

08/29/2006  
700284182

Form PTO-1594 (Rev. 07/05)  
OMB Collection 0651-0027 (exp. 6/30/2008)

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

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies):**

Five Below, Inc.  
1616 Walnut Street, Suite 400  
Philadelphia, PA 19103

- Individual(s)                       Association  
 General Partnership             Limited Partnership  
 Corporation- State: Pennsylvania  
 Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached?  Yes  No

**3. Nature of conveyance /Execution Date(s) :**

Execution Date(s) 08/18/2006

- Assignment                               Merger  
 Security Agreement                   Change of Name  
 Other Assignment and Security Agreement

**2. Name and address of receiving party(ies)**

Additional names, addresses, or citizenship attached?  Yes  No

Name: Wachovia Bank, National Association  
Internal  
Address: \_\_\_\_\_  
Street Address: One S. Broad Street, 3rd Floor, PA4812  
City: Philadelphia  
State: PA  
Country: United States of America Zip: 19107

- Association    Citizenship \_\_\_\_\_  
 General Partnership    Citizenship \_\_\_\_\_  
 Limited Partnership    Citizenship \_\_\_\_\_  
 Corporation    Citizenship \_\_\_\_\_

Other Nat. Bank Assoc. Citizenship \_\_\_\_\_  
If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

**4. Application number(s) or registration number(s) and identification or description of the Trademark.**

A. Trademark Application No.(s)  
76/426066

B. Trademark Registration No.(s)  
2936635  
2813080

Additional sheet(s) attached?  Yes  No

**C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):**

Box 4A - Identification = "5 BELOW" [application date of 06/28/2002]  
Box 4B- Identification = "FIVE BELOW" [registration date 03/29/2005]  
"FIVE BELOW (stylized)" [registration date 02/10/2004]

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

Name: Lauren Lonergan Taylor, Esquire

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

Street Address: DUANE MORRIS LLP  
30 South 17th Street

City: Philadelphia

State: PA Zip: 19103

Phone Number: 215.979.1503

Fax Number: 215.979.1020

Email Address: LLTaylor@duanemorris.com

**6. Total number of applications and registrations involved:**

3

**7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 120.00**

- Authorized to be charged by credit card  
 Authorized to be charged to deposit account  
 Enclosed

**8. Payment Information:**

a. Credit Card    Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number 04-1679  
Authorized User Name Duane Morris LLP

**9. Signature:**

Lauren Lonergan Taylor  
Signature

8-22-06  
Date

By: Lauren Lonergan Taylor, Esquire, Duane Morris LLP Total number of pages including cover sheet, attachments, and document: 19  
Name of Person Signing

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

THIS TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT ("Agreement"), dated August 18, 2006, is by and between FIVE BELOW, INC., a Pennsylvania corporation ("Borrower") and WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association ("Lender").

WITNESSETH:

WHEREAS, Borrower has adopted, used and is using, and is the owner of the entire right, title, and interest in and to the trademarks, trade names, terms, designs and applications therefor described in Exhibit A hereto and made a part hereof; and

WHEREAS, Borrower and Lender have entered into or are about to enter into financing arrangements pursuant to which Lender may make loans and advances and provide other financial accommodations to Borrower as set forth in the Loan and Security Agreement, dated of even date herewith, by and between Borrower and Lender (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement") and other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto, including, but not limited to, this Agreement (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Financing Agreements"); and

WHEREAS, in order to induce Lender to enter into the Loan Agreement and the other Financing Agreements and to make loans and advances and provide other financial accommodations to Borrower pursuant thereto, Borrower has agreed to grant to Lender certain collateral security as set forth herein. Unless otherwise defined herein, capitalized terms used herein and not defined herein shall have the meaning given to such terms in the Loan Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby agrees as follows:

1. GRANT OF SECURITY INTEREST

As collateral security for the prompt performance, observance and indefeasible payment in full of all of the Obligations, Borrower hereby grants to Lender a continuing security interest in and a general lien upon, and a collateral assignment of, the following (being collectively referred to herein as the "Collateral"): (a) all of Borrower's now existing or hereafter acquired right, title, and interest in and to: (i) all of Borrower's trademarks, trade names, trade styles and service marks and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State, Province or Territory thereof, any political subdivision thereof or in any other country, including, without limitation, the trademarks, terms, designs and applications described in Exhibit A hereto, together with all rights and privileges arising under applicable law with respect to Borrower's use of any trademarks, trade names, trade styles, logos and service marks, and all reissues, extensions, continuation and renewals thereof (all of the

foregoing being collectively referred to herein as the "Trademarks"); and (ii) all prints, recordings and labels on which such trademarks, trade names, trade styles, logos and service marks appear, have appeared or will appear, and all designs and general intangibles of a like nature; (b) the goodwill of the business symbolized by each of the Trademarks, including, without limitation, all customer lists and other records relating to the distribution of products or services bearing the Trademarks; (c) all present and future license and distribution agreements (subject to the rights of the licensors therein) pertaining to the Trademarks, (d) all income, fees, royalties and other payments at any time due or payable with respect thereto, including, without limitation, payments under all licenses at any time entered into in connection therewith; (e) the right to sue or bring other rights of action for past, present and future infringements thereof; (f) all rights corresponding thereto throughout the world; and (g) any and all other proceeds of any of the foregoing, including, without limitation, damages and payments or claims by Borrower against third parties for past or future infringement of the Trademarks.

## 2. OBLIGATIONS SECURED

The security interest, lien and other interests granted to Lender pursuant to this Agreement shall secure the prompt performance, observance and payment in full of any and all Obligations.

## 3. REPRESENTATIONS, WARRANTIES AND COVENANTS

Borrower hereby represents, warrants and covenants with and to Lender the following (all of such representations, warranties and covenants being continuing so long as any of the Obligations are outstanding):

(a) Borrower shall pay and perform all of the Obligations according to their terms.

(b) All of the existing Collateral is valid and subsisting in full force and effect, and Borrower owns the sole, full and clear title thereto, and the right and power to grant the security interest and collateral assignment granted hereunder. Borrower shall, at Borrower's expense, perform all acts and execute all documents necessary to maintain the existence of the Collateral consisting of registered Trademarks as registered trademarks and to maintain the existence of all of the Collateral as valid and subsisting, including, without limitation, the filing of any renewal affidavits and applications; provided, that, to the extent that Borrower determines that any of the foregoing is no longer necessary or in the best interests of the business of Borrower, it shall promptly so notify Lender, which notification shall in any event be no later than thirty (30) days prior to any deadline for performing all such acts and executing all such documents necessary to maintain the existence of the Collateral as valid and subsisting. The Collateral is not subject to any liens, claims, mortgages, assignments, licenses, security interests or encumbrances of any nature whatsoever, except: (i) the security interests granted hereunder and pursuant to the Loan Agreement, (ii) the security interests permitted under the Loan Agreement, and (iii) the licenses permitted under Section 3(e) below.

(c) Borrower shall not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license relating to the Collateral, or otherwise dispose of any of the Collateral, in each case without the prior written consent of Lender, except as otherwise permitted herein or in the Loan Agreement.

Nothing in this Agreement shall be deemed a consent by Lender to any such action, except as such action is expressly permitted hereunder.

(d) Borrower acknowledges that value has been given and agrees that the security interests granted will attach when the Borrower signs this Agreement and the Borrower has any rights in the Collateral.

(e) Borrower shall, at Borrower's expense, promptly perform all acts and execute all documents reasonably requested at any time by Lender to evidence, perfect, maintain, record or enforce the security interest in and collateral assignment of the Collateral granted hereunder or to otherwise further the provisions of this Agreement. Borrower hereby authorizes Lender to execute and file one or more financing statements (or similar documents) with respect to the Collateral. Borrower further authorizes Lender to have this Agreement or any other similar security agreement filed with the Commissioner of Patents and Trademarks or any other appropriate federal, state, provincial, territorial or government office.

(f) As of the date hereof, Borrower does not have any Trademarks registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States, any State, Province or Territory thereof, any political subdivision thereof or in any other country, other than those described in Exhibit A hereto and has not granted any licenses with respect thereto other than as set forth in Exhibit B hereto.

(g) Borrower shall, concurrently with the execution and delivery of this Agreement, execute and deliver to Lender five (5) originals of a Special Power of Attorney in the form of Exhibit C annexed hereto for the implementation of the assignment, sale or other disposition of the Collateral pursuant to Lender's exercise of the rights and remedies granted to it in accordance with the terms hereof.

(h) Lender may, in its discretion, pay any amount or do any act which Borrower fails to pay or do as required hereunder or as reasonably requested by Lender to preserve, defend, protect, maintain, record or enforce the Obligations, the Collateral, or the security interest and collateral assignment granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, reasonable attorneys' fees and legal expenses. Borrower shall be liable to Lender for any such payment, which payment shall be deemed an advance by Lender to Borrower, shall be payable on demand together with interest at the rate then applicable to the indebtedness of Borrower to Lender set forth in the Loan Agreement and shall be part of the Obligations secured hereby.

(i) Borrower shall not file any application for the registration of a Trademark with the United States Patent and Trademark Office, any similar office or agency in the United States, any State, Province or Territory thereof, any political subdivision thereof or in any other country, unless Borrower has given Lender prompt written notice of such action. If, after the date hereof, Borrower shall (i) obtain any registered trademark or trade name, or apply for any registration in the United States Patent and Trademark Office or in any similar office or agency in the United States, any State, Province or Territory thereof, any political subdivision thereof or in any other country, or (ii) become the owner of any trademark registrations or applications for trademark registration used in the United States, any State, Province or Territory thereof, political subdivision thereof or in any other country, the provisions of Section 1 hereof shall automatically

apply thereto. Upon the request of Lender, Borrower shall promptly execute and deliver to Lender any and all assignments, agreements, instruments, documents and such other papers as may be reasonably requested by Lender to evidence the security interest in and collateral assignment of such Trademark in favor of Lender.

(j) Borrower has not abandoned any of the Trademarks and Borrower will not do any act, nor omit to do any act, whereby the Trademarks may become abandoned, invalidated, illegal, unenforceable, avoided, or avoidable; provided, that, to the extent that Borrower determines that any Trademark is no longer necessary or in the best interests of the business of Borrower to maintain, it shall promptly so notify Lender, which notification shall in any event be no later than thirty (30) days prior to any deadline for performing all such acts and executing all such documents necessary to maintain the existence of such Trademark as valid and subsisting. Borrower shall notify Lender immediately if it knows or has reason to know of any reason why any application, registration, or recording with respect to the Trademarks may become abandoned, canceled, invalidated, illegal, avoided, or avoidable.

(k) Borrower shall render any assistance, as Lender shall reasonably determine is necessary, to Lender in any proceeding before the United States Patent and Trademark Office, any federal, provincial, territorial or state court, or any similar office or agency in the United States, any State, Province or Territory thereof, any political subdivision thereof or in any other country, to maintain such application and registration of the Trademarks as Borrower's exclusive property and to protect Lender's interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings.

(l) To the best of Borrower's knowledge, no material infringement or unauthorized use presently is being made of any of the Trademarks that would adversely affect in any material respect the fair market value of the Collateral or the benefits of this Agreement granted to Lender, including, without limitation, the creation, validity, priority or perfection of the security interest granted herein or the remedies of Lender hereunder. There has been no judgment holding any of the Trademarks invalid or unenforceable, in whole or part, nor is the legality, validity or enforceability of any of the Trademarks presently being questioned in any litigation or proceeding to which Borrower is a party. Borrower shall promptly notify Lender if Borrower (or any affiliate or subsidiary thereof) learns of any use by any person of any term or design which infringes on any Trademark or is likely to cause confusion with any Trademark. If requested by Lender, Borrower, at Borrower's sole expense, shall join with Lender in such action as Lender, in Lender's reasonable discretion, may deem advisable for the protection of Lender's interest in and to the Trademarks.

(m) Borrower assumes all responsibility and liability arising from the use of the Trademarks and Borrower hereby indemnifies and holds Lender harmless from and against any claim, suit, loss, damage, or expense (including professionals and attorneys' fees and legal expenses) arising out of any alleged defect in any product manufactured, promoted, or sold by Borrower (or any affiliate or subsidiary thereof) in connection with any Trademark or out of the manufacture, promotion, labeling, sale or advertisement of any such product by Borrower (or any affiliate or subsidiary thereof). The foregoing indemnity shall survive the payment of the Obligations, the termination of this Agreement and the termination or non-renewal of the Loan Agreement.

(n) Borrower shall promptly pay Lender for any and all expenditures made by Lender pursuant to the provisions of this Agreement or for the defense, protection or enforcement of the Obligations, the Collateral, or the security interests and collateral assignment granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, travel expenses, and reasonable attorneys' and professionals' fees and legal expenses. Such expenditures shall be payable on demand, together with interest at the rate then applicable to the indebtedness of Borrower to Lender set forth in the Loan Agreement and shall be part of the Obligations secured hereby.

#### 4. EVENTS OF DEFAULT

All Obligations shall become immediately due and payable, without notice or demand, at the option of Lender, upon the occurrence of any Event of Default, as such term is defined in the Loan Agreement (each, an "Event of Default" hereunder).

#### 5. RIGHTS AND REMEDIES

At any time an Event of Default exists or has occurred and is continuing, in addition to all other rights and remedies of Lender, whether provided under this Agreement, the Loan Agreement, the other Financing Agreements, applicable law or otherwise, Lender shall have the following rights and remedies which may be exercised without notice to, or consent by, Borrower except as such notice or consent is expressly provided for hereunder:

(a) Lender may require that neither Borrower nor any affiliate or subsidiary of Borrower make any use of the Trademarks or any marks similar thereto for any purpose whatsoever. Lender may make use of any Trademarks for the sale of goods, completion of work-in-process or rendering of services or otherwise in connection with enforcing any other security interest granted to Lender by Borrower or any subsidiary or affiliate of Borrower or for such other reason as Lender may determine.

(b) Lender may grant such license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner, as Lender shall in its discretion deem appropriate. Such license or licenses may be general, special or otherwise, and may be granted on an exclusive or non-exclusive basis throughout all or any part of the United States of America, its territories and possessions, and all foreign countries.

(c) Lender may assign, sell or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations, except that if notice to Borrower of intended disposition of Collateral is required by law, the giving of ten (10) days prior written notice to Borrower of any proposed disposition shall be deemed reasonable notice thereof and Borrower waives any other notice with respect thereto. Lender shall have the power to buy the Collateral or any part thereof, and Lender shall also have the power to execute assurances and perform all other acts which Lender may, in its discretion, deem appropriate or proper to complete such assignment, sale, or disposition. In any such event, Borrower shall be liable for any deficiency.

(d) Lender may appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or any employee or employees of Lender or not, to be a receiver or receivers (hereinafter called a "Receiver", which term when used herein shall include a receiver

and/or manager) of any Collateral of Borrower (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his/her stead. Any such Receiver shall, so far as concerns responsibility for his/her acts, be deemed the agent of the Borrower, and Lender shall not be in any way responsible for any misconduct, negligence or non-feasance on the part of any such Receiver, his/her servants, agents or employees. Subject to the provisions of the instrument appointing him/her, any such Receiver shall have power to take possession of the Collateral, to preserve the Collateral or its value, to carry on or concur in carrying on all or any part of the business of the Borrower and to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of the Collateral. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including the Borrower, enter upon, use and occupy all premises owned or occupied by the Borrower wherein the Collateral may be situate, maintain Collateral upon such premises, borrow money on a secured or unsecured basis and use the Collateral directly in carrying on the Borrower's business or as security for loans or advances to enable the Receiver to carry on Borrower's business or otherwise, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by the Lender, all money received from time to time by such Receiver in carrying out his/her appointment shall be received in trust for and paid over to the Lender. Every such Receiver may, in the discretion of the Lender, be vested with all or any of the rights and powers of the Lender. The Lender, may, either directly or through its agents or nominees, exercise any or all powers and rights given to a Receiver by virtue of the foregoing provisions of this paragraph.

(e) In addition to the foregoing, in order to implement the assignment, sale, or other disposition of any of the Collateral pursuant to the terms hereof, Lender may at any time execute and deliver on behalf of Borrower, pursuant to the authority granted in the Special Power of Attorney described in Section 3(g) hereof, one or more instruments of assignment of the Trademarks (or any application, registration, or recording relating thereto), in form suitable for filing, recording, or registration. Borrower agrees to pay Lender on demand all costs incurred in any such transfer of the Collateral, including, but not limited to, any taxes, fees, and reasonable attorneys' and professionals' fees and legal expenses. Borrower agrees that Lender has no obligation to preserve rights to the Trademarks against any other parties.

(f) Lender may first apply the proceeds actually received from any such license, assignment, sale or other disposition of any of the Collateral to the costs and expenses thereof, including, without limitation, reasonable attorneys' and professionals' fees and all legal, travel and other expenses which may be incurred by Lender. Thereafter, Lender may apply any remaining proceeds to such of the Obligations as Lender may in its discretion determine. Borrower shall remain liable to Lender for any of the Obligations remaining unpaid after the application of such proceeds, and Borrower shall pay Lender on demand any such unpaid amount, together with interest at the rate then applicable to the indebtedness of Borrower to Lender as set forth in the Loan Agreement.

(g) Borrower shall supply to Lender or to Lender's designee, Borrower's knowledge and expertise relating to the manufacture, sale and distribution of the products and services bearing the Trademarks and Borrower's customer lists and other records relating to the Trademarks and the distribution thereof.

(h) Nothing contained herein shall be construed as requiring Lender to take any such action at any time. All of Lender's rights and remedies, whether provided under this Agreement, the other Financing Agreements, applicable law, or otherwise, shall be cumulative and none is exclusive. Such rights and remedies may be enforced alternatively, successively, or concurrently.

6. JURY TRIAL WAIVER; OTHER WAIVERS AND CONSENTS; GOVERNING LAW

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

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

(c) Borrower hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed immediately upon receipt thereof by Borrower, or, at Lender's option, by service upon Borrower in any other manner provided under the rules of any such courts. Within thirty (30) days after such service, Borrower shall appear in answer to such process, failing which Borrower shall be deemed in default and judgment may be entered by Lender against Borrower for the amount of the claim and other relief requested.

(d) BORROWER AND LENDER EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF BORROWER AND LENDER IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER FINANCING AGREEMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. BORROWER AND LENDER EACH HEREBY AGREES AND



CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT BORROWER OR LENDER MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER AND LENDER TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) Notwithstanding any other provision contained herein, Lender shall not have any liability to Borrower (whether in tort, contract, equity or otherwise) for losses suffered by Borrower in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, unless it is determined by a final and non-appealable judgment or court order binding on Lender that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. In any such litigation, Lender shall be entitled to the benefit of the rebuttable presumption that it acted in good faith and with the exercise of ordinary care in the performance by it of the terms of this Agreement and the other Financing Agreements.

## 7. MISCELLANEOUS

(a) All notices, requests and demands hereunder shall be deemed to have been given or made if done so in accordance with the notice provisions of the Loan Agreement.

(b) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural. All references to Borrower and Lender pursuant to the definitions set forth in the recitals hereto, or to any other person herein, shall include their respective successors and assigns. The words "hereof," "herein," "hereunder," "this Agreement" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced. An Event of Default shall exist or continue or be continuing until such Event of Default is waived in accordance with Section 7(d) hereof. All references to the term "Person" or "person" herein shall mean any individual, sole proprietorship, partnership, corporation (including, without limitation, any corporation which elects subchapter S status under the Internal Revenue Code of 1986, as amended), limited or unlimited liability company, limited liability partnership, business trust, unincorporated association, joint stock company, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof. This Agreement, the other Financing Agreements and any other document referred to herein or therein shall be binding upon Borrower and its successors and assigns and inure to the benefit of and be enforceable by Lender and its successors and assigns.

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

(d) Neither this Agreement nor any provision hereof shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement signed by an authorized officer of Lender. Lender shall not, by any act, delay, omission or otherwise be

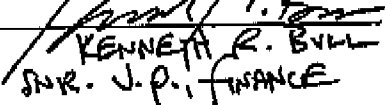
deemed to have expressly or impliedly waived any of its rights, powers and/or remedies unless such waiver shall be in writing and signed by an authorized officer of Lender. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which Lender would otherwise have on any future occasion, whether similar in kind or otherwise.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement as of the day and year first above written.

FIVE BELOW, INC.

By:   
Name: KENNETH R. BULL  
Title: SNR. V.P. FINANCE

WACHOVIA BANK, NATIONAL ASSOCIATION

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

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF Philadelphia ) ss.:

On this 17 day of August, 2006, before me personally came Reginald R. Ball to me known, who being duly sworn, did depose and say, that he/she is the President of FIVE BELOW, INC., and that (s)he being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing.

Carissa A. Fuller  
Notary Public  
COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
CARISSA A. FULLER, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires June 28, 2007

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF \_\_\_\_\_ ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me personally came \_\_\_\_\_ to me known, who, being duly sworn, did depose and say, that he/she is the \_\_\_\_\_ of WACHOVIA BANK, NATIONAL ASSOCIATION, and that (s)he being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing.


\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, Borrower and Lender have executed this Agreement as of the day and year first above written.

FIVE BELOW, INC.

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

WACHOVIA BANK, NATIONAL  
ASSOCIATION

By:   
Name: *Kevin M. Caldwell*  
Title: *DIABOTER*

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.:  
 COUNTY OF PHILADELPHIA )

On this \_\_\_ day of \_\_\_\_\_, 2006, before me personally came \_\_\_\_\_  
 to me known, who being duly sworn, did depose and say, that he/she is the \_\_\_\_\_  
 of FIVE BELOW, INC., and that (s)he being authorized to do so, executed the foregoing  
 instrument for the purposes therein contained by signing.

\_\_\_\_\_  
 Notary Public

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.:  
 COUNTY OF PHILADELPHIA )

On this 18<sup>th</sup> day of August, 2006, before me personally came Kevin McGoldrick, to  
 me known, who, being duly sworn, did depose and say, that he/she is the Director of  
 WACHOVIA BANK, NATIONAL ASSOCIATION, and that (s)he being authorized to do so,  
 executed the foregoing instrument for the purposes therein contained by signing.

Denise M Alice

Notary Public

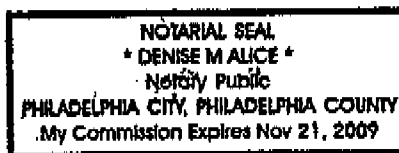


EXHIBIT A  
TO  
TRADEMARK COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT

LIST OF TRADEMARKS AND TRADEMARK APPLICATIONS

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Expiration Date</u>
"FIVE BELOW"	2936635	March 29, 2005	March 29, 2015
"FIVE BELOW (stylized)"	2813080	February 10, 2004	February 10, 2014

<u>Trademark Application</u>	<u>Application/Serial Number</u>	<u>Application Date</u>
"5 BELOW"	76/426066	June 28, 2002

EXHIBIT B  
TO  
TRADEMARK COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT

LIST OF LICENSES

None



EXHIBIT C  
TO  
TRADEMARK COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT  
SPECIAL POWER OF ATTORNEY

SPECIAL POWER OF ATTORNEY

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

KNOW ALL MEN BY THESE PRESENTS, that FIVE BELOW, INC. ("Borrower"), having an office at 1616 Walnut Street, Suite 400, Philadelphia, Pennsylvania 19103 hereby appoints and constitutes, severally, WACHOVIA BANK, NATIONAL ASSOCIATION, as Lender ("Lender"), and each of its officers, its true and lawful attorney, with full power of substitution and with full power and authority to perform the following acts on behalf of Borrower:

1. Execution and delivery of any and all agreements, documents, instrument of assignment, or other papers which Lender, in its discretion, deems necessary or advisable for the purpose of assigning, selling, or otherwise disposing of all right, title, and interest of Borrower in and to any trademarks and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to the foregoing.

2. Execution and delivery of any and all documents, statements, certificates or other papers which Lender, in its discretion, deems necessary or advisable to further the purposes described in Subparagraph 1 hereof.

This Power of Attorney is made pursuant to a Trademark Collateral Assignment and Security Agreement, dated of even date herewith, between Borrower and Lender (the "Security Agreement") and is subject to the terms and provisions thereof. This Power of Attorney, being coupled with an interest is made for consideration, is irrevocable until all "Obligations", as such term is defined in the Security Agreement, are paid in full and the Security Agreement is terminated in writing by Lender.

Dated: \_\_\_\_\_, 2006

FIVE BELOW, INC.

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

Name:

Title:

COMMONWEALTH OF PENNSYLVANIA     )  
   )  
 COUNTY OF \_\_\_\_\_    )  
   )  
   ) ss.:

On this \_\_\_ day of \_\_\_\_\_, 2006, before me personally came \_\_\_\_\_,  
 to me known, who being duly sworn, did depose and say, that he/she is the \_\_\_\_\_  
 of FIVE BELOW, INC., and that (s)he being authorized to do so, executed the foregoing  
 instrument for the purposes therein contained by signing.

---

Notary Public