you to transfer funds to our account as follows:

Bank Name: \_\_\_\_\_  
Bank Address: \_\_\_\_\_  
ABA No.: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
Beneficiary's Name: \_\_\_\_\_

Very truly yours,

\_\_\_\_\_  
as Lender

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT I**  
**DEPOSIT ACCOUNT CONTROL AGREEMENT**

Letterhead of Secured Party

\_\_\_\_\_, 20\_\_

Bank of America, N.A.

\_\_\_\_\_

Attn: \_\_\_\_\_

**Re: Termination of Deposit Account Control Agreement**

Accounts: \_\_\_\_\_

Ladies and Gentlemen:

Reference is made to that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 20\_\_ (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Agreement") among you, \_\_\_\_\_ (the "Company"), and us as ("Lender"). You are hereby notified that the Agreement is terminated with respect to the undersigned, and you have no further obligations to the undersigned thereunder. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to the Account from the Company. This notice terminates any obligations you may have to the undersigned with respect to the Account.

Very truly yours,

\_\_\_\_\_  
as Lender

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and Agreed:

Bank of America, N.A., as Bank

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE I**  
**DEPOSIT ACCOUNT CONTROL AGREEMENT**

June 5, 2008

Master Concentration            1233110110  
Depository Sub-Acct 1         3751830623  
Depository Sub-Acct 2         3751830636  
Depository Sub-Acct 3         3751782072

<b>Store</b>	<b>Store Name</b>	<b>ST</b>	<b>Bank Acct</b>
M-0001	Southland	CA	3751832524
M-0002	Newpark Mall	CA	3751832676
M-0004	Princeton Plaza	CA	3751832854
M-0005	Cupertino	CA	3751832760
M-0006	Pinole	CA	3751832867
M-0007	Dublin	CA	3751832663
M-0008	Napa	CA	3751832621
M-0009	Modesto	CA	3751832799
M-0010	Petaluma	CA	3751832702
M-0011	Antioch	CA	3751832692
M-0012	Alameda	CA	3751832618
M-0013	Campbell	CA	3751832812
M-0014	Serramonte	CA	3751832728
M-0015	Point West	CA	3751832809
M-0016	Vallejo	CA	3751832825
M-0017	Greenback	CA	3751832715
M-0020	Visalia	CA	3751832553
M-0021	Merced	CA	3751832566
M-0022	Millbrae	CA	3751832870
M-0023	Mountain View	CA	3751832540
M-0024	Salinas	CA	3751832773
M-0025	Huntington Beach	CA	3751832595
M-0026	Fullerton	CA	3751832786
M-0027	San Diego	CA	3751832605
M-0028	Oxnard	CA	3751832579
M-0030	Cypress	CA	3751832689
M-0031	Pleasant Hill	CA	3751832582
M-0032	Santa Clara	CA	3751832757
M-0034	Santa Rosa	CA	3751832647
M-0035	Chico	CA	3751832744
M-0036	Capitola	CA	3751832731
M-0037	Bakersfield	CA	3751832838
M-0038	Fresno	CA	3751832650
M-0039	Anaheim	CA	3751832841
M-0040	Tustin	CA	3751833002
M-0041	Stockton	CA	3751832980
M-0042	Simi Valley	CA	3751833112
M-0043	Corona	CA	3751832977
M-0046	College Grove	CA	3751833138
M-0047	Upland	CA	3751832993
M-0049	Marysville	CA	3751833125
M-0050	Redwood City	CA	3751833141
M-0052	Albuquerque	NM	3751922007
M-0053	Lodi	CA	3751833154
M-0054	West Covina	CA	3751833057
M-0061	Sun Valley	CA	3751833060
M-0068	Northridge	CA	3751833073
M-0070	Downey	CA	3751833167

**SCHEDULE I**  
**DEPOSIT ACCOUNT CONTROL AGREEMENT**

<b>Store</b>	<b>Store Name</b>	<b>ST</b>	<b>Bank Acct</b>
M-0071	Whittier	CA	3751833028
M-0072	El Centro	CA	3751833015
M-0073	Fairfield	CA	3751833044
M-0075	Redlands	CA	3751833031
M-0078	Rancho Cordov	CA	3751833109
M-0079	Bassett Center	TX	3751787802
M-0080	Yarborough	TX	3751787705
M-0081	Milpitas	CA	3751832964
M-0083	Monrovia	CA	3751833170
M-0085	Garden Grove	CA	3751832948
M-0086	Oceanside	CA	3751832951
M-0087	Ventura	CA	3751833183
M-0089	S. San Diego	CA	3751833086
M-0090	Hillsdale	CA	3751833196
M-0101	Roseville	CA	3751833099
M-0102	San Luis Obis	CA	3751833361
M-0104	Glendale	CA	3751833468
M-0106	Fontana	CA	3751833332
M-0107	Sports Arena	CA	3751833439
M-0108	Riverside	CA	3751833329
M-0123	Torrance	CA	3751833426
M-0124	Redding	CA	3751833358
M-0125	Monterey	CA	3751833455
M-0126	Alhambra	CA	3751833345
M-0131	Puente Hills	CA	3751833442
M-0135	Redondo Beach	CA	3751833400
M-0140	Ingram Park	TX	3751787747
M-0142	South Park Mall	TX	3751787831
M-0143	Santa Fe	NM	3751921998
M-0146	San Rafael	CA	3751833390
M-0147	Montebello	CA	3751833219
M-0149	Odessa	TX	3751880534
M-0150	Lubbock	TX	3751880547
M-0153	Canoga Park	CA	3751833497
M-0157	Midland	TX	3751880521
M-0165	Woodland	CA	3751833235
M-0166	Victorville	CA	3751833222
M-0167	Mira Mesa	CA	3751833248
M-0168	Huntington Ctr	CA	3751833471
M-0183	Turlock	CA	3751833374
M-0184	Chino	CA	3751833484
M-0185	Valencia	CA	3751833387
M-0193	Cerritos	CA	3751833413
M-0194	Irvine	CA	3751833316
M-0195	Escondido	CA	3751833510
M-0206	Eureka	CA	3751833251
M-0214	Moreno Valley	CA	3751833277
M-0216	Clovis	CA	3751833264
M-0217	East Hills Mall	CA	3751833280
M-0219	Santa Maria	CA	3751833303
M-0224	Morgan Hill	CA	3751833293
M-0225	Sunland Park	TX	3751787608
M-0226	El Cajon	CA	3751833756
M-0230	Rancho Cuc	CA	3751833662
M-0231	Ukiah	CA	3751833633
M-0232	Madera	CA	3751833730

**SCHEDULE I**  
**DEPOSIT ACCOUNT CONTROL AGREEMENT**

<b><u>Store</u></b>	<b><u>Store Name</u></b>	<b><u>ST</u></b>	<b><u>Bank Acct</u></b>
M-0233	Ridgecrest	CA	3751833727
M-0235	Temecula	CA	3751833824
M-0236	Burbank	CA	3751833743
M-0248	Westchester	CA	3751833659
M-0249	North Fullerton	CA	3751833808
M-0250	Tulare	CA	3751833714
M-0251	Porterville	CA	3751833798
M-0262	Manteca	CA	3751833701
M-0263	Palm Desert	CA	3751833523
M-0264	Lompoc	CA	3751833536
M-0265	Palmdale	CA	3751833811
M-0266	Anaheim Hills	CA	3751833675
M-0267	Mission Viejo	CA	3751833772
M-0268	Vacaville	CA	3751833769
M-0269	San Francisco	CA	3751833691
M-0270	McAllen	TX	3751787637
M-0271	Harlingen	TX	3751787857
M-0272	North Star Mall	TX	3751787828
M-0276	Livermore	CA	3751833688
M-0277	Hanford	CA	3751833785
M-0278	Carmel Mtn Pz	CA	3751833620
M-0283	Sonora	CA	3751833604
M-0284	Elk Grove	CA	3751833617
M-0285	Arbor Faire	CA	3751833552
M-0288	Chula Vista Ctr	CA	3751833549
M-0289	Highland	CA	3751833581
M-0291	Foothill Ranch	CA	3751833594
M-0292	Laguna Niguel	CA	3751833565
M-0296	Laredo	TX	3751787624
M-0298	Thousand Oaks	CA	3751833578
M-0313	Cottonwood	NM	3751922010
M-0317	Lakewood	CA	3751833837
M-0320	Folsom	CA	3752080867
M-0321	Slatten Ranch	CA	3752064621
M-0323	Sweetwater	CA	4426310480
M-0324	San Jose	CA	4426310493
M-0326	Las Tiendas Plz	TX	4426310477
M-0327	Blue Oaks	CA	4426377229
M-0331	Apple Valley	CA	4426457987
M-0332	Calexico	CA	4426457990
M-0328	Florin	CA	4426516983

## ACCOUNT CONTROL AGREEMENT

May 3, 2005

Mervyn's LLC  
22301 Foothill Boulevard  
Hayward, California 94541  
(hereinafter referred to as "Debtor")

Wachovia Capital Finance Corporation (Western), as Agent  
251 South Lake Avenue, Suite 900  
Pasadena, California 91101  
(hereinafter referred to as "Bank")

Evergreen Service Company, LLC  
200 Berkeley Street  
Boston, Massachusetts 02116  
(hereinafter referred to as the "Intermediary")

Debtor has granted Bank a security interest in a securities account maintained by Intermediary for Debtor. The parties are entering into this agreement to provide for the control of such account and to perfect Bank's security interest in that account and the financial assets held therein or credited thereto.

1. **THE ACCOUNT.** Intermediary represents and warrants to Bank that: (i) Intermediary maintains securities account number 1009330325 (the "Account") for and in the name of Debtor, (ii) Exhibit A is a statement produced by Intermediary in the ordinary course of its business regarding the property credited to the Account at the statement's date and Intermediary does not know of any inaccuracy in the statement, (iii) Intermediary, by entering into this agreement, hereby acknowledges the pledge to Bank of, and the security interest of Bank in, the Account and the financial assets or other assets at any time held therein or credited thereto, and (iv) Intermediary does not know of any claim to or interest in the Account or any financial assets held therein or credited thereto, except for claims and interests of the parties referred to in this agreement.
2. **CONTROL BY BANK.** Intermediary will comply with all notifications it receives directing it to transfer or redeem any property in the Account or any other entitlement order, direction or instruction (each an "entitlement order" and collectively, "entitlement orders") at any time originated by Bank without further consent by Debtor.
3. **DEBTOR'S RIGHTS IN ACCOUNT.** Notwithstanding anything to the contrary contained herein or in any other agreement of Debtor with, to or in favor of Intermediary, on and after the date hereof, (a) Debtor may not withdraw any property from the Account and (b) Intermediary will not (i) accept or comply with any entitlement order originated by Debtor, (ii) deliver any financial assets from the Account to Debtor, or (iii) pay to Debtor any interest, dividends,



distributions or other income in respect of the financial assets in the Account otherwise payable to Debtor, in each case without the specific prior written consent of Bank.

4. **PRIORITY OF BANK'S SECURITY INTEREST.** Intermediary subordinates in favor of Bank any security interest, lien or right of setoff it may have, now or in the future, against the Account or property in the Account, except that Intermediary will retain its prior lien on property in the Account to secure payment for property purchased for the Account and normal commissions and fees for the maintenance of the Account.

Intermediary will not agree with any third party that Intermediary will comply with entitlement orders originated by the third party.

5. **STATEMENTS, CONFIRMATIONS AND NOTICES OF ADVERSE CLAIMS.**

Intermediary will send copies of all statements and confirmations for the Account simultaneously to Debtor and Bank. Intermediary will use reasonable efforts promptly to notify Bank and Debtor if any other person claims that it has a property interest in property in the Account and that it is a violation of that person's rights for anyone else to hold, transfer or deal with the property.

6. **INTERMEDIARY'S RESPONSIBILITY.** Except for permitting withdrawal, delivery or payment in violation of Section 3 hereof, Intermediary will not be liable to Debtor for complying with entitlement orders originated by Bank, even if Debtor notifies Intermediary that Bank is not legally entitled to issue the entitlement order, unless Intermediary takes the action after it is served with an injunction, restraining order or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order or other legal process, or Intermediary acts in collusion with Bank in violating Debtor's rights.

This agreement does not create any obligation of Intermediary except for those expressly set forth in this agreement. In particular, Intermediary need not investigate whether Bank is entitled under Bank's agreements with Debtor to give an entitlement order. Intermediary may rely on notices and communications it believes given by the appropriate party.

7. **INDEMNITY.** Debtor will indemnify Intermediary, its officers, directors, employees and agents against claims, liabilities and expenses arising out of this agreement (including reasonable attorneys fees and disbursements), except to the extent the claims, liabilities and expenses are caused by Intermediary's gross negligence or willful misconduct. Bank will indemnify Intermediary, its officers, directors, employees and agents against claims, liabilities and expenses arising out of Bank's instructions to Intermediary (including reasonable attorneys fees and disbursements), except to the extent the claims, liabilities and expenses are caused by Intermediary's gross negligence or willful misconduct.

8. **TERMINATION; SURVIVAL.** Bank may terminate this agreement by notice to Intermediary and Debtor. Intermediary may terminate this agreement on 30 days' written notice to Bank and Debtor. If Bank notifies Intermediary in writing that Bank's security interest in the Account has terminated, this agreement will immediately terminate. Sections 6 and 7 hereof will survive termination of this agreement.

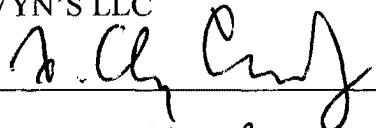
9. MISCELLANEOUS PROVISIONS. Governing Law. This agreement and the Account will be governed by the laws of the Commonwealth of Massachusetts. Intermediary and Debtor may not change the law governing the Account without Bank's express written agreement. Entire Agreement. This agreement is the entire agreement, and supersedes any prior agreements and contemporaneous oral agreements, of the parties concerning its subject matter. Amendments. No amendment of, or waiver of a right under, this agreement will be binding unless it is in writing and signed by the party to be charged. Severability. To the extent a provision of this agreement is unenforceable, this agreement will be construed as if the unenforceable provision were omitted. Financial Assets. All property credited to the Account will be treated as financial assets under Article 8 of the Massachusetts Uniform Commercial Code. Successors and Assigns. A successor to or assignee of Bank's rights and obligations under the financing agreements between Bank and Debtor will succeed to Bank's rights and obligations under this agreement. Notices. A notice or other communication to a party under this agreement will be in writing (except that entitlement orders may be given orally), will be sent to the party's address set forth above or to such other address as the party may notify the other parties and shall be deemed to have been duly given or made: if by telecopier, immediately upon sending and upon confirmation of receipt; if by nationally recognized overnight courier service with instructions to deliver the next business day, one (1) business day after sending; and if by registered or certified mail, return receipt requested, five (5) business days after mailing. Counterparts, etc. This agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this agreement by signing and delivering one or more counterparts. This agreement may delivered by telecopier with the same force and effect as if it were a manually executed and delivered counterpart.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Debtor, Bank and Intermediary have caused this Agreement to be duly executed as of the date first written above.

DEBTOR:

MERVYN'S LLC

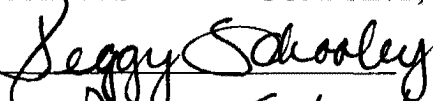
By: 

Print Name: F. Clay Creasey

Title: SVP Finance & CFO

INTERMEDIARY:

EVERGREEN SERVICE COMPANY, LLC

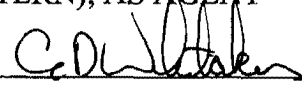
By: 

Print Name: Peggy Schooley

Title: President

BANK:

WACHOVIA CAPITAL FINANCE CORPORATION  
(WESTERN), AS AGENT

By: 

Print Name: Gary Whitaker

Title: VP

Exhibit A

Statement of Account

See attached



# Evergreen Investments™

P.O. Box 8400, Boston, MA 02266-8400  
1-800-343-2898

0062463

ESCCFOOD..J61225.0001.114  
F003 1 SP.PULL1 1 1 1 2 1-----

For the account of:  
WACHOVIA BANK  
LOAN COLLATERAL ACCOUNT  
MERVYNS LLC  
ATTN LETICIA DE LA PAZ  
22301 FOOTHILL BLVD M/S 4255  
HAYWARD CA 94541-2709

YEAR-TO-DATE STATEMENT  
June 16, 2005 to June 22, 2005

Page 1 of 2  
Institutional Mmkt-I  
Fund - Account Number  
495-1009330325

Your financial advisor is: EVERGREEN INVESTMENT SERVICES, MONEY MARKET, ATTN: JIM CORNELIUS  
5TH FLOOR, 401 S TRYON ST # 0969, CHARLOTTE NC 28288-0001  
Your representative is: 0015 KEVIN WALDECK

## MARKET VALUE *Here is the current value of your account as of the end of the period:*

Fund - Account Number	Shares	Price	Market Value on 6/22/05
Institutional Mmkt-I 495-1009330325	79,000,000.000	\$1.00	\$79,000,000.00

## TRANSACTION ACTIVITY *Here are the details of each transaction for your account this year:*

Date	Description	Amount	Price	Shares	Share Balance
6/16/05	Beginning Balance				0.000
6/16/05	Purchase By Fed Wire	\$50,000,000.00	\$1.00	50,000,000.000	50,000,000.000
6/17/05	Purchase By Fed Wire	29,000,000.00	1.00	29,000,000.000	79,000,000.000
6/22/05	Duplicate Confirm Request				79,000,000.000
6/22/05	Ending Balance		1.00		79,000,000.000



# Evergreen Investments

WACHOVIA BANK  
LOAN COLLATERAL ACCOUNT  
MERVYNS LLC  
ATTN LETICIA DE LA PAZ  
22301 FOOTHILL BLVD M/S 4255  
HAYWARD CA 94541-2709

Institutional Mmkt-I  
Account Number: 495-1009330325

## INVESTMENT BY MAIL / ACCOUNT CHANGE

Use this form to add or make changes to your account.

Additional Investment \$ \_\_\_\_\_

Please make your check payable to the Fund and include your account number on your check.

Address change - Please check the box and provide information on the reverse side to change your address.

Mail to: Evergreen, P.O. Box 8400, Boston, MA 02266-8400



0000000000 11 00000010093303254 143116000000000000495 0



Evergreen Investments™

P.O. Box 8400, Boston, MA 02266-8400  
1-800-343-2898

TRANSACTION CONFIRMATION

January 1, 2005 to June 21, 2005  
Page 2 of 2

Fund - Account Number  
495-1009330325

0062453

404506704

*For the account of:*  
WACHOVIA BANK  
LOAN COLLATERAL ACCOUNT  
MERYVNS LLC  
ATTN LETICIA DE LA PAZ  
22301 FOOTHILL BLVD M/S 4255  
HAYWARD CA 94541-2709

*Your financial advisor is:* EVERGREEN INVESTMENT SERVICES, MONEY MARKET, ATTN: JIM CORNELIUS  
5TH FLOOR, 401 S TRYON ST # 0969, CHARLOTTE NC 28288-0001

*Your representative is:* 0015 KEVIN WALDECK

FOR YOUR INFORMATION

---

For investment information, call your financial advisor. For account information, call Evergreen at 1-800-343-2898, or the Evergreen Express Line at 1-800-346-3858. If you prefer, write to us at Evergreen Service Company, P.O. Box 8400, Boston, MA 02266-8400. Visit us at [www.EvergreenInvestments.com](http://www.EvergreenInvestments.com).



F001 5 SP,PULL 2 4 2 2.....