

FORM 10-Q
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

(Mark One)

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

For the quarterly period ended July 31, 2010

OR

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

For the transition period from _____ to _____

Commission file number 1-11084



KOHL'S CORPORATION

(Exact name of registrant as specified in its charter)

Wisconsin

(State or other jurisdiction of incorporation
or organization)

39-1630919

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

N56 W17000 Ridgewood Drive,
Menomonee Falls, Wisconsin

(Address of principal executive offices)

53051

(Zip Code)

Registrant's telephone number, including area code (262)703-7000

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date: August 28, 2010 Common Stock, Par Value \$0.01 per Share, 307,991,404 shares outstanding.

**KOHL'S CORPORATION
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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

KOHL'S CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(In Millions)

	July 31, 2010	January 30, 2010	August 1, 2009
	(Unaudited)	(Audited)	(Unaudited)
Assets			
Current assets:			
Cash and cash equivalents	\$ 2,518	\$ 2,267	\$ 1,310
Merchandise inventories	2,930	2,923	2,724
Deferred income taxes	95	73	72
Other	227	222	201
Total current assets	5,770	5,485	4,307
Property and equipment, net	7,310	7,018	7,142
Long-term investments	298	321	326
Favorable lease rights, net	198	204	196
Other assets	130	132	115
Total assets	<u>\$ 13,706</u>	<u>\$ 13,160</u>	<u>\$ 12,086</u>
Liabilities and Shareholders' Equity			
Current liabilities:			
Accounts payable	\$ 1,345	\$ 1,188	\$ 1,153
Accrued liabilities	994	1,002	900
Income taxes payable	35	184	59
Current portion of long-term debt and capital leases	319	16	16
Total current liabilities	2,693	2,390	2,128
Long-term debt and capital leases	1,766	2,052	2,053
Deferred income taxes	365	377	333
Other long-term liabilities	505	488	436
Shareholders' equity:			
Common stock	4	4	4
Paid-in capital	2,155	2,085	2,000
Treasury stock, at cost, 46 shares	(2,642)	(2,639)	(2,639)
Accumulated other comprehensive loss	(38)	(36)	(45)
Retained earnings	8,898	8,439	7,816
Total shareholders' equity	8,377	7,853	7,136
Total liabilities and shareholders' equity	<u>\$ 13,706</u>	<u>\$ 13,160</u>	<u>\$ 12,086</u>

See accompanying Notes to Condensed Consolidated Financial Statements

KOHL'S CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(Unaudited)
(In Millions, Except per Share Data)

	Three Months (13 Weeks) Ended		Six Months (26 Weeks) Ended	
	July 31, 2010	August 1, 2009	July 31, 2010	August 1, 2009
Net sales	\$ 4,100	\$ 3,806	\$ 8,135	\$ 7,445
Cost of merchandise sold (exclusive of depreciation shown separately below)	2,449	2,286	4,948	4,556
Gross margin	1,651	1,520	3,187	2,889
Operating expenses:				
Selling, general, and administrative	1,047	966	2,077	1,927
Depreciation and amortization	153	144	304	285
Preopening expenses	2	11	6	26
Operating income	449	399	800	651
Interest expense, net	31	31	62	62
Income before income taxes	418	368	738	589
Provision for income taxes	158	139	279	221
Net income	\$ 260	\$ 229	\$ 459	\$ 368
Net income per share:				
Basic:				
Basic	\$ 0.84	\$ 0.76	\$ 1.49	\$ 1.21
Average number of shares	307	305	307	305
Diluted:				
Diluted	\$ 0.84	\$ 0.75	\$ 1.48	\$ 1.20
Average number of shares	308	306	308	306

See accompanying Notes to Condensed Consolidated Financial Statements

KOHL'S CORPORATION
CONDENSED CONSOLIDATED STATEMENT
OF CHANGES IN SHAREHOLDERS' EQUITY
(Unaudited)
(In Millions)

	Common Stock		Paid-In Capital	Treasury Stock	Accumulated Other Comprehensive Loss	Retained Earnings	Total
	Shares	Amount					
Balance at January 30, 2010	353	\$ 4	\$ 2,085	\$ (2,639)	\$ (36)	\$ 8,439	\$ 7,853
Net income	-	-	-	-	-	459	459
Other comprehensive loss:							
Unrealized loss on investments	-	-	-	-	(2)	-	(2)
Total comprehensive income							457
Stock options and awards	1	-	70	-	-	-	70
Treasury stock purchases	-	-	-	(3)	-	-	(3)
Balance at July 31, 2010	<u>354</u>	<u>\$ 4</u>	<u>\$ 2,155</u>	<u>\$ (2,642)</u>	<u>\$ (38)</u>	<u>\$ 8,898</u>	<u>\$ 8,377</u>

See accompanying Notes to Condensed Consolidated Financial Statements

KOHL'S CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In Millions)

	Six Months	
	(26 Weeks) Ended	
	July 31,	August 1,
	2010	2009
Operating activities		
Net income	\$ 459	\$ 368
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization, including debt discount and deferred financing fees	305	285
Share-based compensation	32	27
Excess tax benefits from share-based compensation	2	-
Deferred income taxes	(33)	15
Other non-cash revenues and expenses	19	36
Changes in operating assets and liabilities:		
Merchandise inventories	(5)	77
Other current and long-term assets	(6)	9
Accounts payable	158	272
Accrued and other long-term liabilities	(154)	(38)
Income taxes	(149)	(50)
Net cash provided by operating activities	<u>628</u>	<u>1,001</u>
Investing activities		
Acquisition of property and equipment and favorable lease rights	(421)	(336)
Sales of investments in auction rate securities	20	8
Other	2	(1)
Net cash used in investing activities	<u>(399)</u>	<u>(329)</u>
Financing activities		
Treasury stock purchases	(3)	(1)
Capital lease payments	(9)	(8)
Proceeds from stock option exercises	36	4
Excess tax benefits from share-based compensation	(2)	-
Net cash provided by (used in) financing activities	<u>22</u>	<u>(5)</u>
Net increase in cash and cash equivalents	251	667
Cash and cash equivalents at beginning of period	<u>2,267</u>	<u>643</u>
Cash and cash equivalents at end of period	<u>\$ 2,518</u>	<u>\$ 1,310</u>
Supplemental information:		
Interest paid, net of capitalized interest	\$ 66	\$ 67
Income taxes paid	462	260

See accompanying Notes to Condensed Consolidated Financial Statements

KOHL'S CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Basis of Presentation

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for fiscal year end financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. For further information, refer to the financial statements and related footnotes included in our Form 10-K (Commission File No. 1-11084) filed with the Securities and Exchange Commission.

Due to the seasonality of our business, results for any quarter are not necessarily indicative of the results that may be achieved for a full fiscal year. In addition, quarterly results of operations depend significantly upon the timing and amount of sales and costs associated with the opening of new stores.

We operate as a single business unit.

2. Debt

Long-term debt consists of the following:

Maturing	Weighted Average Effective Rate	July 31, 2010	January 30, 2010	August 1, 2009
(Dollars in Millions)				
Non-callable and unsecured senior debt:				
March 2011	6.32%	\$ 300	\$300	\$ 300
October 2011	7.41%	100	100	100
2017	6.31%	650	650	650
2029	7.36%	200	200	200
2033	6.05%	300	300	300
2037	6.89%	350	350	350
Total senior debt	6.55%	1,900	1,900	1,900
Capital lease obligations		191	174	176
Unamortized debt discount		(6)	(6)	(7)
Less current portion		(319)	(16)	(16)
Long-term debt and capital leases		<u>\$ 1,766</u>	<u>\$ 2,052</u>	<u>\$ 2,053</u>

Based on quoted market prices (Level 1 per ASC No. 820, "Fair Value Measurements and Disclosures"), the estimated fair value of our senior debt was approximately \$2.1 billion at July 31, 2010.

KOHL'S CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

3. Share-Based Compensation

We grant share-based compensation, including options to purchase shares of our common stock and nonvested stock, pursuant to various plans. Annual grants of stock options and nonvested stock are generally made to eligible employees in the first quarter of the fiscal year. Grants to newly-hired and promoted employees and other discretionary grants are made periodically throughout the remainder of the year.

In conjunction with the March 2010 annual grant, we implemented various changes to our share-based compensation practices. Share-based compensation is no longer granted to employees below our management board. All employees who remain eligible for share-based compensation may now elect to receive their annual equity awards in the form of stock options, nonvested stock awards, or a blend of stock options and nonvested stock awards. Finally, annual grants are now based on a fixed dollar value tied to the employee's performance rating, which is intended to eliminate the expense volatility caused by changes in our stock price.

The Black-Scholes option valuation model was used to estimate the fair value of each option award during the first six months of the respective fiscal year based on the following assumptions:

	2010	2009
Volatility	33.5%	42.8%
Risk-free interest rate	2.5%	1.8%
Expected life in years	5.5	5.4
Dividend yield	0%	0%
Weighted-average fair value at grant date	\$19.41	\$17.12

The following table summarizes our stock option activity for the first six months of 2010 and 2009:

	2010		2009	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
	(Shares in Thousands)			
Balance at beginning of year	19,848	\$ 52.10	19,134	\$ 53.01
Granted	546	54.97	2,785	41.65
Exercised	(969)	37.20	(92)	38.15
Forfeited/expired	(334)	55.57	(521)	56.49
Balance at end of quarter	<u>19,091</u>	<u>\$ 52.88</u>	<u>21,306</u>	<u>\$ 51.50</u>

KOHL'S CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

The following table summarizes our nonvested stock activity for the first six months of 2010 and 2009:

	2010		2009	
	Shares	Weighted Average Grant Date Fair Value	Shares	Weighted Average Grant Date Fair Value
	(Shares in Thousands)			
Balance at beginning of year	883	\$ 45.44	276	\$ 54.39
Granted	462	55.45	661	41.63
Vested	(195)	47.38	(60)	60.64
Forfeited	(20)	46.47	-	-
Balance at end of quarter	<u>1,130</u>	<u>\$ 49.17</u>	<u>877</u>	<u>\$ 44.35</u>

Total share-based compensation expense was \$17 million for the three months ended July 31, 2010 and \$16 million for the three months ended August 1, 2009. Total share-based compensation expense was \$32 million for the six months ended July 31, 2010 and \$27 million for the six months ended August 1, 2009.

Total unrecognized share-based compensation expense for all share-based payment plans was \$118 million at July 31, 2010, of which approximately \$31 million is expected to be recognized in the remainder of 2010, \$37 million in 2011, \$22 million in 2012, \$18 million in 2013, \$9 million in 2014 and \$1 million in 2015. Future compensation expense may be impacted by future grants, changes in forfeiture estimates and/or actual forfeitures which differ from estimated forfeitures.

4. Long-Term Investments

As of July 31, 2010, the par value of our long-term investments was \$360 million and the estimated fair value was \$298 million. Our long-term investments consist primarily of investments in auction rate securities ("ARS"), which are long-term debt instruments with interest rates which originally reset through periodic short-term auctions. Since February 2008, these auctions have been unsuccessful and, therefore, the interest rate is determined by the terms of the debt security and current short-term market interest rates. Our ARS portfolio consists entirely of insured student loan backed securities. Substantially all of the principal and interest is insured by the federal government and the remainder is insured by highly-rated insurance companies. As of July 31, 2010, \$158 million of our ARS (at fair value) were rated "AAA" by Moody's, Standard & Poor's and/or Fitch Ratings.

We intend to hold our ARS until their fair value once again equals their par value and believe we have the ability to do so based on other sources of liquidity. Therefore, impairment charges are considered temporary and have been included in Accumulated Other Comprehensive Loss within our Condensed Consolidated Balance Sheets. In certain cases, holding the investments until recovery may mean until maturity, which ranges from 2015 to 2056. The weighted-average maturity date is 2036.

KOHL'S CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

The fair value for our ARS is based on third-party pricing models and is classified as a Level 3 pricing category. The Level 3 pricing category includes financial instruments that are not actively traded on a market exchange and includes situations where there is little, if any, market activity for the financial instrument. Level 3 prices are determined using significant unobservable inputs or valuation techniques.

We utilized a discounted cash flow model to estimate the current fair market value for each of the securities we owned as there was no recent activity in the secondary markets in these types of securities. This model used unique inputs for each security including discount rate, interest rate currently being paid and maturity. The discount rate was calculated using the closest match available for other insured asset backed securities. A market failure scenario was employed as recent successful auctions of these securities were very limited.

The following table presents a rollforward of our ARS, all of which are measured at fair value on a recurring basis using unobservable inputs (Level 3 per ASC No. 820, "Fair Value Measurements and Disclosures"):

	<u>2010</u>	<u>2009</u>
	(In Millions)	
Balance at beginning of year	\$ 320	\$ 332
Sales	(20)	(8)
Unrealized gains (losses)	(3)	1
Balance at end of quarter	<u>\$ 297</u>	<u>\$ 325</u>

5. Contingencies

We are involved in various legal matters arising in the normal course of business. In the opinion of management, the outcome of such proceedings and litigation will not have a material adverse impact on our consolidated financial statements.

6. Net Income Per Share

The calculations of the numerator and denominator for basic and diluted net income per share are summarized as follows:

	<u>Three Months Ended</u>		<u>Six Months Ended</u>	
	<u>July 31,</u>	August 1,	<u>July 31,</u>	August 1,
	<u>2010</u>	2009	<u>2010</u>	2009
	(In Millions)			
Numerator - Net income	\$ 260	\$ 229	\$ 459	\$ 368
Denominator - Weighted average shares:				
Basic	307	305	307	305
Impact of dilutive employee stock options				
(a)	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
Diluted	<u>308</u>	<u>306</u>	<u>308</u>	<u>306</u>

- (a) Excludes 12 million options for the three months ended July 31, 2010, 11 million options for the six months ended July 31, 2010, 18 million options for the three months ended August 1, 2009 and 19 million options for the six months ended August 1, 2009 as the impact of such options was antidilutive.

KOHL'S CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Unaudited)

7. Subsequent Events

On August 11, 2010, we entered into a strategic alliance with Capital One, National Association (“Capital One”) related to our private label credit card operations. As part of this alliance, we entered into a Private Label Credit Card Program Agreement (the “Program Agreement”) with Capital One.

Pursuant to the Program Agreement, Capital One will offer private label credit cards to new and existing customers of Kohl's (the “Program”). We will continue to handle all customer service functions and will continue to be responsible for all advertising and marketing related to our credit card customers. The Program will operate in the same manner as it currently operates under our existing program agreement with Chase Bank USA, National Association (“Chase”). The effects of the transaction will be largely transparent to Kohl's customers.

Kohl's and Capital One will share in the net risk-adjusted revenue of the portfolio as defined by the sum of finance charges, late fees and other revenue less write-offs of uncollectible accounts. Changes in funding costs related to interest rate fluctuations will be shared similar to the revenue. Management believes that increases in funding costs will be largely offset by increases in finance charge revenues.

The initial term of the Program Agreement is seven years, which becomes effective and commences upon Capital One's acquisition from Chase of all right, title and interest in approximately 20 million proprietary Kohl's credit card accounts and the outstanding balances associated with these accounts. We or our nominee will have the option to purchase the credit card accounts and all other Program assets from Capital One upon the expiration or earlier termination of the Program Agreement.

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

For purposes of the following discussion, all references to "the quarter" are for the 13-week fiscal periods ended July 31, 2010 and August 1, 2009 and all references to "year to date" are for the 26-week fiscal periods ended July 31, 2010 and August 1, 2009.

The following discussion should be read in conjunction with our Condensed Consolidated Financial Statements and the related notes included elsewhere in this report, as well as the financial and other information included in our 2009 Annual Report on Form 10-K. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could materially differ from those discussed in these forward-looking statements. Factors that could cause or contribute to those differences include, but are not limited to, those discussed elsewhere in this report and in our 2009 Annual Report on Form 10-K (particularly in "Risk Factors").

Executive Summary

We believe that consumers were slightly more confident in their spending during the second quarter of 2010, but remain focused on value and ways to make their dollars go farther. We intend to continue to be flexible in our sales and inventory planning and in our expense management in order to react to changes in consumer demand.

Total sales increased 7.7% for the quarter and 9.3% for the six months ended July 31, 2010. Comparable store sales increased 4.6% for the quarter and 5.9% year to date. An increase in the number of transactions was the primary driver of the increase in comparable store sales in both periods. E-Commerce sales increased approximately 50% and contributed approximately 100 basis points to our comparable store sales in both the quarter and year-to-date period.

Gross margin as a percent of net sales increased 31 basis points in the quarter and 38 basis points year to date. Strong inventory management, as well as successful private and exclusive brand strategies, contributed to the margin strength.

Selling, general and administrative expenses increased eight percent compared to the prior year quarter and year-to-date period due in part to investments in technology and infrastructure in our E-Commerce business.

Net income increased 13% for the quarter to \$260 million, or \$0.84 per diluted share, compared to net income of \$229 million and diluted earnings per share of \$0.75 in the second quarter of last year. Year to date, net income increased 25% to \$459 million or \$1.48 per diluted share, compared to net income of \$368 million and diluted earnings per share of \$1.20 last year.

In June, we announced the signing of a multi-year service agreement and partnership with Aldo, International, who will design and produce exclusive footwear products to be sold at Kohl's and Kohls.com under select private and exclusive brands. As part of the agreement, Aldo will be responsible for the design and production and will have a dedicated design team on the business. Kohl's will collaborate on the design process. The line is expected to launch in spring 2011.

Our strategic committees continue to focus on opportunities to drive our overall profitability. The mission of the Regional Assortment Committee is to accelerate sales growth by varying merchandise assortment, marketing and store presentation by region to reflect the lifestyle preferences and climate needs of our customers. Our focus on regional relevance resulted in year-to-date increases in both transactions per store and comparable store sales in our hot and mild markets in the Southeast and West, where we have the strongest opportunity to gain market share. The mission of the In-Store Experience Committee is to consistently deliver an improved store experience that generates loyalty and grows market share. Our overall internal customer service scores continue to increase year over year and were up 4% for the first six months of 2010.

As of July 31, 2010, we operated 1,067 stores in 49 states, compared to 1,022 stores as of August 1, 2009. Selling square footage totaled 79 million square feet at July 31, 2010 and 76 million square feet at August 1, 2009. We currently expect to open 21 additional stores in the second half of fiscal 2010. We also plan to re-open a store in Virginia which has been closed for a complete re-build since January 2010.

We completed 85 remodels this year; approximately two-thirds more than last year's remodel total of 51. Remodels remain a critical part of our long-term strategy and we believe it is extremely important to maintain our existing store base, even in this difficult environment.

During 2010, we are making significant capital investments to support our growth:

- In the second quarter, we opened a second E-fulfillment center in southern California to support the significant growth in our E-Commerce business. We expect this center to be fully operational in time for the 2010 Holiday season.
- We also opened a third customer operations center in July 2010. This center, which is located in Texas, will serve Kohl's charge and Kohls.com customers.
- The in-store kiosk was effectively rolled-out to all stores in August. The kiosks allow customers to order items which were not available in the store and have them shipped to their home at no cost.
- This Fall, we expect to test new electronic signs in up to 100 of our stores. Although it will be a significant capital investment, we expect a good return on this investment through elimination of ad set payroll hours, signage errors and paper signs, which supports our desire to be a leader in "Green" initiatives. Assuming a successful pilot, we would expect to continue the roll-out of electronic signs to all stores in 2011.

Our current expectations for the third and fourth quarters of fiscal 2010 compared to the comparable prior year quarters are as follows:

		Third Quarter	Fourth Quarter
Total sales	Increase	4.5% - 6.5%	4.5% - 6.5%
Comparable store sales	Increase	2% - 4%	2% - 4%
Gross margin as a percent of sales	Increase	20 - 40 bp	20 - 40 bp
SG&A	Increase	10% - 11%	3% - 4%
Earnings per diluted share		\$0.57 - \$0.63	\$1.51 - \$1.59

Based on these assumptions, we expect diluted earnings per share of \$3.57 to \$3.70 for fiscal 2010. This guidance does not reflect any additional share repurchases in fiscal 2010.

Results of Operations

Net Sales

	2010	2009	Increase	
			\$	%
	(Dollars in Millions)			
Quarter	\$ 4,100	\$ 3,806	\$ 294	7.7 %
Year to date	8,135	7,445	690	9.3

New stores contributed \$119 million in net sales over the prior year quarter and \$255 million over the prior year-to-date period. Comparable store sales for the quarter, which are sales from stores (including E-Commerce sales and relocated or expanded stores) open throughout the full current and prior fiscal year periods, increased \$175 million, or 4.6%, compared to the second quarter of last year and \$435 million, or 5.9%, compared to the six months ended August 1, 2009.

Drivers of the changes in comparable stores sales were as follows:

	Quarter	Year to Date
Selling price per unit	(1.7) %	(1.7) %
Units per transaction	(2.0)	(0.9)
Average transaction value	(3.7)	(2.6)
Number of transactions	8.3	8.5
Comparable store sales	4.6 %	5.9 %
Stores	3.6 %	4.9 %
E-Commerce	49.4	49.8
Total Kohl's	4.6 %	5.9 %

From a line of business perspective, Footwear reported the strongest comparable store sales for both the quarter and year-to-date periods with low double-digit comparable store sales increases. Men's also outperformed the company average in both periods with strength in casual sportswear and basics. Home, Women's and Accessories all reported low to mid single-digit comparable store sales increases in both the quarter and year to date. The Children's business underperformed the company, posting a negative low single-digit comparable store sales decrease for the quarter and a low single-digit comparable store sales increase year to date.

The Southeast region continued its first quarter trends and, again, reported the strongest comparable store sales for the second quarter. The Northeast also outperformed the company for the quarter. The Midwest, South Central, MidAtlantic and West regions posted positive comparable store sales for the quarter, but underperformed the company average. Year to date, the Southeast region was the strongest performer with high single-digit comparable store sales increases. All other regions posted mid single-digit comparable store sales increases.

Private and exclusive brands as a percentage of total sales increased approximately 300 basis points for the quarter to 49.1% of sales. Our three largest private brands - Apt. 9, Croft & Barrow and Sonoma - combined for a 20% increase in sales. Jumping Beans sales increased almost twice this amount. Strong exclusive brand performers for the quarter included ELLE, FILA Sport, Food Network, and Simply Vera Vera Wang, which all achieved sales increases of 30 percent or more.

E-Commerce sales increased approximately 50% in both periods to \$126 million for the quarter and \$253 million year to date. The sales growth is primarily the result of increased customer traffic to the web site, increased style and size selections offered on-line compared with our in-store selection, and the expansion of product categories not available in our stores.

Gross Margin

	2010	2009	Increase	
			\$	%
	(Dollars in Millions)			
Quarter	\$ 1,651	\$ 1,520	\$ 131	9 %
Year to date	3,187	2,889	298	10
Gross margin as a percent of sales				
Quarter	40.3 %	40.0 %		
Year to date	39.2	38.8		

Gross margin includes the total cost of products sold, including product development costs, net of vendor payments other than reimbursement of specific, incremental and identifiable costs; inventory shrink; markdowns; freight expenses associated with moving merchandise from our vendors to our distribution centers; shipping and handling expenses of E-Commerce sales; and terms cash discount. Our gross margin may not be comparable with that of other retailers because we include distribution center costs in selling, general and administrative expenses while other retailers may include these expenses in cost of merchandise sold.

Gross margin as a percent of net sales was 40.3% for the second quarter of 2010, an increase of 31 basis points compared to 40.0% for the second quarter of 2009. For the year-to-date period, gross margin as a percent of sales was 39.2% in 2010 compared to 38.8% in 2009. Strong inventory management as well as increased penetration of private and exclusive brands contributed to the margin strength. Total inventory increased eight percent compared to the prior year, but inventory per store increased three percent, less than our comparable store sales increase. At the end of the second quarter, clearance inventory was slightly higher than last year, but constitutes less than five percent of our total units on hand. Sales of private and exclusive brands reached 49.1% of net sales for the quarter, an increase of more than 300 basis points over the prior year quarter. Year to date, private and exclusive brand sales were 48.2% of net sales, an increase of 284 basis points over last year. Additionally, our ongoing markdown and size optimization initiatives continue to develop and have favorable impacts on our gross margin percentage.

Operating Expenses

	2010	2009	Increase	
			\$	%
SG&A	(Dollars in Millions)			
Quarter	\$ 1,047	\$ 966	\$ 81	8 %
Year to date	2,077	1,927	150	8
S,G&A as a percent of net sales				
Quarter	25.5 %	25.4 %		
Year to date	25.5	25.9		

Selling, general and administrative expenses (“SG&A”) include compensation and benefit costs (including stores, headquarters, buying and merchandising and distribution centers); occupancy and operating costs of our retail, distribution and corporate facilities; freight expenses associated with moving merchandise from our distribution centers to our retail stores and among distribution and retail facilities; advertising expenses, offset by vendor payments for reimbursement of specific, incremental and identifiable costs; net revenues from our Kohl’s credit card operations; and other administrative costs. We do not include depreciation and amortization and preopening expenses in SG&A. The classification of these expenses varies across the retail industry.

SG&A increased eight percent in both the quarter and year-to-date periods. SG&A as a percentage of net sales increased, or “deleveraged” for the quarter, primarily due to investments in technology and infrastructure related to our E-Commerce business, but decreased, or “leveraged,” year to date. Store payroll and advertising expenses leveraged in both the quarter and year to date. Credit expenses did not leverage in either period due to reductions in late fee revenue. Costs associated with legislative changes effective in the first quarter of 2010 also had a negative impact on credit expenses for the year-to-date period.

	2010	2009	Increase	
			\$	%
Depreciation and amortization	(Dollars in Millions)			
Quarter	\$ 153	\$ 144	\$ 9	6 %
Year to date	304	285	19	7

The increases in depreciation and amortization are primarily attributable to the addition of new stores and remodels.

	2010	2009	Decrease	
			\$	%
Preopening	(Dollars in Millions)			
Quarter	\$ 2	\$ 11	\$ (9)	(82) %
Year to date	6	26	(20)	(77)

Preopening expenses decreased due to fewer new store openings during the six months ended July 31, 2010 as compared to August 1, 2009. We plan to open 30 new stores in fiscal 2010, compared to 56 in fiscal 2009. Additionally, most of the stores opened in September 2009 were ground leased stores which had higher rental expenses.

Operating Income

	2010	2009	Increase	
			\$	%
	(Dollars in Millions)			
Quarter	\$ 449	\$ 399	\$ 50	13 %
Year to date	800	651	149	23
Operating income as a percent of sales				
Quarter	10.9 %	10.5 %		
Year to date	9.8	8.7		

As a result of the above factors, operating income as a percent of net sales increased 44 basis points to 10.9% of net sales for the three months ended July 31, 2010, compared to 10.5% of net sales for the three months ended August 1, 2009. For the year-to-date period, operating income as a percent of net sales increased 116 basis points to 9.8% of net sales for 2010 compared to 8.7% of net sales for 2009.

Interest Expense, Net

	2010	2009	Change	
			\$	%
	(Dollars in Millions)			
Quarter	\$ 31	\$ 31	\$ -	- %
Year to date	62	62	-	-

Net interest expense in both the quarter and year-to-date periods was comparable to the prior year periods as interest income from higher average investments was more than offset by lower interest rates.

Provision for Income Taxes

	2010	2009	Increase	
			\$	%
	(Dollars in Millions)			
Quarter	\$ 158	\$ 139	\$ 19	14 %
Year to date	279	221	58	26

Our effective tax rate was 37.9% for both the three and six months ended July 31, 2010 compared to 37.6% for both the three and six months ended August 1, 2009.

Seasonality & Inflation

Our business, like that of most retailers, is subject to seasonal influences, with the major portion of sales and income typically realized during the second half of each fiscal year, which includes the back-to-school and holiday seasons. Approximately 15% of annual sales typically occur during the back-to-school season and 30% during the holiday season. Because of the seasonality of our business, results for any quarter are not necessarily indicative of the results that may be achieved for a full fiscal year. In addition, quarterly results of operations depend significantly upon the timing and amount of sales and costs associated with the opening of new stores.

Although we expect that our operations will be influenced by general economic conditions, including rising food, fuel and energy prices, we do not believe that inflation has had a material effect on our results of operations. However, there can be no assurance that our business will not be affected by such factors in the future.

We are, however, beginning to experience inflation in our merchandise and transportation costs. We do not expect such costs to be significant in the third and fourth quarters of 2010, but we do expect to see low to mid single-digit increases in the first six months of 2011. In our private and exclusive brands, where we have more control over the production and manufacture of the merchandise, we have historically been able to minimize inflationary pressures through measures such as committing earlier for fabric and shifting production to lower cost markets. Our third-party brand vendors are also facing the same inflationary pressures. We will continue to work with these vendors, as possible, to minimize the impact of inflation on our merchandise costs and our selling prices.

Financial Condition and Liquidity

Our primary ongoing cash requirements are for capital expenditures in connection with our expansion and remodeling programs and seasonal and new store inventory purchases. Our primary source of funds for our business activities are cash flow from operations, short-term trade credit and our lines of credit.

As of July 31, 2010, we had cash and cash equivalents of \$2.5 billion. As discussed in Footnote 7, "Subsequent Events," on August 11, 2010, we entered into a strategic alliance with Capital One, National Association ("Capital One") related to our proprietary credit card accounts. Once the receivables from our credit card accounts are transitioned to Capital One, we will consider various capital planning options, which could include the resumption of share repurchases, the initiation of a dividend, or both.

	2010	2009	Increase (Decrease) in Cash	
			\$	%
(Dollars in Millions)				
Net cash provided by (used in):				
Operating activities	\$ 628	\$ 1,001	\$ (373)	(37) %
Investing activities	(399)	(329)	(70)	(21)
Financing activities	22	(5)	27	100+

Operating Activities. Despite the increase in net income, cash provided by operations in 2010 was \$628 million, 37% lower than the prior year. The decrease is primarily a result of higher incentive compensation payments in the first quarter of 2010, inventory reductions in 2009 and slower accounts payable growth in 2010.

Merchandise inventories per store were \$2.75 million at July 31, 2010 and \$2.67 million at August 1, 2009. This three percent increase in inventories per store reflects continued inventory management, including conservative sales and receipts planning.

Accounts payable as a percent of inventory was 45.9% at July 31, 2010, compared to 42.3% at August 1, 2009. The increase is primarily due to vendor finance initiatives. We have rolled out a receivable financing program whereby a financial institution provides our vendors with financing, at a rate which is below what the vendors could normally obtain on their own. We offer this program to vendors in exchange for extended payment terms. We do not incur any costs or expenses or forfeit any portion of our receivables in connection with this program.

Investing Activities. Net cash used in investing activities increased \$70 million, primarily due to higher capital spending as a result of increased remodels and the opening of a second fulfillment center to support our E-Commerce business. These increases were partially offset by reductions in capital spending for new stores.

As of July 31, 2010, we had investments in auction rate securities (“ARS”) with a par value of \$359 million and an estimated fair value of \$297 million. To date, substantially all ARS sales and calls have been at par and we have collected all interest payable on outstanding ARS when due and expect to continue to do so in the future. At this time, we have no reason to believe that any of the underlying issuers of our ARS or their insurers are presently at risk or that the underlying credit quality of the assets backing our ARS has been impacted by the reduced liquidity of these investments. While the auction failures, which began in February 2008, limit our ability to liquidate these investments, we do not believe that these failures will have any significant impact on our ability to fund ongoing operations and growth initiatives.

Financing Activities. Financing activities generated cash of \$22 million in 2010 and used cash of \$5 million 2009. The increase is primarily due to increased stock option exercises in 2010.

We have various facilities upon which we may draw funds, including a \$900 million senior unsecured revolving facility and two demand notes with aggregate availability of \$50 million. The \$900 million revolving facility expires in October 2011. The co-leads of this facility, The Bank of New York Mellon and Bank of America, have each committed \$100 million. The remaining 12 lenders have each committed between \$30 and \$130 million. There were no draws on these facilities during 2010 or 2009.

We have no debt maturing until 2011. We expect to use cash and cash equivalents on hand and funds from operations to repay both the \$300 million of long-term debt which is due in March 2011 and the \$100 million of long-term debt which is due in October 2011. Alternatively, if economic conditions and financing terms are favorable, we may choose to refinance the \$400 million in 2011.

Key Financial Ratios. Key financial ratios that provide certain measures of our liquidity are as follows:

	July 31, 2010	January 30, 2010	August 1, 2009
Working capital (In Millions)	\$ 3,077	\$ 3,095	\$ 2,179
Current ratio	2.14:1	2.29:1	2.02:1
Debt/capitalization	19.9%	20.8%	22.5%

The increase in working capital and the current ratio as of July 31, 2010 compared to August 1, 2009 was primarily due to higher cash and cash equivalents, partially offset by the reclassification of \$300 million of long-term debt due in March 2011 to current liabilities. The decrease in the debt/capitalization ratio reflects higher capitalization, primarily due to earnings.

Debt Covenant Compliance. As of July 31, 2010, we were in compliance with all debt covenants and expect to remain in compliance during fiscal 2010.

	(Dollars in Millions)
Total Debt per Balance Sheet	\$ 2,085
Other Debt	-
Subtotal	2,085
Rent x 8	4,074
A Included Indebtedness	\$6,159
Net Worth	\$ 8,377
Investments (accounted for under equity method)	-
Subtotal	8,377
Included Indebtedness	6,159
B Capitalization	\$14,536
Leverage Ratio (A/B)	0.42
Maximum permitted Leverage Ratio	0.70

Free Cash Flow. We generated free cash flow of \$207 million in 2010 compared to \$665 million in 2009. The decrease in free cash flow is primarily a result of higher incentive compensation payments in the first quarter of 2010; inventory reductions in 2009; slower accounts payable growth in 2010; and increased capital expenditures. Free cash flow is a non-GAAP financial measure which we define as net cash provided by operating activities less capital expenditures. Free cash flow should be evaluated in addition to, and not considered a substitute for, other financial measures such as net income and cash flow provided by operations. We believe that free cash flow represents our ability to generate additional cash flow from our business operations.

The following table reconciles net cash provided by operating activities, a GAAP measure, to free cash flow, a non-GAAP measure.

	<u>2010</u>	<u>2009</u>
	(In Millions)	
Net cash provided by operating activities	\$ 628	\$ 1,001
Acquisition of property and equipment and favorable lease rights	(421)	(336)
Free cash flow	<u>\$ 207</u>	<u>\$ 665</u>

Contractual Obligations

There have been no significant changes in the contractual obligations disclosed in our Annual Report on Form 10-K for the year ended January 30, 2010.

Off-Balance Sheet Arrangements

We have not provided any financial guarantees as of July 31, 2010. We have not created, and are not party to, any special-purpose or off-balance sheet entities for the purpose of raising capital, incurring debt or operating our business. We do not have any arrangements or relationships with entities that are not consolidated into our financial statements that are reasonably likely to materially affect our liquidity or the availability of capital resources.

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires us to make estimates and assumptions that affect reported amounts. Management has discussed the development, selection and disclosure of its estimates and assumptions with the Audit Committee of our Board of Directors. There have been no significant changes in the critical accounting policies and estimates discussed in our Annual Report on Form 10-K for the year ended January 30, 2010.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There have been no significant changes in the market risks described in our Annual Report on Form 10-K for the year ended January 30, 2010.

Item 4. Controls and Procedures

(a) Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (the "Evaluation") at a reasonable assurance level as of the last day of the period covered by this Report.

Based upon the Evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective at the reasonable assurance level. Disclosure controls and procedures are defined by Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934 (the "Exchange Act") as controls and other procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified by the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosures.

It should be noted that the design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving our stated goals under all potential future conditions, regardless of how remote.

(b) *Changes in Internal Control Over Financial Reporting*

During the last fiscal quarter, there were no changes in our internal control over financial reporting that have materially affected or are reasonably likely to materially affect such controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

PART II. OTHER INFORMATION

Item 1A. Risk Factors

In March 2010, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 were signed into law in the U.S. This legislation expands health care coverage to many uninsured individuals and expands coverage to those already insured. The changes required by this legislation could cause us to incur additional health care and other costs, but we do not expect any material short-term impact on our financial results as a result of the legislation and are currently assessing the extent of any long-term impact.

There have been no other significant changes in our risk factors from those described in our Annual Report on Form 10-K for the year ended January 30, 2010.

Forward-looking Statements

This report contains statements that may constitute forward-looking statements within the meaning of the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. Those statements relate to developments, results, conditions or other events we expect or anticipate will occur in the future. Words such as “believes,” “anticipates,” “plans,” “expects” and similar expressions are intended to identify forward-looking statements. Without limiting the foregoing, these statements may relate to future outlook, revenues, earnings, store openings, planned capital expenditures, market conditions, new strategies and the competitive environment. Forward-looking statements are based on our management’s then current views and assumptions and, as a result, are subject to certain risks and uncertainties that could cause actual results to differ materially from those projected. Any such forward-looking statements are qualified by the important risk factors, described in Item 1A of our Annual Report on Form 10-K filed with the SEC on March 19, 2010, that could cause actual results to differ materially from those predicted by the forward-looking statements. Forward-looking statements relate to the date initially made, and we undertake no obligation to update them. An investment in our common stock or other securities carries certain risks. Investors should carefully consider the risks as stated in our Form 10-K and other risks which may be disclosed from time to time in our filings with the SEC before investing in our securities.

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

We did not sell any securities during the quarter ended July 31, 2010, which were not registered under the Securities Act.

In September 2007, our board of Directors authorized a \$2.5 billion share repurchase program which is intended to return excess capital to our shareholders. As a result of the current economic environment, we have not purchased any shares pursuant to this program since July 2008. The program does not have a specified termination date.

The following table contains information for shares acquired from employees in lieu of amounts required to satisfy minimum tax withholding requirements upon the vesting of the employees' restricted stock during the three fiscal months ended July 31, 2010:

Period	Total Number of Shares Purchased During Period	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
May 2 – May 29, 2010	1,996	\$ 50.82	-	(In millions) \$ 1,866
May 30 – July 3, 2010	4,249	49.53	-	1,866
July 4 – July 31, 2010	-	-	-	1,866
Total	6,245	\$ 49.95	-	\$ 1,866

Item 6. Exhibits

- 10.1 Private Label Credit Card Program Agreement
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.
- 32.1 Certification of Periodic Report by Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Periodic Report by Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 101.INS XBRL Instance Document
- 101.SCH XBRL Taxonomy Extension Schema
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase
- 101.DEF XBRL Taxonomy Extension Definition Linkbase
- 101.LAB XBRL Taxonomy Extension Label Linkbase
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase

SIGNATURES

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

Kohl's Corporation
(Registrant)

Date: September 3, 2010

/s/ Wesley S. McDonald

Wesley S. McDonald
Executive Vice President and Chief Financial Officer
(Principal Financial and Chief Accounting Officer)

PRIVATE LABEL CREDIT CARD PROGRAM AGREEMENT

by and between

KOHL'S DEPARTMENT STORES, INC.

and

CAPITAL ONE, NATIONAL ASSOCIATION

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This Private Label Credit Card Program Agreement is made as of the 11th day of August, 2010, by and between KOHL'S DEPARTMENT STORES, INC. ("Kohl's"), a Delaware corporation with its principal offices at Menomonee Falls, Wisconsin, and Capital One, National Association ("Bank"), a financial institution chartered under the laws of the United States with its home office at McLean, Virginia.

W I T N E S S E T H:

WHEREAS, Bank is establishing programs to extend private label card credit to qualified customers for the purchase of goods and services;

WHEREAS, Kohl's is engaged, among other activities, in operating retail department stores and, together with JPMorgan Chase & Co. ("Seller"), a Kohl's private label credit card program;

WHEREAS, in connection with the execution of this Agreement, Bank intends to enter into a purchase and sale agreement with Seller (the "Purchase Agreement") pursuant to which Bank shall (a) purchase from Seller certain assets related to the Kohl's private label credit card program designated in the Purchase Agreement, which shall include all private label credit card accounts established pursuant to the Kohl's private label credit card program with Seller that exist on the Closing Date and associated receivables ("Purchased Accounts"); and (b) assume from Seller certain liabilities related to the Kohl's private label credit card program with Seller designated in the Purchase Agreement, including all obligations to holders of the Kohl's private label credit cards issued by Seller existing on the Closing Date in respect of the Purchased Accounts under the credit card agreements between each such cardholder and the Seller.

WHEREAS, it is a condition precedent to the obligations of the parties hereunder that Bank enters into the Purchase Agreement with the Seller;

WHEREAS, Kohl's has requested that Bank establish a program pursuant to which Bank shall issue Private Label Credit Cards, which shall be accepted only by Kohl's Channels; and

WHEREAS, the parties agree that the goodwill associated with the "Kohl's" mark contemplated for use hereunder is of substantial value which is dependent upon the maintenance of high quality services and appropriate use of the mark pursuant to this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Kohl's and Bank agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Generally.

The following terms shall have the following meanings when used in this Agreement:

“Account” means a Private Label Credit Card-accessed open-end credit account established in favor of a Cardholder, pursuant to which such Cardholder may finance the purchase of Goods and/or Services from Kohl’s Channels, subject to the terms of a Credit Card Agreement. The term Account includes Purchased Accounts.

“Account Documentation” means, with respect to an Account, any and all documentation relating to that Account, including Credit Card Documentation, checks or other forms of payment with respect to an Account, credit bureau reports (to the extent not prohibited from transfer by contract with the credit bureau), adverse action notices, change in terms notices, other notices, correspondence, memoranda, documents, stubs, instruments, certificates, agreements, magnetic tapes, disks, hard copy formats or other computer-readable data transmissions, any microfilm, electronic or other copy of any of the foregoing, and any other written, electronic or other records or materials of whatever form or nature, whether tangible or intangible, including information arising from or relating or pertaining to any of the foregoing to the extent related to the Program; provided that Account Documentation shall not include Kohl’s register tapes, invoices, sales or shipping slips, delivery and other receipts or other indicia of the sale of Goods and/or Services.

“Account Terms” has the meaning set forth in Section 2.3(a).

“Acquiring IP Party” has the meaning set forth in Section 10.3(a).

“Affiliate” means, with respect to any Person, each Person that controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this Private Label Credit Card Program Agreement, together with all of its schedules and exhibits, and, if modified, altered, supplemented, amended and/or restated, as the same may be so modified, altered, supplemented, amended and/or restated from time to time.

“Applicable Law” has the meaning set forth on **Schedule 1.1**.

“Bank” has the meaning set forth on page 1.

“Bank Compliance Manager” has the meaning set forth in Section 3.2(d).

“Bank Event of Default” means the occurrence of any one of the events listed on **Schedule 14.2** hereof or an Event of Default of Bank.

“Bank Licensed Marks” means the trademarks, trade names, service marks, logos and other proprietary designations of Bank listed on **Schedule B** and licensed to Kohl’s under Section 10.2.

“Bank Nominee” means each nominee representing the Bank on the Management Committee.

“Bank-owned Intellectual Property” has the meaning set forth on **Schedule 10.3(c)**.

“Bankruptcy Code” means Title 11 of the United States Code, as amended, or any other applicable state or federal bankruptcy, insolvency, moratorium or other similar law and all laws relating thereto.

“Billing Cycle” means the interval of time between regular periodic Billing Dates for an Account.

“Billing Date” means, for any Account, the last day of each regular period when the Account is billed.

“Billing Statement” means a summary of Account credit and debit transactions for a Billing Cycle including a descriptive statement covering purchases of Goods and/or Services and a statement with only past-due account information.

“Business Day” means any day, other than a Saturday, Sunday or legal holiday, on which Kohl’s and Bank both are open for business.

“Cardholder” means any individual who has been issued a Credit Card regardless of the individual’s place of residency.

“Cardholder Data” means all personally identifiable information about a Cardholder received by or on behalf of Bank (including by Kohl’s as servicer) in connection with the Cardholder’s application for or use of a Private Label Credit Card or Account or otherwise obtained by or on behalf of Bank (including by Kohl’s as servicer) for inclusion in a database of Cardholder information but shall not include Kohl’s Shopper Data.

“Cardholder Indebtedness” means all amounts charged and owing to Bank by Cardholders with respect to Accounts (including finance charges, late fees and other similar fees), whether or not billed, less the amount of any payments received, any credit balances owing by Bank to Cardholders, including any credits associated with returns of Goods and/or Services and similar credits and adjustments, whether or not billed.

“Cardholder List” means any list in electronic form that identifies or provides a means of differentiating Cardholders, including any such electronic listing that includes the names, addresses, email addresses (as available), telephone numbers or social security numbers of any or all Cardholders.

“Charge Transaction Data” means the transaction information with regard to each purchase of Goods and/or Services by a Cardholder on credit and each return of Goods and/or Services or other adjustment for credit in the form of electronic information as more particularly set forth in the Operating Policies.

“Closing Date” has the meaning set forth on **Schedule 1.1**.

“Co-Branded Credit Card” means a credit card that bears a Kohl’s Licensed Mark and the trademarks, trade names, service marks, logos and other proprietary designations of VISA U.S.A., Inc., MasterCard International Inc., Discover Financial Services or any other payment system.

“Confidential Information” has the meaning set forth in Section 12.1(a).

“Cost Allocation” has the meaning set forth on **Schedule 1.1**.

“Credit Card Agreement” means the credit card agreement between Bank and a Cardholder (and any replacement of such agreement), governing the use of an Account, together with any amendments, modifications or supplements which now or hereafter may be made to such Credit Card Agreement (and any replacement of such agreement).

“Credit Card Application” means Bank’s credit application which must be completed and submitted for review to Bank by individuals who wish to become Cardholders.

“Credit Card Documentation” means, with respect to Accounts, all Credit Card Applications, Credit Card Agreements, Credit Cards, the Program Privacy Policy and Billing Statements relating to such Accounts.

“Development Agreement” has the meaning set forth in Section 10.3(b)(i).

“Disclosing Party” has the meaning set forth in Section 12.1(d).

“Effective Date” has the meaning set forth on **Schedule 1.1**.

“Enhancement Products” means the Credit Card enhancement products and services offered to Cardholders that are listed in **Schedule 6.3(c)**, or such other Credit Card enhancement products or services that are offered to Cardholders as shall be approved by Kohl’s from time to time. For avoidance of doubt the Enhancement Products do not include merchandise purchased by Cardholders through Kohl’s Channels.

“Event of Default” means the occurrence of any one of the events listed on **Schedule 14.1**.

“Federal Funds Rate” means the offered rate as reported in The Wall Street Journal in the “Money Rates” section for reserves traded among commercial banks for overnight use in amounts of one million dollars or more, as published in the most recent Friday edition prior to any required payment or settlement date in which such offered rate is reported, and if such rate is not so reported in any Friday edition of The Wall Street Journal during the thirty day period preceding such required payment or settlement date, such offered rate as reported in another publication reasonably acceptable to parties.

“Financing Income” has the meaning set forth on **Schedule 1.1**.

“GAAP” means generally accepted accounting principles, consistently applied.

“Goods and/or Services” means the products and services sold by or through Kohl’s Channels, including for personal, family, household or business purposes.

“Governmental Authority” means any federal, state or local domestic, foreign or supranational governmental, regulatory or self-regulatory authority, agency, court, tribunal, commission or other governmental, regulatory or self-regulatory entity.

“Indemnified Party” has the meaning set forth in Section 17.3(a).

“Indemnifying Party” has the meaning set forth in Section 17.3(a).

“Initial Development Project” has the meaning set forth on **Schedule 10.3(c)**.

“Initial Term” has the meaning set forth in Section 15.1.

“Inserts” has the meaning set forth in Section 5.3(a).

“In-Store Payment” means any payment on an Account made in a Kohl’s Channel by a Cardholder or a person acting on behalf of a Cardholder.

“Intellectual Property” means, on a worldwide basis, other than with respect to Kohl’s Licensed Marks or Bank Licensed Marks, any and all: (i) rights associated with works of authorship, including copyrights, moral rights and mask-works; (ii) trade marks and service marks and the goodwill associated therewith; (iii) trade secret rights; (iv) patents, designs, algorithms and other industrial property rights; (v) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (vi) applications, registrations, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

“Interest Free Plans” has the meaning set forth on **Schedule 5.5**.

“IP Owner” has the meaning set forth in Section 10.3(a).

“Knowledge” means, with respect to either Kohl’s or the Bank, the actual knowledge of each respective party’s Manager.

“Kohl’s” has the meaning set forth on page 1.

“Kohl’s Channels” means all retail establishments owned or operated by Kohl’s or its Affiliates in the United States (including Licensee departments therein) and all mail order, catalog, Internet outlets (including websites operated by Kohl’s or its Licensees) and other direct access media within the United States that are owned or operated by Kohl’s, its Affiliates or its Licensees.

“Kohl’s Core Systems” has the meaning set forth on **Schedule 4.10**.

“Kohl’s Event of Default” means the occurrence of any one of the events listed on **Schedule 14.3** or an Event of Default of Kohl’s.

“Kohl’s Licensed Marks” means the trademarks, trade names, service marks, logos and other proprietary designations of Kohl’s or its Affiliates listed on **Schedule A** and licensed to Bank by Kohl’s or its Affiliates under Section 10.1.

“Kohl’s Nominee” means each nominee representing Kohl’s on the Management Committee.

“Kohl’s Operating Policies” shall mean the operating policies set forth on **Schedule 4.1(a)**, solely to the extent applicable to the Program.

“Kohl’s Shopper” shall mean any Person who makes purchases of Goods and/or Services, whether or not he/she uses a Credit Card.

“Kohl’s Shopper Data” shall mean all personally identifiable information regarding a Kohl’s Shopper that is obtained by Kohl’s in connection with the Kohl’s Shopper making a purchase of Goods and/or Services including all transaction and experience information collected by Kohl’s with regard to each purchase made by a Kohl’s Shopper, including the item-specific transaction information collected about Cardholders.

“Licensee(s)” means any Person(s) authorized by Kohl’s to operate in and sell goods and/or services from Kohl’s Channels under the Kohl’s Licensed Marks.

“Management Committee” shall mean the committee established pursuant to Section 3.3.

“Manager” has the meaning set forth in Section 3.2(a).

“Monthly Settlement Sheet” has the meaning set forth in Section 9.1.

“Net Settlement Amount” has the meaning set forth in Section 8.4(b).

“New Mark” has the meaning set forth in Sections 10.1(b) and 10.2(b).

“Nominated Purchaser” has the meaning set forth on **Schedule 16.2**.

“Operating Policies” has the meaning set forth in Section 4.1(a).

“Person” means and includes any individual, partnership, joint venture, corporation, company, bank, trust, unincorporated organization, government or any department, agency or instrumentality thereof.

“POS” means point of sale.

“Prime Rate” has the meaning set forth on **Schedule 1.1**.

“Private Label Credit Card” or “Credit Card” means a card issued by Bank to a Cardholder in connection with the Program which bears a Kohl’s Licensed Mark and may be used to finance purchases of Goods and/or Services.

“Program” means the private label credit card program established by Kohl’s and Bank and made available to Cardholders and qualified applicants for the purchase of Goods and/or Services through Kohl’s Channels, including the extension of credit, billings, collections, customer service, accounting between the parties and all other aspects of the customized credit plan specified herein and in Credit Card Agreements.

“Program Assets” has the meaning set forth on **Schedule 1.1**.

“Program Net Losses” has the meaning set forth on **Schedule 1.1**.

“Program Privacy Policy” shall mean the privacy policy and associated disclosures to be provided by Bank to Cardholders in connection with the Program, the initial form of which is attached hereto as **Schedule 6.3(b)** hereto.

“Program Purchase Date” has the meaning set forth on **Schedule 16.2**.

“Program Website” has the meaning set forth in Section 4.8(a).

“Purchase Agreement” has the meaning set forth on page 1.

“Purchase Notice” has the meaning set forth on **Schedule 16.2**.

“Purchase Option” has the meaning set forth on **Schedule 16.2**.

“Purchased Accounts” has the meaning set forth on page 1.

“Qualified Kohl’s Customer” shall mean customers of Kohl’s that Kohl’s determines are available to be solicited for Accounts under the Program.

“Qualified Kohl’s Customer List” means the list of Qualified Kohl’s Customers provided from time to time by Kohl’s to Bank for purposes of soliciting such Persons for the Program.

“Receiving Party” has the meaning set forth in Section 12.1(d).

“Regulator” has the meaning set forth in Section 7.6.

“Regulatory SLAs” have the meaning set forth on **Schedule 7.3(a)**.

“Remediation Period” has the meaning set forth on **Schedule 7.5**.

“Renewal Term” has the meaning set forth in Section 15.1.

“Risk Adjusted Revenue” has the meaning set forth in subsection (d) of **Schedule 9.2**.

“Risk Management Policies” has the meaning set forth on **Schedule 4.6(a)**.

“Seller” has the meaning set forth on page 1.

“Service Level Failure” has the meaning set forth on **Schedule 1.1**.

“Service Level Transfer Event” has the meaning set forth on **Schedule 7.5**.

“SLA” means any service level set forth on **Schedule 7.3(a)** or **Schedule 7.3(b)**.

“Solicitation Materials” means documentation, materials, artwork, copy, trademarks (excluding the Kohl’s Licensed Marks and the Bank Licensed Marks), copyrights and any protectible items, in any format or media (including television and radio), used to promote or identify the Program to Cardholders and potential Cardholders, including direct mail solicitation materials and coupons.

“Term” means the Initial Term and each Renewal Term.

“Termination Period” means the period beginning with the date of any notice of termination or non-renewal pursuant to Article 15 and ending on (a) the Program Purchase Date, if Kohl’s or its designee purchases the Program Assets or, (b) if Kohl’s does not exercise its Purchase Option, the later of (i) the termination or expiration of this Agreement, or (ii) the earlier of (A) Kohl’s written notice that it will not exercise its Purchase Option or (B) expiration of the Purchase Option.

“Trademark Style Guide” means any rules governing the manner of usage of trademarks, trade names, service marks, logos and other proprietary designations.

“Transaction” means any purchase of Goods and/or Services through a Kohl’s Channel using a Private Label Credit Card or Account number.

“United States” means the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States or any political subdivision thereof.

“Value Proposition” means Kohl’s new account opening discounts, coupons, promotional card event discounts, and any other card-related promotional or rewards programs as may be established by Kohl’s from time to time.

“Variable Rate” has the meaning set forth on **Schedule 1.1**.

1.2 Miscellaneous.

As used herein,

- (a) all references to the plural number shall include the singular number (and vice versa),

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- (b) unless otherwise specified, all references to days, months or years shall be deemed to be preceded by the word “calendar,”
 - (c) all references to “herein,” “hereunder,” “hereinabove” or like words shall refer to this Agreement as a whole and not to any particular section, subsection or clause contained in this Agreement, and
 - (d) all references to “include,” “includes” or “including” shall be deemed to be followed by the words “without limitation.”

ARTICLE 2

ESTABLISHMENT OF THE PROGRAM

2.1 Generally.

Pursuant to the terms and conditions of this Agreement, Kohl’s and Bank shall establish and participate in the Program commencing on the Effective Date.

2.2 Credit Program.

Beginning as of the Effective Date, Bank shall offer Private Label Credit Cards to qualified customers in accordance with this Agreement and the Credit Card Agreement.

2.3 Account Terms.

- (a) As of the date of execution, the parties acknowledge that the terms and conditions for the Kohl’s branded private label credit card accounts issued by Seller are set forth in the second column of the table set forth on **Schedule 2.3(a)**. Bank acknowledges that Kohl’s intends to transition to the terms and conditions for such accounts set forth in the third column on the table set forth on **Schedule 2.3(a)** prior to the Effective Date. If such transition does not occur prior to the Effective Date, in whole or in part, Bank and Kohl’s shall implement the terms and conditions for Accounts (“Account Terms”) set forth in the third column **Schedule 2.3(a)** via change in ownership as soon as reasonably practicable after the Effective Date.
- (b) The parties agrees as set forth on **Schedule 2.3(b)** with respect to changes to Account Terms and change in terms notices.

2.4 Change of Ownership; Reissuance of Accounts.

- (a) **Change of Ownership.** Kohl’s, as servicer for Bank shall prepare and send via mail or e-mail, in cases where Cardholders have opted to receive e-mail notifications and such method of notification is permissible under Applicable Law, a change in ownership notice, if any, as required by Applicable Law to each Person obligated on such Accounts. Descriptions of the terms and conditions of the Account shall be included as part of such notices to the extent required by Applicable Law. The parties further agree as set forth on **Schedule 2.4(a)** with respect to the change in ownership of Accounts.

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- (b) Reissuance of Accounts. Kohl's, as servicer for Bank shall reissue Private Label Credit Cards to Cardholders as reasonably determined by the parties. The parties agree as set forth on Schedule 2.4(b) with respect to the reissuance of Accounts.

2.5 Exclusivity.

- (a) The parties agree as set forth on Schedule 2.5 with respect to exclusivity.

2.6 Non-Solicitation.

Neither party shall specifically target, recruit, or solicit for employment any employees of the other party or its Affiliates who supports the Program during the Term and for a two (2) year period following the end of the Term. Notwithstanding the foregoing in this Section 2.6, neither party shall be precluded from hiring any such employee who: (a) responds to a general solicitation placed by a party or its Affiliates or its retained recruiting firm; or (b) has been terminated prior to commencement of employment discussions between a party or its Affiliates and such employee. Bank and Kohl's and their respective Affiliates shall be entitled to specific performance of such provisions in addition to any other remedies that they may have at law or in equity.

ARTICLE 3

PROGRAM MANAGEMENT

3.1 Program Objectives.

In performing its responsibilities with respect to the management and administration of the Program, each party shall be guided by the following Program objectives:

- (a) To enhance the experience of Kohl's Shoppers;
- (b) To increase retail sales of Kohl's;
- (c) To maximize Program economics while minimizing operational and funding costs and complexity;
- (d) To leverage the Program to identify existing and potential Kohl's Shoppers, develop and deepen relationships with Kohl's Shoppers and finance retail sales growth; and
- (e) To design, test and, if mutually agreed, launch additional financial products that will support the Program objectives set forth in Section 3.1(a)-(d).

3.2 Program Managers; Program Team.

- (a) Kohl's and Bank shall each appoint one Program manager (each, a "Manager"). The Managers shall exercise day-to-day operational oversight of the Program and coordinate the efforts between Kohl's and Bank. Kohl's and Bank shall endeavor to provide stability and continuity in the Manager positions and each party's other Program personnel. The initial Manager for Kohl's and Bank is set forth on **Schedule 3.2(a)**. Each Manager shall sign a confidentiality agreement to ensure compliance with Article 12.
- (b) Each Bank Manager shall have substantial relevant experience, including experience with the department store industry, comparable customer demographics and loyalty programs and has been employed by Bank for at least the twelve (12) months immediately prior to appointment. Subject to the remainder of this Section 3.2(b), Bank shall not reassign the Bank Manager for a period of at least two (2) years from the date the Manager is no longer employed in connection with the Program to any other retail department store program operated by Bank or any of its Affiliates. The appointment of a new Manager by Bank is subject to the prior approval of Kohl's. Kohl's shall have the right to require replacement of the Bank Manager in the event that such Bank Manager's performance is unsatisfactory in the reasonable judgment of Bank. Without limiting the foregoing, Kohl's shall raise any concerns it has about the Bank Manager with Bank and Kohl's and Bank shall consult in good faith to address such concerns.
- (c) Bank shall make available to Kohl's without additional cost the services of employees of the Bank to support the Program. Such employees are identified on **Schedule 3.2(c)** and shall have the functions, qualifications and availability identified on **Schedule 3.2(c)**.
- (d) Bank shall appoint a compliance manager (the "Bank Compliance Manager"). The Bank Compliance Manager shall be Kohl's single point of contact for purposes of reviewing any materials or documentation subject to Bank's prior review for compliance with Applicable Law as contemplated by this Agreement and for purposes of receiving and responding to Kohl's inquiries regarding its obligations under this Agreement in connection with the compliance of this Program with Applicable Law. The Bank Compliance Manager shall be entitled to review Kohl's compliance with Applicable Law and the Operating Policies (and its underlying procedures), and Kohl's shall provide the Bank Compliance Manager with such information as reasonably requested in connection with the Bank Compliance Manager's activities hereunder. The Bank Compliance Manager shall sign a confidentiality agreement in a form acceptable to Kohl's to ensure compliance with Article 12. Bank may replace the Bank Compliance Manager at its sole discretion. Without limiting the foregoing, Kohl's shall raise any concerns it has about the Bank Compliance Manager with Bank and Kohl's and Bank shall consult in good faith to address such concerns.

3.3 Management Committee.

The parties hereby establish a committee (the “Management Committee”) to review the conduct of the Program pursuant to this Agreement and to perform any other action that, pursuant to any express provision of this Agreement, requires its action. The Management Committee shall consist of an equal number of nominees from each party and shall consist of at least six (6) members. The initial Kohl’s Nominees and Bank Nominees will be nominated prior to the Effective Date. Each party shall nominate its Manager to serve as one of its nominees on the Management Committee. At least one nominee from each party shall be the individual with overall responsibility for the performance of the Program within his or her respective corporate organization, which, in the case of Bank, shall be a managing vice president or more senior officer with primary responsibility for the Program at the Bank and, in the case of Kohl’s shall be the senior vice president of Retail Payment Solutions. Each Bank Nominee will serve on the Management Committee for a minimum of two (2) years, unless the Bank Nominee’s employment with the Bank terminates or Bank Nominee is a Manager who is replaced pursuant to Section 3.2(b) herein. Each party may substitute one of its nominees to the Management Committee upon termination of such nominee’s employment with the party; provided that the substitute nominee satisfies the requirements of this Section 3.3. Each party shall provide the other party with as much prior notice of such substitution as is reasonably practicable under the circumstances.

3.4 Functions of the Management Committee.

The Management Committee shall primarily serve as a forum for the parties to discuss and recommend initiatives to improve the Program. The Management Committee shall have no decision-making authority and any decision-making authority regarding various aspects of the Program is as set forth throughout this Agreement. Specifically the Management Committee shall:

- (a) Monitor and review Program activities, financial performance of the Program and key portfolio performance data;
- (b) Monitor activities of competitive programs, identify implications of market trends and develop initiatives to present to Kohl’s to ensure that the Program remains competitive;
- (c) Review and recommend Enhancement Products, changes to the Account Terms, etc.; and
- (d) Carry out such other tasks as are assigned to it by this Agreement or jointly by the parties.

3.5 Management Committee Meetings.

- (a) The Management Committee will meet from time to time as its members consider necessary, but in no event less than once per calendar quarter unless otherwise agreed by each party's Manager. Meetings may be held in person or wholly or partly by way of telephone or video conference.
- (b) The Management Committee shall determine the frequency, place and agenda for its meetings, the manner in which meetings will be called and all procedural matters not set forth herein.

ARTICLE 4

PROGRAM OPERATION

4.1 Operating Policies; Operation of the Program.

- (a) Subject to Section (b) of **Schedule 4.1(b)**, except as modified by mutual agreement of the parties from time to time or as modified by the Bank pursuant to subsection (a) of **Schedule 4.1(b)**, the Operating Policies shall be the Kohl's Operating Policies. The parties shall cooperate to review and update Operating Policies as appropriate. Except as provided in the remainder of this Section 4.1 and **Schedule 4.1(b)**, all changes to the Operating Policies shall be mutually agreed by the parties.
- (b) Bank shall be responsible for monitoring and updating the Operating Policies (including its underlying procedures) to comply with changes in Applicable Law. The parties further agree as set forth on **Schedule 4.1(b)** with respect to the Operating Policies.
- (c) Bank and Kohl's shall provide, either directly or indirectly, the services, materials and personnel necessary to operate the Program in accordance herewith and in accordance with the Operating Policies.

4.2 Certain Responsibilities of Kohl's.

In addition to its other obligations set forth elsewhere in this Agreement, the parties agree that during the Term, Kohl's shall, on behalf of itself or as servicer for Bank:

- (a) maintain (internally or via a third party) one or more systems to process Credit Card Applications, establish new Accounts, assign, increase and decrease credit lines, and authorize Transactions;
- (b) maintain one or more call center(s) to respond to inquiries from Cardholders and to deal with billing related claims and adjustments (including making finance charges and late fee reversals);

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- (c) provide Account monitoring services, including identifying delinquencies, identifying collection efforts required, implementing credit-line adjustments, over limit authorizations and Account reactivation, deactivation or cancellation;
 - (d) handle collection and recovery efforts with respect to Accounts;
 - (e) be responsible for Credit Card Application processing, customer service, statementing, payment processing, Transaction authorization and processing, Value Proposition administration, collections and risk management;
 - (f) prepare, process and mail Billing Statements, Inserts, Program Privacy Policy notices, change in terms notices and other communications to Cardholders;
 - (g) produce and issue all new, replacement and reissued credit card plates related to the Private Label Credit Cards;
 - (h) in its capacity as servicer, operate in accordance with the Risk Management Policies and Operating Policies and any underlying procedures;
 - (i) provide the support described on **Schedule 4.3(d)** to assist Bank in performing Bank's operational responsibilities described on such schedule; and
 - (j) have ultimate decision-making authority with respect to any aspect of the Program except for (i) the Account Terms which are governed by Section 2.3, (ii) change in terms notices which are governed by Section 2.4(a), (iii) the Operating Policies which are governed by Section 4.1, (iv) the Risk Management Policies which are governed by Section 4.6; (v) Bank's right to make changes to documents and materials to ensure compliance with Applicable Law which is governed by Section 4.5; (vi) any other aspect of the Program designated as a Bank responsibility under Section 4.3 or elsewhere in this Agreement; and (vii) all matters related to compliance of the Program with Applicable Law.

4.3 Certain Responsibilities of Bank.

In addition to its other obligations set forth elsewhere in this Agreement, including on **Schedule 4.3**, the parties agree that during the Term, Bank shall:

- (a) extend credit on newly originated and existing Accounts in accordance with the Risk Management Policies and Operating Policies;
- (b) comply with, or ensure that Kohl's in its capacity as servicer complies with, the terms of the Credit Card Agreements, the Program Privacy Policy and all Cardholder opt-outs;
- (c) monitor and notify Kohl's of changes in Applicable Law that will affect the Program and ensure that all aspects of the Program comply with Applicable Law at all times (in this regard all matters under the Program pertaining to compliance with Applicable Law shall be determined by Bank as provided in this Agreement and Kohl's shall extend reasonable cooperation and access to permit Bank to perform its obligations herein);

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- (d) perform the operational functions set forth on **Schedule 4.3(d)** in accordance with the terms described on such schedule;
 - (e) provide Kohl's reasonable access to Bank's compliance staff and counsel in order to address issues relating to compliance with Applicable Law, including Bank's Compliance Manager as set forth in Section 3.2(d) and systems support personnel as set forth in subsection (c) of **Schedule 4.10**; and
 - (f) provide introductions to Kohl's to Bank's third party servicers for the purpose of assisting Kohl's in its efforts to minimize the costs associated with Kohl's performance under this Agreement (including, costs for collections, mailers, printers and plastics) and use commercially reasonable efforts to facilitate Kohl's negotiations with such servicers.

4.4 Ownership of Accounts.

- (a) Except to the extent of Kohl's ownership of the Kohl's Licensed Marks and its option to purchase the Program Assets under Section 16.2, Bank shall be the sole and exclusive owner of all Accounts and Account Documentation and shall have all rights, powers, and privileges with respect thereto as such owner; provided that Bank shall exercise such rights consistent with its obligations under this Agreement and the Operating Policies and in no event in a manner less favorable than its exercise of similar rights in connection with its other similarly situated credit card portfolios. All purchases of Goods and/or Services in connection with the Accounts and the Cardholder Indebtedness shall create the relationship of debtor and creditor between the Cardholder and Bank, respectively. Kohl's acknowledges and agrees that (i) it has no right, title or interest (except for its right, title and interest in the Kohl's Licensed Marks and its option to purchase the Program Assets under Section 16.2) in or to, any of the Accounts or Account Documentation or any proceeds of the foregoing, and (ii) Bank extends credit directly to Cardholders.
- (b) Except as expressly provided herein, Bank shall be entitled to (i) receive all payments made by Cardholders on Accounts, and (ii) retain for its account all Cardholder Indebtedness and such other fees and income authorized by the Credit Card Agreements and collected by Bank, or by Kohl's as servicer for Bank, with respect to the Accounts and Cardholder Indebtedness.
- (c) Bank shall fund all Cardholder Indebtedness on the Accounts.
- (d) Bank shall have the exclusive right to effect collection of Cardholder Indebtedness, subject to Kohl's right to service the Accounts, and shall notify Cardholders to make payment directly to it in accordance with its instructions; provided, however, that Bank shall make all collections for its account using the name "Kohl's" and shall direct all payments to be made payable to "Kohl's" or,

with Kohl's approval, another name. Kohl's grants to Bank a limited power of attorney (coupled with an interest) to sign and endorse Kohl's name upon any form of payment that may have been issued in Kohl's name in respect of any Account.

- (e) Notwithstanding the foregoing, in addition to payments made by mail, Kohl's shall accept payments made with respect to an Account (i) in a Kohl's store as provided in Section 8.3, (ii) online, and (iii) by telephone through the call center.
- (f) With respect to all Account Documentation, and notwithstanding the purchase of such Account Documentation by Bank as of the Effective Date for so long as Kohl's is the servicer of the Accounts, Kohl's shall continue to hold and retain the Account Documentation following the Effective Date as bailee for the sole benefit of Bank.

4.5 Documents Developed and Used in Connection with the Program.

- (a) The content, design and format of all documents and materials used in connection with the Program including the Credit Card Documentation, Solicitation Materials and Private Label Credit Cards (both front and back) shall be as proposed by Kohl's and modified by Kohl's from time to time (except for the Account Terms which are governed by Section 2.3, the change in ownership notices which are governed by Section 2.4(a), the Operating Policies which are governed by Section 4.1 and the Risk Management Policies which are governed by Section 4.6); subject to final approval of Bank solely for matters relating to compliance with Applicable Law. Bank shall consider in good faith the suggestions and concerns of Kohl's regarding any changes proposed by Bank to comply with Applicable Law. Kohl's shall provide Bank an opportunity to review all such documents and materials for compliance with Applicable Law and Bank shall review and approve such documents and materials in a timely manner (but in no event later than seven (7) calendar days from receipt by Bank) and in accordance with Kohl's production calendar. Notwithstanding the immediately preceding sentence, Kohl's shall have no obligation to provide an opportunity for legal review if Bank has previously approved such document, text or template unless Bank has notified Kohl's of a change in Applicable Law that has occurred since the prior review. Bank acknowledges and agrees that it received, reviewed, and accepted, without modification, the marketing materials attached hereto as **Schedule 4.5(a)**.
- (b) The parties agree as set forth on **Schedule 4.5(b)** with respect to Program documentation.
- (c) Kohl's Licensed Marks shall appear prominently on the face of the Private Label Credit Cards. The front of the Private Label Credit Cards shall not bear Bank's Licensed Marks or Bank's name.

4.6 Risk Management/Credit Standards.

Bank and Kohl's agree regarding risk management and credit standards as set forth on **Schedule 4.6(a)**.

4.7 Exception Accounts.

- (a) Notwithstanding the foregoing, Bank shall, upon request by Kohl's, shall offer a Private Label Credit Card and Account to any customer that does not satisfy Bank's credit standards; provided that Bank shall have no obligation to issue such a Private Label Credit Card and Account if, at the time Kohl's makes such a request to Bank, the number of Accounts approved under this Section 4.7(a) exceeds the percentage set forth on **Schedule 4.7(a)**.
- (b) Notwithstanding the foregoing, Bank shall, upon request by Kohl's, work with Kohl's to develop a program whereby any Kohl's employee that does not satisfy Bank's credit standards may receive an Account or other mutually agreed credit or debit card product issued by Bank. The parties shall work together in good faith to develop the terms of such a program including whether such Accounts should be secured or prepaid.

4.8 Program Website.

- (a) Kohl's shall maintain a Kohl's-branded website for Cardholders and potential Cardholders ("**Program Website**"). The Program Website shall be accessible by means of links from the Kohl's website and shall contain or otherwise be associated with only such material and links as Kohl's shall determine in its discretion, subject to Applicable Law. Kohl's will provide links to the Program Website on (i) its home page, (ii) its check-out pages, and (iii) such other pages as Kohl's shall determine from time to time. Kohl's shall ensure that the Program Privacy Policy is clearly and prominently posted on the pages of the Program Website.
- (b) The Program Website shall permit Cardholders to (i) view the Cardholder's Account information and Billing Statements, (ii) make payments on the Cardholder's Account via automated clearing house transfer or other payment mechanism approved by the parties, (iii) perform account maintenance (update address or telephone, request replacement cards, update billing cycle etc.), (iv) contact customer service, and (v) apply for a new credit card account. In addition, the Program Website shall include any other functions as may be approved by the Managers from time to time.

4.9 Taxes.

The parties' respective responsibilities for taxes arising under or in connection with this Agreement shall be as set forth on **Schedule 4.9**.

4.10 Systems.

The parties agree as set forth on **Schedule 4.10** with respect to systems.

ARTICLE 5

MARKETING OF THE PROGRAM

5.1 Kohl's Responsibility to Market the Program.

- (a) Kohl's shall bear primary responsibility for marketing the Program and shall make all marketing decisions in its discretion; provided, however, that Bank shall have the opportunity to review any changes after the Effective Date to Kohl's marketing channels or processes solely with respect to matters related to compliance with Applicable Law related to the Program; provided, however that Bank shall not be permitted to review Kohl's marketing strategies, plans and calendars. Bank shall review and approve such channels and processes in a timely manner (but in no event later than seven (7) calendar days from receipt by Bank) and in accordance with Kohl's production calendar.
- (b) Kohl's may, in its discretion, choose and implement marketing initiatives including offering the Value Proposition to Cardholders. Kohl's may, in its discretion, offer a different Value Proposition through a rewards program to certain Cardholders based on one or more Account characteristics determined by Kohl's, including Cardholder purchase volume, tenure of Account, or Account type.
- (c) During the Term, Kohl's may present marketing initiatives to Bank for Bank's consideration, which Bank shall review and consider in good faith. In addition, the parties agree as set forth on **Schedule 5.1** with respect to Kohl's marketing initiatives.

5.2 Bank's Responsibility to Market the Program.

During the first six (6) months following the Effective Date, and on an annual basis thereafter, Bank shall present to Kohl's marketing team a list of possible marketing initiatives and the associated budget for each marketing initiative. In addition, the parties agree as set forth on **Schedule 5.2** with respect to Bank's marketing initiatives.

5.3 Communications with Cardholders.

- (a) Inserts. Except as provided in the remainder of this Section 5.3(a), Kohl's shall have the exclusive right to communicate with Cardholders, except for any message required by Applicable Law, through use of inserts, fillers and bangtails (collectively, "Inserts"), including Inserts selectively targeted for particular classes of Cardholders, in any and all Billing Statements, subject to Applicable Law. Bank shall give Kohl's reasonable advance notice of any Insert required by Applicable Law. Bank shall ensure that any Insert required by Applicable Law that is distributed through the Program is consistent in form and content with the Inserts distributed to Bank's other

similarly affected credit card portfolios. Bank shall consider in good faith the suggestions and concerns of Kohl's regarding any such Insert required by Applicable Law. All Inserts required by Applicable Law shall take precedence over any other Inserts, solely to the extent required by Applicable Law and in a manner that is consistently applied across Bank's other similarly affected credit card portfolios. In addition, the parties agree as set forth on **Schedule 5.3(a)** with respect to Inserts.

- (b) **Billing Statement Messages.** Kohl's shall have the exclusive right to use Billing Statement messages and Billing Statement envelope messages in each Billing Cycle to communicate with Cardholders, subject to Applicable Law. Notwithstanding the foregoing, the following messages shall take precedence, to the extent required by Applicable Law and in a manner that is consistently applied across Bank's other similarly affected credit card portfolios, over any Kohl's messages: (i) any message required by Applicable Law as determined by Bank; and (ii) collection and/or customer service messages. Bank shall give Kohl's reasonable advance notice of any Billing Statement messages and Billing Statement envelope messages required by Applicable Law to allow Kohl's to review such changes and to coordinate the timing and content of Billing Statement messages. Bank shall consider in good faith the suggestions and concerns of Kohl's regarding any such messages required by Applicable Law. Notwithstanding the first sentence of this Section 5.3(b) and Bank's obligation to communicate with customers as required by Applicable Law, subject to Kohl's prior written approval, Bank may communicate with Cardholders through Billing Statement messages. Bank shall be responsible for the content of any message required by Applicable Law and any Bank message which has been approved by Kohl's, and Kohl's shall be responsible for the content of any other Billing Statement message.
- (c) **Other Communications.** Kohl's shall have the exclusive right to communicate with Cardholders through direct mail (including through books, invitations, newsletters and postcards), e-mail, telephone messaging, text messaging and any other communication channel that Kohl's deems appropriate. Kohl's may communicate with Cardholders through these channels about any aspect of the Program, including the Value Proposition, and any other subject matter, in Kohl's discretion, subject to Applicable Law. Notwithstanding the first sentence of this Section 5.3(c), Bank may communicate with Cardholders through any of the foregoing communication channels to carry out its obligations as may be required by Applicable Law. Bank shall give Kohl's reasonable advance notice of any such communication required by Applicable Law. Bank shall consider in good faith the suggestions and concerns of Kohl's regarding any such communication required by Applicable Law. In addition, the parties agree as set forth on **Schedule 5.3(c)** with respect to other cardholder communications.

5.4 Access to Bank Databases and Mailing Lists.

The parties agree as set forth on **Schedule 5.4** with respect to access to and use of certain Bank marketing resources and mailing lists.

5.5 Interest Free Plans/Deferred Billing.

The parties agree as set forth on **Schedule 5.5** with respect to Interest Free Plans.

ARTICLE 6

CARDHOLDER AND CUSTOMER INFORMATION

6.1 Customer Information.

The parties agree as set forth on **Schedule 6.1** with respect to Customer Information.

6.2 Qualified Kohl's Customer List.

The parties agree as set forth on **Schedule 6.2** with respect to Qualified Kohl's Customer List.

6.3 Cardholder Data.

The parties agree as set forth on **Schedule 6.3** with respect to Cardholder Data.

6.4 Kohl's Shopper Data.

The parties agree as set forth on **Schedule 6.4** with respect to Kohl's Shopper Data.

6.5 Data Security.

The parties agree as set forth on **Schedule 6.5** with respect to Data Security.

ARTICLE 7

OPERATING STANDARDS

7.1 Reports.

Within thirty (30) days after the end of each month to begin after the Effective Date, each party shall provide to the other party the reports specified in **Schedule 7.1**. To the extent that Kohl's, as servicer to Bank, has access to the information needed to produce such reports, Kohl's, as servicer, shall provide such information and reports to itself on Bank's behalf. The parties shall also provide to each other such other data and reports as are mutually agreed to by the parties from time to time.

7.2 Servicing.

Kohl's, on behalf of Bank, shall service all Accounts under the Program in accordance with the terms and conditions of this Agreement.

7.3 Customer Service.

- (a) Kohl's shall be responsible for customer service for the Program in accordance with this Agreement, including the Regulatory SLAs and the other service level standards set forth in **Schedule 7.3(b)** as attached hereto, in each case subject to the terms set forth on **Schedule 7.3(c)**.
- (b) Kohl's shall maintain one or more separate toll-free customer service telephone numbers for the Program, which toll-free numbers shall be provided by and remain the property of Kohl's. Any publication of the toll-free numbers shall be approved by Kohl's.
- (c) Customer service shall be Kohl's branded to the extent legally permissible. Notwithstanding the foregoing, Bank shall have the right in its reasonable discretion to take whatever steps and make such disclosures it believes are necessary to ensure that at all times the Bank is considered the creditor on the Accounts.
- (d) If Bank receives a Cardholder complaint or inquiry from a Governmental Authority regarding the quality or delivery of Goods and/or Services, Bank shall refer such complaint to Kohl's in accordance with the Operating Policies and Kohl's shall respond directly to Cardholder.
- (e) Bank, in consultation with Kohl's, shall establish an appropriate process for handling immaterial Cardholder complaints or inquiries from a Governmental Authority regarding the Private Label Credit Card or the Program, provided that Bank, upon reasonable request, shall have access to and the right to review all such complaints and inquiries and any responses thereto handling by Kohl's. Bank, in consultation with Kohl's, shall establish a process for Kohl's to determine which Cardholder complaints or inquiries from a Governmental Authority regarding the Private Label Credit Card or the Program should be deemed a material complaint and the parties shall cooperate with respect to responding to such complaints; provided that Bank shall have final approval with respect to such responses.
- (f) Kohl's and Bank (or their respective subcontractors, as applicable), may jointly observe and score inbound/outbound telephone customer contacts that Kohl's has with Cardholders, provided, that, Bank may conduct and score observations alone if a representative of Kohl's does not join in the observation. Kohl's will make arrangements to allow Bank to observe customer service operations remotely at any time and without prior notice. Customer service observations may be conducted by Bank on any day and at any time during the day or night, provided that such observations shall not unreasonably interfere with Kohl's normal business operations.

7.4 Transfer of Servicing to Bank.

The parties agree as set forth on **Schedule 7.4** with respect to the transfer of servicing to Bank.

7.5 Bank Right to Assume Servicing.

The parties agree as set forth on **Schedule 7.5** with respect to Bank's right to assume servicing.

7.6 Access.

In addition to access as provided in Section 7.3(e), each party, at its own expense, will permit the other party and any Governmental Authority with jurisdiction over the other party, including without limitation the Office of the Comptroller of Currency (the "Regulators") to visit its facilities related to the Program. Each party will also permit the other party and its Regulators to review and obtain copies of the books and records relating to the Program; provided that Bank shall not have access to books and records relating to the expenses or cost structure of servicing the Accounts and Kohl's shall not have access to the books and records relating to the funding or other costs or expense solely borne by Bank. Notwithstanding the foregoing, each party shall have access to the other party's books and records in order to audit the other party's compliance with the terms of this Agreement. The access granted under this Section 7.6 shall occur during normal business hours with reasonable advance notice; provided, however that with respect to access by Regulators, such access shall not be so limited.

7.7 Disaster Recovery Plans.

Kohl's and Bank will each maintain in effect during the Term a disaster recovery and business continuity plan that complies with Applicable Law. Each party shall notify the other party of any material changes to its disaster recovery and business continuity plan. Each party will test such plan annually and will promptly initiate such plan upon the occurrence of a disaster or business interruption, giving the Program the highest priority in its recovery efforts. In addition, the parties agree as set forth on **Schedule 7.7** with respect to disaster recovery.

7.8 Sarbanes-Oxley Compliance.

The parties agree as set forth on **Schedule 7.8** with respect to Sarbanes-Oxley Compliance.

ARTICLE 8

MERCHANT SERVICES

8.1 Transmittal and Authorization of Charge Transaction Data.

- (a) Kohl's will accept the Private Label Credit Cards for Transactions. Kohl's will transmit Charge Transaction Data for authorization of Transactions as provided in the Operating Policies. If Kohl's is unable to communicate with the authorization system for any reason, Kohl's may complete Transactions without receipt of further authorization as provided in the Operating Policies.
- (b) Bank, through Kohl's as servicer, shall authorize or decline Transactions on a real time basis as provided in the Operating Policies, including transactions involving split-tender (i.e., a portion of the total transaction amount is billed to a Private Label Credit Card and the remainder is paid through one or more other forms of payment).

8.2 POS Terminals.

Kohl's shall maintain POS terminals capable of processing Private Label Credit Card Transactions. To the extent that Bank requires other equipment or changes to such terminals for transmission of Charge Transaction Data under this Agreement, Bank shall provide, or pay for the purchase, installation and maintenance of, such other equipment or required changes to Kohl's POS credit card terminals.

8.3 In-Store Payments.

Kohl's may accept In-Store Payments from Cardholders on their Accounts in accordance with the Operating Policies, which payments Kohl's, as servicer for the Bank, shall apply against the outstanding balances on the Accounts. Kohl's shall, as necessary, provide proper endorsements on such items. Bank grants to Kohl's a limited power of attorney (coupled with an interest) to sign and endorse Bank's name upon any form of payment that may have been issued in Bank's name in respect of any Account. The Operating Policies shall specify the manner in which such In-Store Payments shall be processed. Kohl's shall notify Bank upon receipt of In-Store Payments and Bank shall include the Charge Transaction Data related to such In-Store Payments in the net settlement in respect of the day immediately following such receipt on the same basis as other Charge Transaction Data. Kohl's shall issue receipts for such payments in compliance with the Operating Policies.

8.4 Settlement Procedures.

- (a) Kohl's will transmit Charge Transaction Data (including Charge Transaction Data arising in connection with sales by Licensees) to Bank in accordance with the Operating Policies. If Charge Transaction Data is received by Bank's processing center before 11:00 am (CST) on any Business Day, Bank will process the Charge Transaction Data for payment on the same Business Day. If the Charge Transaction Data is received after 11:00 am (CST) on any Business Day, or at any time on a day other than a Business Day, Bank will process the Charge Transaction Data for payment on the following Business Day.

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- (b) Bank will remit to Kohl's on each Business Day, for itself and any Licensees, an amount equal to: the sum of the total of charges identified in such Charge Transaction Data less the sum of (i) the total amount of any credits included in such Charge Transaction Data for returns of Goods and/or Services in accordance with Section 8.5, and (ii) the total amount of any Cardholder payments (the "Net Settlement Amount"). Kohl's shall be responsible for allocating such remittances among all Kohl's Channels as appropriate and Bank shall have no responsibility or liability in connection therewith (it being agreed that Bank has no obligation to accept Charge Transaction Data directly from, or make remittances to, any Person other than Kohl's). If the Net Settlement Amount is negative, Bank shall notify Kohl's of the negative amount and Kohl's shall pay Bank such negative amount by the next Business Day following such notice.

8.5 Returns of Kohl's Goods and/or Services.

If a Cardholder purchases Goods and/or Services on an Account and Kohl's processes a return of such Goods and/or Services in accordance with Kohl's return policy or makes another adjustment such as a price reduction, Kohl's shall provide a credit to such Cardholder's Account. Kohl's will transmit the relevant information in the Charge Transaction Data for inclusion in the daily settlement process.

8.6 No Merchant Discount.

None of Kohl's, its Affiliates or its Licensees shall be required to pay any merchant discount, interchange fees, or other transaction fees on any Transaction. Bank shall directly process the Transactions such that none of Kohl's, its Affiliates or its Licensees incur any merchant acquirer/processor or similar fees.

ARTICLE 9

PROGRAM ECONOMICS

9.1 Monthly Statement to Kohl's.

Prior to the Effective Date, the parties shall mutually agree on an appropriate process for sharing information in a timely manner to enable Bank to deliver to Kohl's within five (5) Business Days after the end of each month a statement setting forth, in a mutually agreed format and Bank shall deliver such statement in accordance with such process,

- (a) the total amount owed to Kohl's for the month pursuant to Section 9.2, with line item specificity; and
- (b) any other amounts owed to or by Kohl's as explicitly provided for herein or as otherwise agreed by the parties in writing with line item specificity, which amounts may be netted.

Each such statement, including supporting documentation, shall be known as a “Monthly Settlement Sheet.”

9.2 Compensation.

The parties agree as set forth on Schedule 9.2 with respect to compensation.

9.3 Renegotiation of Terms. The parties agree as set forth on Schedule 9.3 with respect to renegotiation of terms.

9.4 Recoveries. The parties agree as set forth on Schedule 9.4 with respect to recoveries.

ARTICLE 10

LICENSING OF TRADEMARKS; INTELLECTUAL PROPERTY

10.1 The Kohl’s Licensed Marks.

- (a) Grant of License to Use the Kohl’s Licensed Marks. Kohl’s and its Affiliates hereby grant to Bank a non-exclusive, royalty-free, non-transferable right and license to use the Kohl’s Licensed Marks in the United States solely in connection with the creation, establishment, marketing and administration of, and the provision of services related to, the Program, all pursuant to, and in accordance with, this Agreement and any applicable Trademark Style Guide of Kohl’s. Those services shall include the solicitation of Cardholders and potential Cardholders, acceptance of Credit Card Applications, the issuance and reissuance of Credit Cards, the provision of accounting services to Cardholders, the provision of Billing Statements and other correspondence relating to Accounts to Cardholders, the extension of credit to Cardholders, and the advertisement or promotion of the Program. All use of the Kohl’s Licensed Marks shall be approved by Kohl’s. The license hereby granted is solely for the use of Bank and may be used as necessary to permit the exercise by Bank of any of its rights under this Agreement to (i) delegate its obligations to Affiliate(s) and/or third party subcontractors, and (ii) sell the Accounts and Cardholder Indebtedness to third parties for liquidation. Except for the rights granted to the Bank in the preceding sentence, the licenses granted hereby may not be sublicensed in connection with the sale of any goods or services without the prior written approval of Kohl’s. Bank will ensure that any subcontractor or third party shall agree to comply with all of the standards specified herein and the limitations on the use of the Kohl’s Licensed Marks contained in this Section.
- (b) New Marks. If Kohl’s or its Affiliates adopt a trademark, trade name, service mark logo or other proprietary mark which is used by Kohl’s or its Affiliates in connection with the Program but which is not listed on Schedule A hereto (a “New Mark”), Kohl’s, upon written notice to Bank, may add such New Mark to Schedule A. Bank may request that Kohl’s add a New Mark to Schedule A hereto and license its use hereunder, Kohl’s shall not unreasonably fail to do so. Any New Mark requested by Bank and agreed by Kohl’s shall be added to Schedule A by amendment of this Agreement.

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- (c) Termination of License. Except as otherwise set forth on **Schedule 16.3** hereof, the license granted in this Section shall terminate six (6) months after the later of (i) the Program Purchase Date, (ii) termination of this Agreement, or (iii) Kohl's gives written notice that it will not exercise its Purchase Option or the Purchase Option expires. Upon such termination of this license, as provided in this subsection (c), all rights in the Kohl's Licensed Marks shall revert to Kohl's and its Affiliates, the goodwill connected therewith shall remain the property of Kohl's and its Affiliates, and Bank shall: (i) discontinue immediately all use of the Kohl's Licensed Marks, or any of them, and any colorable imitation thereof; and (ii) at Bank's option, delete the Kohl's Licensed Marks from or destroy all unused Credit Cards, Credit Card Applications, Account Documentation, periodic statements, materials, displays, advertising and sales literature and any other items bearing any of the Kohl's Licensed Marks.
- (d) Ownership of the Kohl's Licensed Marks. Bank acknowledges that (i) the Kohl's Licensed Marks, all rights therein, and the goodwill associated therewith, are, and shall remain, the exclusive property of Kohl's and its Affiliates, (ii) it shall take no action which will adversely affect Kohl's and its Affiliates exclusive ownership of the Kohl's Licensed Marks, or the goodwill associated with the Kohl's Licensed Marks (it being understood that the collection of Accounts, adverse action letters, and changes in terms of Accounts as required by Applicable Law do not adversely affect goodwill, if done in accordance with the terms of this Agreement), and (iii) any and all goodwill arising from use of the Kohl's Licensed Marks by Bank shall inure to the benefit of Kohl's and its Affiliates. Nothing herein shall give Bank any proprietary interest in or to the Kohl's Licensed Marks, except the right to use the Kohl's Licensed Marks in accordance with this Agreement, and Bank shall not contest Kohl's or its Affiliates title in and to the Kohl's Licensed Marks.
- (e) Infringement by Third Parties. Bank shall use reasonable efforts to notify Kohl's, in writing, in the event that it has Knowledge of any infringing use of any of the Kohl's Licensed Marks by any third party. If any of the Kohl's Licensed Marks is infringed, Kohl's alone has the right, in its sole discretion, to take whatever action it deems necessary to prevent such infringing use; provided, however, that if Kohl's fails to take reasonable steps to prevent infringement of the Kohl's Licensed Marks by any retail department store and such infringement has an adverse effect upon the Program or the rights of Bank hereunder, Bank may request that Kohl's take action necessary to alleviate such adverse impact. Bank shall reasonably cooperate with and assist Kohl's, at Kohl's expense, in the prosecution of those actions that Kohl's determines, in its sole discretion, are necessary or desirable to prevent the infringing use of any of the Kohl's Licensed Marks.

10.2 The Bank Licensed Marks.

- (a) Grant of License to Use the Bank Licensed Marks. Bank hereby grants to Kohl's a non-exclusive, royalty-free, non-transferable right and license to use the Bank Licensed Marks in the United States solely in connection with the creation, establishment, marketing and administration of, and the provision of services related to, the Program, all pursuant to, and in accordance with, this Agreement and any applicable Trademark Style Guide of Bank. Those services shall include the solicitation of Cardholders and the advertisement or promotion of the Program. All use of the Bank Licensed Marks shall be approved by Bank. The license hereby granted is solely for the use of Kohl's and may be used as necessary to permit the exercise by Kohl's of any of its rights under this Agreement to delegate obligations to Affiliate(s) and/or third party contractors. The license granted hereby may not be sublicensed in connection with the sale of Goods and/or Services without the prior written approval of Bank. Kohl's shall ensure that any subcontractor or third party shall agree to comply with all of the standards specified herein and the limitations on the use of the Bank Licensed Marks contained in this Section.
- (b) New Marks. If Bank adopts a trademark, trade name, service mark logo or other proprietary mark which is used by Bank in connection with its extension of bank card credit to customers but which is not listed on **Schedule B** hereto (a "New Mark"), Kohl's may request that Bank add such New Mark to **Schedule B** hereto and license its use hereunder, Bank shall not unreasonably fail to do so, and such New Mark shall be added to **Schedule B** by amendment of this Agreement. The foregoing notwithstanding, it is understood and agreed that Bank shall not be required to add a New Mark to **Schedule B** if such New Mark was developed by Bank primarily for another charge, credit or debit program.
- (c) Termination of License. The license granted in this Section shall terminate six (6) months after the later of (i) the Program Purchase Date, (ii) termination of this Agreement, or (iii) Kohl's gives written notice that it will not exercise its Purchase Option or the Purchase Option expires. Upon such termination of this license, as provided in this subsection (c), all rights in the Bank Licensed Marks shall revert to Bank, the goodwill connected therewith shall remain the property of Bank, and Kohl's shall: (i) discontinue immediately all use of the Bank Licensed Marks, or any of them, and any colorable imitation thereof; and (ii) at Kohl's option, delete the Bank Licensed Marks from or destroy all unused Credit Card Applications, Account Documentation, periodic statements, materials, displays, advertising and sales literature and any other items bearing any of the Bank Licensed Marks.
- (d) Ownership of the Bank Licensed Marks. Kohl's acknowledges that (i) the Bank Licensed Marks, all rights therein, and the goodwill associated therewith, are, and shall remain, the exclusive property of Bank, (ii) it shall take no action which will adversely affect Bank's exclusive ownership of the Bank Licensed Marks or the goodwill associated with the Bank Licensed Marks, and (iii) any and all goodwill arising from use of the Bank Licensed Marks by Kohl's shall inure to

the benefit of Bank. Nothing herein shall give Kohl's any proprietary interest in or to the Bank Licensed Marks, except the right to use the Bank Licensed Marks in accordance with this Agreement, and Kohl's shall not contest Bank's title in and to the Bank Licensed Marks.

- (e) Infringement by Third Parties. Kohl's shall use reasonable efforts to notify Bank, in writing, in the event that it has Knowledge of any infringing use of any of the Bank Licensed Marks by any third party. If any of the Bank Licensed Marks is infringed, Bank alone has the right, in its sole discretion, to take whatever action it deems necessary to prevent such infringing use; provided, however, that if Bank fails to take reasonable steps to prevent infringement of the Bank Licensed Marks by any credit provider and such infringement has an adverse effect upon the Program or the rights of Kohl's hereunder, Kohl's may request that Bank take action necessary to alleviate such adverse impact. Kohl's shall reasonably cooperate with and assist Bank, at Bank's expense, in the prosecution of those actions that Bank determines, in its sole discretion, are necessary or desirable to prevent the infringing use of any of the Bank Licensed Marks.

10.3 Ownership and Licenses of Intellectual Property.

- (a) Ownership of Intellectual Property. Each party shall continue to own all of its Intellectual Property that existed as of the Effective Date. Each party also shall own all right, title and interest in the Intellectual Property it develops independently of the other party during the Term. To the extent a party (the "Acquiring IP Party") acquires any rights in or to such Intellectual Property of the other party (the "IP Owner"), the Acquiring IP Party hereby assigns all such right, title and interest in and to such Intellectual Property back to IP Owner.
- (b) Joint Intellectual Property.
- (i) The parties intend that any Intellectual Property developed through the combined efforts of the parties during the Term of this Agreement shall be developed pursuant to a negotiated development agreement, which shall be negotiated in good faith, and entered into, by the parties prior to commencement of work for the development of the Intellectual Property (each such agreement a "Development Agreement"). The terms of any such Development Agreement shall govern the parties rights in and any restrictions or obligations with respect to the Intellectual Property that is the subject of such Development Agreement.
- (ii) In the event that a Development Agreement has not been entered into by the parties with regard to jointly developed Intellectual Property, such Intellectual Property shall be owned jointly by the parties and any restrictions or obligations on use shall be governed by the remainder of this Section 10.3(b)(ii). During the Term and in perpetuity thereafter, Bank shall have the right to use, license and otherwise exploit such jointly owned Intellectual Property

without any restriction or obligation to account to Kohl's. During the Term and in perpetuity thereafter, Kohl's shall have the right to use, license and otherwise exploit such jointly owned Intellectual Property without any restriction or obligation to account to Bank for such uses (A) solely in connection with and for purposes of operating the Kohl's-branded private label credit card program and any other payment product program offered by Kohl's, either directly or through third party, including in connection with the creation, establishment, marketing and administration of such programs, and the provision of services related thereto; and (B) solely for the purposes described in subsection 10.3(b)(ii)(A), sublicense such jointly owned Intellectual Property to its Affiliates and subcontractors, the third party purchaser of the Program Assets and any other third party that offers such any such payment program with Kohl's.

- (iii) Patents and inventions shall be deemed to be developed jointly only if employees or contractors of each party who have assigned all such patent rights to such party are deemed co-inventors under the applicable patent laws. Software and other works of authorship and associated copyrights shall be deemed to be jointly developed only if the parties are deemed co-authors of such software or other work of authorship under the applicable copyright laws or otherwise deemed co-owners of such copyright. Otherwise, all patents, patentable inventions, software, other works of authorship and related copyrights shall be deemed to be developed solely by one party. For the avoidance of doubt, if any work is created solely by one party which is based on or incorporates Intellectual Property of the other party, then such party shall be the sole owner of the Intellectual Property in and to the new work, subject to the other party's sole ownership of the underlying work.

(c) Bank Intellectual Property.

The parties agree as set forth on Schedule 10.3(c) with respect to Bank Intellectual Property.

ARTICLE 11

REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 General Representations and Warranties of Kohl's.

To induce Bank to establish and administer the Program, Kohl's makes the representations and warranties set forth on Schedule 11.1 and the following representations and warranties to Bank, each and all of which shall survive the execution and delivery of this Agreement, and each and all of which shall be deemed to be restated and remade with the same force and effect on each day of the Term.

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- (a) Corporate Existence. Kohl's (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of its incorporation; (ii) is duly licensed or qualified to do business as a corporation and is in good standing as a foreign corporation in all jurisdictions in which the nature of the activities conducted or proposed to be conducted by it or the character of the assets owned or leased by it makes such licensing or qualification necessary to perform its obligations required hereunder except to the extent that its non-compliance would not have a material and adverse effect on Kohl's ability to perform its obligations hereunder; and (iii) has all necessary licenses, permits, consents or approvals from or by, and has made all necessary notices to, all governmental authorities having jurisdiction, to the extent required for Kohl's current ownership, lease or conduct and operation, except to the extent that the failure to obtain such licenses, permits, consents or approvals or to provide such notices would not have a material and adverse effect on Kohl's ability to perform its obligations required hereunder.
- (b) Capacity; Authorization; Validity. Kohl's has all necessary corporate power and authority to (i) execute and enter into this Agreement, and (ii) perform the obligations required of Kohl's hereunder and the other documents, instruments and agreements relating to the Program and this Agreement executed by Kohl's pursuant hereto. The execution and delivery by Kohl's of this Agreement and all documents, instruments and agreements executed and delivered by Kohl's pursuant hereto, and the consummation by Kohl's of the transactions specified herein have been duly and validly authorized and approved by all necessary corporate action of Kohl's. This Agreement (i) has been duly executed and delivered by Kohl's, (ii) constitutes the valid and legally binding obligation of Kohl's, and (iii) is enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, receivership or other laws affecting the rights of creditors generally and by general equity principles including those respecting the availability of specific performance).
- (c) Conflicts; Defaults; Etc. The execution, delivery and performance of this Agreement by Kohl's, its compliance with the terms hereof, and its consummation of the transactions specified herein will not (i) conflict with, violate, result in the breach of, constitute an event which would, or with the lapse of time or action by a third party or both would, result in a default under, or accelerate the performance required by, the terms of any material contract, instrument or agreement to which Kohl's is a party or by which it is bound, or by which Kohl's assets are bound, except for conflicts, breaches and defaults which would not have a material and adverse effect upon Kohl's ability to perform its obligations under this Agreement; (ii) conflict with or violate the articles of incorporation or by-laws, or any other equivalent organizational document(s), of Kohl's; (iii) violate any Applicable Law or conflict with, or require any consent or approval under any judgment, order, writ, decree, permit or license, to which Kohl's is a party or by which it is bound or affected, except to the extent that such violation or the failure to obtain such consent or approval would not have a material and adverse effect upon Kohl's ability to perform its obligations under this Agreement; (iv) require the consent or approval of any other party to any contract, instrument

or commitment to which Kohl's is a party or by which it is bound, except to the extent that the failure to obtain such consent or approval would not have a material and adverse effect upon Kohl's ability to perform its obligations under this Agreement; or (v) require any filing with, notice to, consent or approval of, or any other action to be taken with respect to, any regulatory authority, except to the extent that the failure to obtain such consent or approval would not have a material and adverse effect upon Kohl's ability to perform its obligations under this Agreement.

- (d) Solvency. Kohl's is solvent.
- (e) No Default. Neither Kohl's nor, to the best of its Knowledge, its Affiliates are in default with respect to any contract, agreement, lease, or other instrument to which it is a party or by which it is bound, except for defaults which would not have a material and adverse effect upon Kohl's ability to perform its obligations under this Agreement, nor has Kohl's received any notice of default under any contract, agreement, lease or other instrument which default or notice of default would materially and adversely affect the performance by Kohl's of its obligations under this Agreement. No Kohl's Event of Default has occurred and is continuing.
- (f) Books and Records. All of Kohl's and, to the best of its Knowledge, its Affiliates' records, files and books of account relating to the Program, including records provided to the Bank regarding Kohl's Account activities, are in all material respects complete and correct and are maintained in accordance with Applicable Law and GAAP.
- (g) No Litigation. No action, claim or any litigation, proceeding, arbitration, investigation or controversy is pending or, to the best of Kohl's Knowledge, threatened against Kohl's or its Affiliates, at law, in equity or otherwise, before any court, board, commission, agency or instrumentality of any federal, state, or local government or of any agency or subdivision thereof or before any arbitrator or panel of arbitrators, to which Kohl's is a party, which, if adversely determined, could have a material and adverse effect on Kohl's ability to perform its obligations under this Agreement.
- (h) Kohl's Licensed Marks. Kohl's is the owner of the Kohl's Licensed Marks and Kohl's has the right, power and authority to license to Bank and authorized designees the use of the Kohl's Licensed Marks in connection with the Program and the use of the Kohl's Licensed Marks by said licensees in a manner approved (or deemed approved) by Kohl's shall not (i) violate any Applicable Law or (ii) infringe upon the right(s) of any third party.

11.2 General Representations and Warranties of Bank.

To induce Kohl's to enter into this Agreement and participate in the Program, Bank makes the following representations and warranties to Kohl's, each and all of which shall survive the execution and delivery of this Agreement, and each and all of which shall be deemed to be restated and remade with the same force and effect on each day of the Term.

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- (a) Corporate Existence. Bank (i) is a banking corporation duly organized, validly existing, and in good standing under the laws of the United States with its home office as indicated in the first paragraph of this Agreement; (ii) is duly licensed or qualified to do business as a banking corporation and is in good standing as a foreign corporation in all jurisdictions in which the nature of the activities conducted or proposed to be conducted by it or the character of the assets owned or leased by it makes such licensing or qualification necessary to perform its obligations hereunder except to the extent that its non-compliance would not have a material and adverse effect on Bank, the Program, the Accounts, Cardholder Indebtedness or Bank's ability to perform its obligations hereunder; and has all necessary licenses, permits, consents, or approvals from or by, and has made all necessary notices to, all governmental authorities having jurisdiction, to the extent required for Bank's current ownership, lease or conduct and operation, except to the extent that the failure to obtain such licenses, permits, consents, approvals or to provide such notices would not have a material and adverse effect on Bank, the Program, the Accounts, Cardholder Indebtedness or Bank's ability to perform its obligations under this Agreement.
- (b) Capacity; Authorization; Validity. Bank has all necessary power and authority to (i) execute and enter into this Agreement, and (ii) perform all of the obligations required of Bank hereunder and the other documents, instruments and agreements relating to the Program and this Agreement executed by Bank pursuant hereto. The execution and delivery by Bank of this Agreement and all documents, instruments and agreements executed and delivered by Bank pursuant hereto, and the consummation by Bank of the transactions specified herein, have been duly and validly authorized and approved by all necessary corporate action of Bank. This Agreement (i) has been duly executed and delivered by Bank, (ii) constitutes the valid and legally binding obligations of Bank, and (iii) is enforceable in accordance with its respective terms (subject to applicable bankruptcy, insolvency, reorganization, receivership or other laws affecting the rights of creditors generally and financial institutions in particular and by general equity principles including those respecting the availability of specific performance).
- (c) Conflicts; Defaults; Etc. The execution, delivery and performance of this Agreement by Bank, its compliance with the terms hereof, and the consummation of the transactions specified herein will not (i) conflict with, violate, result in the breach of, constitute an event which would, or with the lapse of time or action by a third party or both would, result in a default under, or accelerate the performance required by, the terms of any material contract, instrument or agreement to which Bank is a party or by which it is bound, except for conflicts, breaches and defaults which would not have a material and adverse effect upon Bank, the Program, the Accounts, Cardholder Indebtedness or Bank's ability to perform its obligations under this Agreement; (ii) conflict with or violate the articles of incorporation or by-laws, or any other equivalent organizational document(s) of Bank;

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- (iii) violate any Applicable Law or conflict with, or require any consent or approval under any judgment, order, writ, decree, permit or license, to which Bank is a party or by which it is bound or affected, except to the extent that such violation or the failure to obtain such consent or approval would not have a material and adverse effect upon Bank, the Program, the Accounts, the Cardholder Indebtedness or Bank's ability to perform its obligations under this Agreement; (iv) require the consent or approval of any other party to any contract, instrument or commitment to which Bank is a party or by which it is bound, except to the extent that the failure to obtain such consent or approval would not have a material and adverse effect upon Bank's ability to perform its obligations under this Agreement; or (v) require any filing with, notice to, consent or approval of, or any other action to be taken with respect to, any regulatory authority, except to the extent that the failure to obtain such consent or approval would not have a material and adverse effect upon Bank's ability to perform its obligations under this Agreement.
- (d) Solvency. Bank is solvent.
- (e) No Default. Neither Bank nor, to the best of its Knowledge, its Affiliates are in default with respect to any contract, agreement, lease, or other instrument to which it is a party or by which it is bound, except for defaults which would not have a material and adverse effect upon Bank, the Program, the Accounts, Cardholder Indebtedness or Bank's ability to perform its obligations under this Agreement, nor has Bank received any notice of default under any such contract, agreement, lease or other instrument which default or notice of default would materially and adversely affect the performance by Bank of its obligations under this Agreement. No Bank Event of Default has occurred and is continuing.
- (f) Books and Records. All of Bank's and, to the best of its Knowledge, its Affiliates' records, files and books of account relating to the Program are in all material respects complete and correct and are maintained in accordance with Applicable Law.
- (g) No Litigation. No action, claim, or any litigation, proceeding, arbitration, investigation or controversy is pending or, to the best of Bank's Knowledge, threatened against Bank or its Affiliates, at law, in equity or otherwise, before any court, board, commission, agency or instrumentality of any federal, state, or local government or of any agency or subdivision thereof or before any arbitrator or panel of arbitrators, to which Bank is a party, which, if adversely determined, could have a material and adverse effect on Bank, the Program, the Accounts, Cardholder Indebtedness or Bank's ability to perform its obligations under this Agreement, nor, to the best of Bank's Knowledge, do facts exist which might give rise to any such proceedings. Bank, further, is not the subject of any action by a regulatory authority; and is not subject to any agreement, orders or directives with any regulatory authority with respect to its operations affecting the Accounts, Cardholder Indebtedness and the Program, any other aspect of Bank's business that relates to the Program or the ability of Bank to consummate the transactions specified herein.

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- (h) FDIC Insurance. Bank is FDIC-insured, and to the best of Bank's Knowledge, no proceeding is contemplated to revoke such insurance.
 - (i) The Bank Licensed Marks. Bank, or one of its Affiliates, is the owner of the Bank Licensed Marks and Bank has the right, power and authority to license to Kohl's the use of the Bank Licensed Marks in connection with the Program and the use of the Bank Licensed Marks by Kohl's in a manner approved (or deemed approved) by Bank shall not
 - (i) violate any Applicable Law or
 - (ii) infringe upon the right(s) of any third party.

11.3 General Covenants of Kohl's.

Kohl's makes the following covenants to Bank, each and all of which shall survive the execution and delivery of this Agreement:

- (a) Maintenance of Existence and Conduct of Business. Kohl's shall preserve and keep in full force and effect its corporate existence, other than in the event of a change in control, merger or consolidation in which Kohl's is not the surviving entity.
- (b) Litigation. Kohl's promptly shall notify Bank in writing if it receives written notice of any litigation that, if adversely determined, would have a material and adverse effect on the Program, the Accounts in the aggregate or Kohl's ability to perform its obligations hereunder.
- (c) Enforcement of Rights. Except as otherwise specified herein, Kohl's shall enforce its rights against third parties to the extent that a failure to enforce such rights could reasonably be expected to materially and adversely affect the Program, Accounts in the aggregate or Kohl's ability to perform its obligations hereunder. Kohl's shall not enter into any agreement which, at the time such agreement is executed, could reasonably be expected to have a material and adverse effect on the Program, the Accounts in the aggregate or Kohl's ability to perform its obligations hereunder.
- (d) Reports and Notices. Kohl's will provide Bank with a telephonic, telefacsimile or PDF e-mail notice specifying the nature of any Event of Default where Kohl's is the defaulting party or Kohl's Event of Default, or any event which, with the giving of notice or passage of time or both, would constitute a Kohl's Event of Default or any Event of Default where Kohl's is the defaulting party or any development or other information which is likely to have a material and adverse effect on the Program, the Accounts in the aggregate or Kohl's ability to perform its obligations pursuant to this Agreement. Notices pursuant to this Section 11.3(d) relating to Kohl's Events of Default or any Event of Default where Kohl's is the defaulting party shall be provided within two (2) Business Days after Kohl's has Knowledge of the existence of such default. Notices relating to all other

events or developments described in this Section 11.3(d) shall be provided (i) within two (2) Business Days after Kohl's becomes aware of the existence of such event or development if such event or development has already occurred, and (ii) with respect to events or developments that have yet to occur, as early as reasonably practicable under the circumstances. Any notice provided under this section shall be confirmed in writing to Kohl's within five (5) Business Days after the transmission of the initial notice.

- (e) Applicable Law/Operating Policies. Kohl's shall at all times during the Term of this Agreement comply in all material respects with Applicable Law affecting obligations under this Agreement and the Operating Policies.
- (f) Disputes with Cardholders. Kohl's shall cooperate with Bank in a timely manner (but in no event less promptly than required by Applicable Law) to resolve all disputes with Cardholders.
- (g) Affiliate Compliance. Kohl's shall, to the extent necessary, cause its Affiliates to comply with the terms of this Agreement.
- (h) Disposition of any Kohl's Channels. Kohl's shall promptly notify Bank of any material disposition or discontinuance of Kohl's Channels.

11.4 General Covenants of Bank.

Bank makes the following covenants to Kohl's, each and all of which shall survive the execution and delivery of this Agreement:

- (a) Maintenance of Existence and Conduct of Business. Bank shall preserve and keep in full force and effect its corporate existence other than in the event of a change in control, merger or consolidation in which Bank or its Parent is not the surviving entity.
- (b) Litigation. Bank promptly shall notify Kohl's in writing if it receives written notice of any litigation that, if adversely determined, would have a material and adverse effect on the Program, the Accounts in the aggregate or Bank's ability to perform its obligations hereunder.
- (c) Enforcement of Rights. Except as otherwise specified herein, Bank shall enforce its rights against third parties to the extent that a failure to enforce such rights could reasonably be expected to materially and adversely affect the Program, Kohl's or Bank's ability to perform its obligations hereunder. Bank shall not enter into any agreement which, at the time such agreement is executed, could reasonably be expected to have a material and adverse effect on the Program or Bank's ability to perform its obligations hereunder.
- (d) Reports and Notices. Bank will provide Kohl's with a telephonic, telefacsimile or PDF e-mail notice specifying the nature of any Event or Default where Bank is defaulting party any Bank Event of Default, or any event which, with the giving of notice or passage of time or both, would

constitute a Bank Event of Default or any Event of Default where Bank is the defaulting party, or any development or other information which is likely to have a material and adverse effect on the Program, the Accounts in the aggregate or Bank's ability to perform its obligations pursuant to this Agreement. Notice pursuant to this Section 11.4(d) relating to Bank Events of Default or any Event of Default where Bank is the defaulting party shall be provided within two (2) Business Days after Bank becomes aware of the existence of such default. Notices relating to all other events or developments described in this Section 11.4(d) shall be provided (i) within two (2) Business Days after Bank becomes aware of the existence of such event or development if such event or development has already occurred, and (ii) with respect to events or developments that have yet to occur, as early as reasonably practicable under the circumstances. Any notice produced under this section shall be confirmed in writing to Bank within five (5) Business Days after transmission of the initial notice.

- (e) Applicable Law/Operating Policies. Bank shall at all times during the Term comply in all material respects with Applicable Law and the Operating Policies. Bank shall at all times during the Term maintain its bank charter and FDIC insurance.
- (f) Books and Records. Bank shall keep adequate records and books of account with respect to the Accounts and Cardholder Indebtedness in which proper entries, reflecting all of Bank's financial transactions relating to the Program, are made in accordance with GAAP. All of Bank's records, files and books of account shall be in all material respects complete and correct and shall be maintained in accordance with good business practice and Applicable Law.
- (g) Affiliate Compliance. Bank shall, to the extent necessary, cause its Affiliates to comply with the terms of this Agreement.

ARTICLE 12

CONFIDENTIALITY

12.1 General Confidentiality.

- (a) For purposes of this Agreement, "Confidential Information" means any of the following: (i) information that is provided by or on behalf of either Kohl's or Bank to the other party or its agents in connection with the Program; or (ii) information about Kohl's or Bank or their Affiliates, or their respective businesses or employees, that is otherwise obtained by the other party in connection with the Program, in each case including but, not limited to: (A) information concerning marketing plans, objectives and financial results; (B) information regarding business systems, methods, processes, financing data, programs and products; (C) information unrelated to the Program obtained by Kohl's or Bank in connection with this Agreement, including by accessing or

being present at the business location of the other party; (D) proprietary technical information, including source codes; (E) information about Credit Card usage that is not identifiable to Cardholders, which shall solely be the Confidential Information of Kohl's; and (F) any information, data, materials, and elements relating to and/or comprising Intellectual Property. Confidential Information shall include Cardholder Data, the Qualified Kohl's Customer List or Kohl's Shopper Data and shall be governed by this Article 12, except as expressly provided elsewhere in this Agreement. Program-related data, including financial data related to the Program, that is not personally identifiable to a Cardholder shall be the Confidential Information of each party.

- (b) The restrictions on disclosure of Confidential Information under this Article 12 shall not apply to, with respect to Kohl's or Bank, information that: (i) is already rightfully known to such party at the time it obtains Confidential Information from the other party; (ii) is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement or any other confidentiality obligations; (iii) is lawfully received on a non-confidential basis from a third party authorized to disclose such information without restriction and without breach of this Agreement; (iv) is contained in, or is capable of being discovered through examination of publicly available records or products; (v) is required to be disclosed by Applicable Law (provided that the party subject to such Applicable Law shall, if permitted by Applicable Law, notify the other party of any such use or requirement prior to disclosure of any Confidential Information obtained from the other party in order to afford such other party an opportunity to seek a protective order to prevent or limit disclosure of the Confidential Information to third parties and shall disclose Confidential Information of the other party only to the extent required by such Applicable Law); or (vi) is developed by Kohl's or Bank without the use of any proprietary, non-public information provided by the other party under this Agreement. Nothing herein shall be construed to permit the Receiving Party (as defined below) to disclose to any third party any Confidential Information that the Receiving Party is required to keep confidential under Applicable Law.
- (c) The terms and conditions of this Agreement shall be the Confidential Information of both Kohl's and Bank.
- (d) If Kohl's or Bank receive Confidential Information of the other party ("Receiving Party"), the Receiving Party shall do the following with respect to the Confidential information of the other party ("Disclosing Party"): (i) keep the Confidential Information of the Disclosing Party secure and confidential; (ii) treat all Confidential Information of the Disclosing Party with the same degree of care as it accords its own Confidential Information, but in no event less than a reasonable degree of care; and (iii) implement and maintain commercially reasonable physical, electronic, administrative and procedural security measures, including commercially reasonable authentication, access controls, virus protection and intrusion detection practices and procedures.

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- (e) Upon reasonable request, Kohl's and Bank each shall have the right to review the other party's information security standards and shall notify the other party prior to materially modifying such procedures.

12.2 Use and Disclosure of Confidential Information

- (a) Each Receiving Party shall use and disclose the Confidential Information of the Disclosing Party only for the purpose of performing its obligations or enforcing its rights with respect to the Program and this Agreement or as otherwise expressly permitted by this Agreement, and shall not accumulate in any way or make use of such Confidential Information for any other purpose.
- (b) Each Receiving Party shall: (i) limit access to the Disclosing Party's Confidential Information to those employees, authorized agents, vendors, consultants, service providers and subcontractors who have a reasonable need to access such Confidential Information in connection with the Program; and (ii) ensure that any Person with access to the Disclosing Party's Confidential Information agrees to be bound by the provisions of this Article 12 and maintains the existence of this Agreement and the nature of their obligations hereunder strictly confidential.
- (c) The parties acknowledge that the Confidential Information pertaining to consumer Cardholders, applicants and the Accounts received by Kohl's under this Agreement may include "nonpublic personal information" ("NPPI"), as such term is defined in Title V of the federal Gramm-Leach-Bliley Act (Pub. L. 106-102) as implemented and interpreted by regulations promulgated pursuant thereto (the "Privacy Act and Regulations"). Subject to Section 6.4, to the extent Kohl's is receiving NPPI from Program applicants, Cardholders or otherwise from Bank in connection with this Agreement, such NPPI shall be and remain the property of Bank and Kohl's shall not possess or assert any ownership interest or right to NPPI. Subject to Sections 6.3 and 6.4, neither Kohl's nor Bank shall use or disclose such NPPI for purposes other than those necessary for each party to exercise its rights and carry out its obligations under this Agreement, and as otherwise permitted by Program Privacy Policy and Applicable Law, including in the provisions of the Privacy Act and Regulations applicable to the reuse and redisclosure of NPPI (see, e.g., 12 CFR 40.11).

12.3 Unauthorized Use or Disclosure of Confidential Information

Each Receiving Party agrees that any unauthorized use or disclosure of Confidential Information of the Disclosing Party might cause immediate and irreparable harm to the Disclosing Party for which money damages might not constitute an adequate remedy. In that event, the Receiving Party agrees that injunctive relief may be warranted in addition to any other remedies the Disclosing Party may have. In addition, the Receiving Party agrees promptly to advise the Disclosing Party by telephone and in writing via facsimile or PDF e-mail of any security breach that may have compromised any Confidential Information, of any unauthorized misappropriation, disclosure or use by any person of the Confidential Information of the Disclosing Party which may come to its attention and to take all steps at its own expense reasonably requested by the Disclosing Party to limit, stop or otherwise remedy such misappropriation, disclosure or use.

12.4 Return or Destruction of Confidential Information

Upon the termination or expiration of this Agreement, the Receiving Party shall comply with the Disclosing Party's reasonable instructions regarding the disposition of the Disclosing Party's Confidential Information, which may include return of any and all the Disclosing Party's Confidential Information (including any electronic or paper copies, reproductions, extracts or summaries thereof); provided, however, the Receiving Party in possession of tangible property containing the Disclosing Party's Confidential Information may retain one archived copy of such material, subject to the terms of this Agreement, which may be used solely for regulatory purposes and may not be used for any other purpose. Such compliance shall be certified in writing, including a statement that no copies of Confidential Information have been kept, except as necessary for regulatory purposes.

ARTICLE 13

RETAIL PORTFOLIO ACQUISITIONS AND DISPOSITIONS

13.1 Retail Portfolio Acquisition.

The parties agree as set forth on **Schedule 13.1** with respect to retail portfolio acquisitions.

13.2 Retail Disposition.

Nothing in this Agreement shall be deemed to require Kohl's to maintain any Kohl's Channel, in whole or in part, during the Term of this Agreement or prevent Kohl's from ceasing to operate any Kohl's Channel, in whole or in part, during the Term of this Agreement. In the event that Kohl's arranges for the disposition of any of its retail establishments in the United States during the Term of this Agreement, Kohl's may, in its discretion, offer its designated purchaser the right to acquire the portion of the Program Assets related to such disposition and Bank shall cooperate and use commercially reasonable efforts to consummate such disposition to the same extent as if such disposition were a transfer of Program Assets upon the expiration of this Agreement as provided in Article 16.

ARTICLE 14

EVENTS OF DEFAULT; RIGHTS AND REMEDIES

14.1 Events of Default.

The parties agree as set forth on **Schedule 14.1** with respect to Events of Default.

14.2 Defaults by Bank.

The parties agree as set forth on **Schedule 14.2** with respect to defaults by Bank.

14.3 Defaults by Kohl's.

The parties agree as set forth on **Schedule 14.3** with respect to defaults by Kohl's.

14.4 Remedies for Events of Default.

The parties agree as set forth on **Schedule 14.4** with respect to Remedies for Events of defaults.

ARTICLE 15

TERM/TERMINATION

15.1 Term.

This Agreement shall continue in full force and effect for seven (7) years from the Effective Date (the "**Initial Term**"). The Agreement shall renew automatically without further action of the parties for successive one (1) year terms (each a "**Renewal Term**") unless either party provides written notice of non-renewal at least six (6) months prior to the expiration of the Initial Term or current Renewal Term, as the case may be.

15.2 Termination by Kohl's Prior to the End of the Initial Term or a Renewal Term.

Kohl's may terminate this Agreement upon written notice prior to the end of the Initial Term or any Renewal Term on any basis set forth on **Schedule 15.2**.

15.3 Termination by Bank Prior to the End of the Initial Term or Renewal Term.

Bank may terminate this Agreement upon written notice prior to the end of the Initial Term or any Renewal Term on any basis set forth on **Schedule 15.3**.

ARTICLE 16

EFFECTS OF TERMINATION

16.1 General Effects.

- (a) All obligations of the parties including (i) operating the Program and servicing of the Accounts in good faith and in the ordinary course of their respective businesses, (ii) solicitations, marketing and advertising of the Program, and (iii) acceptance of applications through Kohl's Channels in the ordinary course of business consistent with past practice, shall continue during the Termination Period upon notice of termination or non-renewal of this Agreement by either party, except as the parties may mutually agree, subject to the terms of this Agreement, until the expiration of the

Termination Period. The parties will cooperate in good faith to ensure the orderly wind-down or transfer of the Program, including with respect to the Bank, providing such transition support as reasonably requested by Kohl's. Bank shall provide such transition support to Kohl's at its then-current rates; provided however, that Bank shall waive any amounts due and owing by Kohl's for such transition services if Kohl's terminates this Agreement upon the occurrence of a Bank Event of Default or any other Event of Default where Bank is the defaulting party, unless otherwise determined by a court of competent jurisdiction after the resolution of all appeals.

- (b) Upon the expiration of the Termination Period, all obligations of the parties under this Agreement shall cease, except that the provisions specified in Section 18.24 shall survive.

16.2 Kohl's Option to Purchase the Program Assets.

The parties agree as set forth in **Schedule 16.2** with respect to Kohl's option to purchase the Program Assets.

16.3 Rights of Bank if Purchase Option not Exercised.

The parties agree as set forth on **Schedule 16.3** with respect to the rights of Bank if Kohl's Purchase Option is not exercised.

ARTICLE 17

INDEMNIFICATION

17.1 Kohl's Indemnification of Bank.

From and after the Effective Date, Kohl's shall indemnify and hold harmless Bank, its Affiliates, their respective officers, directors, employees, agents and representatives and any Person claiming by or through any of them from and against and in respect of any and all losses, liabilities, damages, costs and expenses of whatever nature, including reasonable attorneys' fees and expenses relating to third-party claims, which are caused or incurred by, result from, arise out of or relate to:

- (a) Kohl's or its Licensee's negligence, gross negligence, recklessness or willful misconduct (including acts and omissions) relating to the Program;
- (b) any breach by Kohl's, its Licensee's or any of its Affiliates, or their respective officers, directors employees or agents of any of the material terms, covenants, representations, warranties or other provisions contained in this Agreement or of Kohl's or its Affiliates' obligations under any Credit Card Agreement, if any;
- (c) Kohl's, or its Licensee's, failure to satisfy any of its material obligations or liabilities to third parties, including its obligations to Cardholders in respect of the purchase of Goods and/or Services;

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- (d) any actions or omissions by Bank taken or not taken at Kohl's written request or direction pursuant to this Agreement except where Bank would have been otherwise required to take such action (or refrain from acting) absent the request or direction of Kohl's;
 - (e) fraudulent acts by Kohl's, or its Licensee's or its Affiliates, or their respective officers, directors employees or agents;
 - (f) the failure of Kohl's or its Licensee's to comply with Applicable Law or Operating Policies unless such failure was the result of any action taken or not taken by Kohl's or its Licensee's at the specific written request or direction of Bank;
 - (g) Kohl's Inserts or Billing Statement messages;
 - (h) allegations by a third party that the use of the Kohl's Licensed Marks or any materials or documents provided by Kohl's constitutes: (i) libel, slander, and/or defamation; (ii) infringement of intellectual property, including trademark infringement or dilution, or copyright infringement; (iii) unfair competition or misappropriation of another's ideas or trade secret; (iv) invasion of rights of privacy or rights of publicity; or (v) breach of contract or tortious interference; or
 - (i) allegations by a third party that the use of the Kohl's Core Systems or anything provided by Kohl's under **Schedule 4.10** (including Kohl's Core Systems, software or licenses) constitutes infringement, misappropriation or violation of intellectual property unless such allegations are caused by a failure of Bank, its personnel and any third parties engaged thereby to (i) have complied with applicable licenses, and (ii) have maintained the confidentiality of source codes as applicable.

17.2 Bank's Indemnification of Kohl's.

From and after the Effective Date, Bank shall indemnify and hold harmless Kohl's, its Affiliates, their respective officers, directors, employees, agents and representatives and any Person claiming by or through any of them from and against and in respect of any and all losses, liabilities, damages, costs and expenses of whatever nature, including reasonable attorneys' fees and expenses, relating to third-party claims, which are caused or incurred by, result from, arise out of or relate to:

- (a) Bank's negligence, gross negligence, recklessness or willful misconduct (including acts and omissions) relating to the Program;
- (b) any breach by Bank or any of its Affiliates, or their respective officers, directors employees or agents of any of the material terms, covenants, representations, warranties or other provisions contained in this Agreement, or any Credit Card Agreement;

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- (c) Bank's failure to satisfy any of its material obligations or liabilities to third parties, including Cardholders;
 - (d) any actions or omissions by Kohl's taken or not taken at Bank's written request or direction pursuant to this Agreement, except where Kohl's would have been otherwise required to take such action (or refrain from acting) absent the request or direction of Bank;
 - (e) fraudulent acts by Bank, its Affiliates or their respective officers, directors employees or agents;
 - (f) any Account Documentation used by Kohl's after Bank's legal review and approval that fails to comply with Applicable Law unless such failure to comply is as a result of subsequent modification to such Account Documentation by Kohl's;
 - (g) the failure of Bank to comply with Applicable Law or the Operating Policies unless such failure was the result of any action taken or not taken by Bank at the specific written request or direction of Kohl's;
 - (h) the Bank's Inserts or Billing Statement messages;
 - (i) the Bank's failure to perform its obligations under the Purchase Agreement;
 - (j) allegations by a third party that the use of the Bank Licensed Marks or any materials or documents provided by Bank constitutes: (i) libel, slander, and/or defamation; (ii) infringement of intellectual property, including trademark infringement or dilution, or copyright infringement, (iii) unfair competition or misappropriation of another's ideas or trade secret; (iv) invasion of rights of privacy or rights of publicity; or (v) breach of contract or tortious interference; and
 - (k) allegations by a third party that the use of the Bank Systems or anything provided by Bank under **Schedule 4.10** (including Bank Systems, software or licenses) constitutes infringement, misappropriation or violation of intellectual property unless such allegations are caused by a failure of Kohl's, its personnel and any third parties engaged thereby to (i) have complied with licenses and training provided pursuant to subsection (b) of **Schedule 4.10** after Bank has completed such training and other obligations set forth in subsection (b) **Schedule 4.10**, (ii) have maintained the confidentiality of source codes accessed pursuant thereto in accordance with this Agreement, and (iii) use or alter the Bank Systems or anything provided by subsection (b) of **Schedule 4.10** in a manner consistent with the installation, tuning, maintenance and support therefor provided by Bank pursuant to subsection (b) of **Schedule 4.10** after Bank has completed such support and other obligations set forth in subsection (b) of **Schedule 4.10**.

17.3 Procedures.

- (a) In case any claim is made, or any suit or action is commenced, against either party (the “Indemnified Party”) in respect of which indemnification may be sought by it under this Article 17, the Indemnified Party shall promptly give the other party (the “Indemnifying Party”) notice thereof and the Indemnifying Party shall be entitled to participate in the defense thereof and, with prior written notice to the Indemnified Party given not later than twenty (20) days after the delivery of the applicable notice, to assume, at the Indemnifying Party’s expense, the defense thereof, with counsel reasonably satisfactory to such Indemnified Party. After notice from the Indemnifying Party to such Indemnified Party of its election so to assume the defense thereof, the Indemnifying Party will not be liable to such Indemnified Party under this Section for any attorneys’ fees or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof other than reasonable costs of investigation.
- (b) The Indemnified Party shall have the right to employ its own counsel if the Indemnifying Party elects to assume such defense, but the fees and expenses of such counsel shall be at the Indemnified Party’s expense, unless (i) the employment of such counsel has been authorized in writing by the Indemnifying Party, (ii) the Indemnifying Party has not employed counsel to take charge of the defense within twenty (20) days after delivery of the applicable notice or, having elected to assume such defense, thereafter ceases its defense of such action, or (iii) the Indemnified Party has reasonably concluded that there may be defenses available to it which are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of the Indemnified Party), in any of which event attorneys’ fees and expenses shall be borne by the Indemnifying Party.
- (c) The Indemnifying Party shall promptly notify the Indemnified Party if the Indemnifying Party desires not to assume, or participate in the defense of, any such claim, suit or action.
- (d) The Indemnified Party or Indemnifying Party may at any time notify the other of its intention to settle or compromise any claim, suit or action against the Indemnified Party in respect of which payments may be sought by the Indemnified Party hereunder, and (i) the Indemnifying Party may settle or compromise any such claim, suit or action solely for the payment of money damages, but shall not agree to any other settlement or compromise without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld (it being agreed that any failure of an Indemnified Party to consent to any settlement or compromise involving relief other than monetary damages shall not be deemed to be unreasonably withheld), and (ii) the Indemnified Party may settle or compromise any such claim, suit or action solely for an amount not exceeding One Thousand Dollars (\$1,000), but shall not settle or compromise any other matter without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

17.4 Notice and Additional Rights and Limitations.

- (a) If an Indemnified Party fails to give prompt notice of any claim being made or any suit or action being commenced in respect of which indemnification under this Article 17 may be sought, such failure shall not limit the liability of the Indemnifying Party; provided, however, that this provision shall not be deemed to limit the Indemnifying Party's rights to recover for any loss, cost or expense which it can establish resulted from such failure to give prompt notice.
- (b) This Article 17 shall govern the obligations of the parties with respect to the subject matter hereof but shall not be deemed to limit the rights which any party might otherwise have at law or in equity.

ARTICLE 18

MISCELLANEOUS

18.1 Limitation of Liability.

Notwithstanding anything to the contrary in this Agreement, no party shall be liable to the other party for punitive, consequential, indirect or exemplary damages relating to or arising out of this Agreement, any breach hereof or any of the transactions provided for therein; provided, however, the limitations set forth in this Section 18.1 shall not apply with respect to the following: (i) damages occasioned by the willful misconduct, fraud or gross negligence of either party; (ii) third-party claims that are the subject of indemnification pursuant to Article 17; (iii) damages occasioned by a party's breach of its obligations under Section 6.5 or Article 12 covering data security and confidentiality.

18.2 Precautionary Security Interest.

Kohl's and Bank agree that this Agreement contemplates the extension of credit by Bank to Cardholders. However, as a precaution in the unlikely event that any person asserts that Article 9 of the UCC applies or may apply to the transactions contemplated hereby, and to secure Kohl's payment of and performance of all obligations of Kohl's to Bank, Kohl's hereby grants to Bank a first priority present and continuing security interest in and to the following, whether now existing or hereafter created or acquired, together with the proceeds thereof: all Accounts, all indebtedness charged to Accounts, and all Charge Transaction Data. In addition, Kohl's agrees to take any reasonable action requested by Bank, at Bank's expense, to establish the first lien and perfected status of such security interest, and appoints Bank as Kohl's attorney-in-fact to take any such action on Kohl's behalf; provided that Bank shall be responsible for preparing any such documentation.

18.3 Securitization; Participation.

Bank shall have the right to securitize, pledge or participate the Cardholder Indebtedness or any part thereof by itself or as part of a larger offering at any time, in such a manner that allows Bank to obtain cash flows representing all or most of the economic benefits of owning such Cardholder Indebtedness. Such securitization, pledge or participation shall not affect Kohl's rights or Bank's obligations hereunder. Bank shall not securitize, pledge or participate the Cardholder Indebtedness in any manner that may encumber any of Kohl's rights hereunder to purchase the Program Assets. All uses of the Kohl's Licensed Marks in any securitization document shall be made in accordance with Section 10.1 and with the prior written approval of Kohl's.

18.4 Assignment.

Except as provided in this Section 18.4, neither party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other party; provided, however, that either party may, without the consent of the other party, assign this Agreement in whole or in part to an Affiliate of such party or as part of a transfer of all or substantially all of the assets of such party.

18.5 Sale or Transfer of Accounts.

Except as provided in Sections 13.2 and 18.3, the Bank shall not sell or transfer in whole or in part the Accounts.

18.6 Subcontracting.

It is understood and agreed that, in fulfilling its obligations under this Agreement, either party may utilize its Affiliates or other Persons to perform functions. The party shall be responsible for functions performed by such Affiliates or other Persons to the same extent the party would be responsible if it performed such functions itself.

18.7 Amendment.

Except as provided herein, this Agreement may not be amended except by a written instrument executed and delivered by Bank and Kohl's. For the avoidance of doubt, an email shall not constitute a written instrument for purposes of this Section 18.7.

18.8 Non-Waiver.

No delay by a party hereto in exercising any of its rights hereunder, or partial or single exercise of such rights, shall operate as a waiver of that or any other right. The exercise of one or more of a party's rights hereunder shall not be a waiver of, or preclude the exercise of, any rights or remedies available to such party under this Agreement or in law or at equity.

18.9 Severability.

If any provision of this Agreement is held to be invalid, void or unenforceable, all other provisions shall remain valid and be enforced and construed as if such invalid provision were never a part of this Agreement.

18.10 Waiver of Jury Trial and Venue.

- (a) The parties hereto waive all right to trial by jury in any action or proceeding to enforce or defend any rights under this Agreement.
- (b) Any lawsuit brought by a party against the other party shall be brought in the United States District Court in the jurisdiction where the headquarters of the party against which the suit is being brought is located.

18.11 Governing Law.

This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to internal principles of conflict of laws, and applicable federal law.

18.12 Captions.

Captions of the articles and sections of this Agreement are for convenient reference only and are not intended as a summary of such articles or sections and do not affect, limit, modify or construe the contents thereof.

18.13 Notices.

Any notice, approval, acceptance or consent required or permitted under this Agreement shall be in writing to the other party and shall be deemed to have been duly given when delivered in person or, if sent by United States registered or certified mail, with postage prepaid, or by a nationally recognized overnight delivery service, when received, addressed as follows:

If to Kohl's:

Kohl's Department Stores, Inc.
N56 W17000 Ridgewood Drive
Menomonee Falls, Wisconsin 53051
Attention: Chief Executive Officer

With a copy to (which copy shall not constitute notice):

Kohl's Department Stores, Inc.
N56 W17000 Ridgewood Drive
Menomonee Falls, Wisconsin 53051
Attention: General Counsel
Fax: (262) 703-7274

If to Bank: Capital One Services, LLC
15000 Capital One Drive
Glen Allen, VA 23832
Attention: James Banta, Managing Vice President
Fax: 804-284-1922

With a copy to (which copy shall not constitute notice): Capital One Financial Corporation
1680 Capital One Drive
McLean, VA 22102
Attention: Shahin Rezai, Esq.
Chief Counsel – Transactions
Fax: 703-720-2221

18.14 Further Assurances.

Kohl's and Bank agree to produce or execute such other documents or agreements as may be necessary or desirable for the execution and implementation of this Agreement and the consummation of the transactions specified herein and to take all such further action as the other party may reasonably request in order to give evidence to the consummation of the transactions specified herein. Without limiting the foregoing each party shall use commercially reasonable efforts to enable Bank to enter into and close the Purchase Agreement.

18.15 No Joint Venture.

Nothing contained in this Agreement shall be deemed or construed by the parties or any third party to create the relationship of principal and agent, partnership, joint venture or of any association between Kohl's and Bank, and no act of either party shall be deemed to create any such relationship. Kohl's and Bank each agree to such further actions as the other may request to evidence and affirm the non-existence of any such relationship.

18.16 Press Releases.

Kohl's and Bank shall mutually agree on the content, timing and distribution of a press release announcing the execution of this Agreement. Kohl's and Bank each shall obtain the prior written approval of the other party with regard to the substance and timing of any press releases which announce the execution of this Agreement or the transactions specified herein, which prior approval shall not unreasonably be withheld or delayed. At all times thereafter, Kohl's and Bank, prior to issuing any press releases concerning this Agreement or the transactions specified herein, shall consult with each other concerning the proposed substance and timing of such releases and give due consideration to the comments of the other party relating thereto.

18.17 No Set-Off.

Kohl's and Bank agree that each party has waived any right to set-off, combine, consolidate or otherwise appropriate and apply (i) any assets of the other party held by the party or (ii) any indebtedness or other liabilities at any time owing by the party to the other party, as the case may be, against or on account of any obligations owed by the other party under this Agreement, except as expressly set forth herein.

18.18 Conflict of Interest.

Each party hereto, in performing its obligations hereunder, shall establish and maintain appropriate business standards, procedures and controls. Each party shall review such standards, procedures and controls with reasonable frequency during the Term of this Agreement including those related to the activities of its employees and agents in their relations with the employees, agents and representatives of the other parties hereto and with other third parties.

18.19 Third Parties.

There are no third-party beneficiaries to this Agreement. The parties do not intend: (i) the benefits of this Agreement to inure to any third party; or (ii) any rights, claims or causes of action against a party to be created in favor of any person or entity other than the other party.

18.20 Force Majeure.

If performance of any service or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of labor disputes, strikes, acts of God, floods, lightning, severe weather, shortages of materials, rationing, utility or communication failures, earthquakes, war, revolution, civil commotion, acts of public enemies, blockade, embargo or any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect of any government or any judicial authority or representative of any such government, or any other act whatsoever, whether similar or dissimilar to those referred to in this clause, which are beyond the reasonable control of a party and could not have been prevented by reasonable precautions, then such party shall be excused from such performance to the extent of and during the period of such prevention, restriction, delay or interference. A party excused from performance pursuant to this Section shall exercise all reasonable efforts to continue to perform its obligations hereunder, including by implementing its disaster recovery and business continuity plan as provided pursuant to Section 7.7, and shall thereafter continue with reasonable due diligence and good faith to remedy its inability to so perform except that nothing herein shall obligate either party to settle a strike or other labor dispute when it does not wish to do so.

18.21 Entire Agreement.

This Agreement, together with the Schedules hereto which are expressly incorporated herein by reference, supersedes any other agreement, whether written or oral, that may have been made or entered into by Kohl's and Bank (or by any officer or employee of either of such parties) relating to the matters specified herein and constitutes the entire agreement by the parties related to the matters specified herein or therein.

18.22 Binding Effect; Effectiveness.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement is the product of negotiation by the parties having the assistance of counsel and other advisers. It is the intention of the parties that this Agreement not be construed more strictly with regard to one party than with regard to the other.

18.23 Counterparts/Facsimiles/PDF E-Mails.

This Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same instrument, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Any telefacsimile or PDF e-mailed version of an executed counterpart shall be deemed an original.

18.24 Survival.

Upon the termination of this Agreement, the parties shall have the rights and remedies described herein. Upon such termination, all obligations of the parties under this Agreement shall cease, except that the obligations of the parties pursuant to Sections 6 (Cardholder and Customer Information), 10 (Licensing of Trademarks; Intellectual Property), 12 (Confidentiality), 16 (Effects of Termination), 17 (Indemnification), 18.1 (Limitation of Liability), 18.10 (Waiver of Jury Trial and Venue) and 18.11 (Governing Law) shall survive the expiration or termination of this Agreement. In furtherance and not in limitation of the foregoing, Bank shall be entitled to collect Accounts in any lawful manner.

18.25 Consents.

Unless otherwise expressly set forth herein, whenever the consent or approval of a party is required under this Agreement, such consent shall not be unreasonably withheld or delayed.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed as of the date first above written.

KOHL'S DEPARTMENT STORES, INC.

By: /s/ Wesley S. McDonald

Name: Wesley S. McDonald

Title: EVP, Chief Financial Officer

CAPITAL ONE, NATIONAL ASSOCIATION

By: /s/ Richard D. Fairbank

Name: Richard D. Fairbank

Title: Chief Executive Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kevin Mansell, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Kohl's Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: September 3, 2010

/s/ Kevin Mansell
Kevin Mansell
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Wesley S. McDonald, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Kohl's Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: September 3, 2010

/s/ Wesley S. McDonald

Wesley S. McDonald

Executive Vice President and Chief Financial Officer

(Principal Financial and Chief Accounting Officer)

**CERTIFICATION OF PERIODIC REPORT
BY CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kevin Mansell, Chief Executive Officer of Kohl's Corporation (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to the undersigned's knowledge, on the date of this Certification:

1. the Quarterly Report on Form 10-Q of the Company for the quarterly period ended July 31, 2010 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: September 3, 2010

/s/ Kevin Mansell
Kevin Mansell
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF PERIODIC REPORT
BY CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Wesley S. McDonald, Chief Financial Officer of Kohl's Corporation (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to the undersigned's knowledge, on the date of this Certification:

1. the Quarterly Report on Form 10-Q of the Company for the quarterly period ended July 31, 2010 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: September 3, 2010

/s/ Wesley S. McDonald
Wesley S. McDonald
Executive Vice President and Chief Financial Officer
(Principal Financial and Chief Accounting Officer)